

Torture and Human dignity- AN Indian Scenario

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Received: March 25, 2018

Accepted: April 30, 2018

ABSTRACT

Torture by one human to human is simply a sign a domination by stronger into weaker it is basically a weapon by which stronger try to influence the weaker person .it is generally done by police official during implementation of their duties. They use very unlawful method to curb the crime and investigate the case. However they have power to maintain the law and order but this power is not absolute. There are some restriction in the form of law which prevent the misuse of the power during the investigations or during interrogations in police custody or in judicial custody. Sometime this type of mal practice of authority's leads to death .this articles describes the Indian scenario of torture and respect to human dignity. Protection of life and liberty also include protect from arrest and unreasonable use of force without any necessities .¹ It is a fundamental right. Right to life doesn't mean mere existence. It means life for full dignity which has some existence in the society, apart from this person care is taken by article 22 of constitution of India. " Liberty is the most cherished possession of the man". Torture is a wound in the soul so painful that you can almost touch it, but it is also so intangible that there is no way to heat it. Torture is anguish squeezing in you. Chest, cold as ice and heavy, as a stone paralyzing as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself.²"

Keywords: Torture, fundamental rights, human dignity, violation, punishment.

Introduction

Torture is serious violation of human rights. It maybe define as the infliction of excruciating physical or psychological pain for such reasons as punishments , intimidation ,coercion , the extraction of a confession , or for obtaining the information .

The declaration of Tokyo (1975) has described torture as a deliberate, 'systematic, or wanton infliction of physical or mental suffering by one person one or more persons acting alone or one the orders of any authority to force another person to field information to make a confession or for any other purpose. Moreover India is also signatory to the **united nation convention against torture and other cruel, inhuman or degrading treatment or punishment** which came into force in 1987. The government of India signed the UN convention in October, 1997. the constitution has entrusted the work of protecting fundamental freedoms to Indian judiciary has the prime obligation to be utmost careful and to resist even the slightest intrusion into its domain in safeguarding the human dignity which our founding fathers have so passionately granted to us.

Although the term torture has not been define neither in domestic law nor in international law. However article 21 grantees the protection of life of a person except procedure establish by law". Right to life has been held to include the right to live with human dignity and include within its ambit a personal grantees against torture to cruel, inhuman or degrading against torture or to cruel , inhuman or disregarding treatment and punishment . a person can move to the higher court^(32, 226)³for enforcement of his fundamental rights against any misbehaving or ill treatment on the part of police or any similar authority ,who has power to curb the crime and maintain the law and order .in case of **Neelabati Bahera v. State of Orissa , 1994(1) Recent Criminal Report 18 (Sc)** hon ble supreme pointed out that prisoners and detune are not denuded of their fundamental rights under article 21 and it is only such restriction as are permitted by law ,which can be imposed on the enjoyment of the fundamental rights arrestee and detunes .moreover, In **Munsi Singh Gautam (D) v. State of M.P 2005 AIR (sc)**, it was observed by supreme court that...

Article 21 which one of the luminary provision in the constitution of India, 1950 and is a part of the scheme for the fundamentals rights occupies a place of pride in the constitution. The article mandates that no person shall deprive of his life and personal liberty, except according to the procedure establish by law. there is an inbuilt guarantee by against torture or assault by the state or its functionaries.

That in the case of **Dr. Mehmood Nayyar Azam v. state of Chhattisgarh (SC), 2012(8) SCC1**, ho'nble Supreme court , while referring to the case of **joginder Kumar** , observed that any form of torture or cruel act,

inhuman, or disregarding treatment would fall within the ambit of article 21 of the constitution of India, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the government become lawbreakers, it is bound to breed contempt of law would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchy. No civilized nation can permit that to happen for a citizen doesn't happen, for a citizen doesn't shed off his fundamental right to life, the moment a policeman arrests him. The right to life of a citizen cannot put in abeyance on his arrest. The right to life of a person is a precious right guaranteed by article 21 of the constitution of India cannot be denied to convicts, under trials, detunes and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law.

In a very important judgment of **D.K Basu v. State Of West Bengal (SC), 1997 AIR (SC) 610** the supreme court issues certain important guidelines for protection of prisoners from custodial violence and torture on the part of investigating wing.

1. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible, and clear identification and name tags with their designations. The particulars of the all such police personnel who handle interrogation of the arrestee must be recorded in a registrar.
2. That police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrests and shall contain the date and time.
3. A person who has been arrested by police and being held in custody in a police station or interrogation centre or lockup, shall be entitled to have one friend relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
4. The arrested person must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
5. An entry must be made regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrests and the names and particulars of the police officials in whose custody the arrestees is.
 - a. The arrestees may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

Remedies against torture and violation of human dignity in India.

Legal regime-

1. CONSTITUTIONAL SAFEGUARDS

It has been held in a catena of judgments that just because a person is in police custody or detained or under arrest, does not deprive him of his basic fundamental rights and its violation empowers the person to move the Supreme Court under Article 32⁵ of the Constitution of India. Detention does not deprive one of his fundamental rights. They don't flee the persons as he enters the prison although they may suffer shrinkage necessitated by incarceration.

It primarily gives a person the rights against conviction of offences. These include the principle of non-retroactivity of penal laws (Nullum crimen sine lege[17]) i.e. ex-post facto laws thereby making it a violation of the persons fundamental rights if attempts are made to convict him and torture him as per some statute.

Article 20 also protects against double jeopardy (*Nemo debet pro eadem causa bis vexari*). This article most importantly protects a **person from self-incrimination. The police subject a person to brutal and continuous torture to make him confess to a crime even if he has not committed the same.**

Article 21:

This article has been understood in the Indian judiciary to protect the right to be free from torture. This view is held because the right to life is more than a simple right to live an animalistic existence. The

1. SUPREME COURT JUDGEMENT 1997¹

expression "life or personal liberty" includes a guarantee against torture and assault even by the State and its functionaries to a person who is taken in custody and no sovereign immunity can be pleaded against the liability of the State arising due to such criminal use of force over the captive person.

Other Statutory Safeguards:

Indian Evidence Act, 1872:

A confession to police officer cannot be proved as against a person accused of any offence (Sec. 25 Evidence Act) and confession caused by threats from a person in authority in order to avoid any evil of a temporal nature would be irrelevant in criminal proceedings as, inter-alia, provided in Sec. 24. Thus, even though custodial torture is not expressly prohibited by law in India, the evidence collected by illegal means, including torture is not accepted in courts.

Code of Criminal Procedure, 1973:

Sec. 46 and 49 of the Code protect those under custody from torture who are not accused of an offence punishable with death or imprisonment for life and also during escape. Sec. 50-56 are in consonance with Sec. 54 of the Code is a provision that to a significant extent corresponds to any infliction of custodial torture and violence. A compensatory mechanism has also been used by courts. When the Magistrate does not follow procedure with respect to entertaining complaint of custodial torture, it calls for interference by the High Court.

Another significant provision with respect to custodial torture leading to deaths is Sec. 176 of the Code where a compulsory magisterial inquiry is to take place on death of an accused caused in police custody. Sections 167 and 309 of the Code have the object of bringing the accused persons before the court and so safeguard their rights and interests as the detention is under their authorisation.

Indian Police Act:

Sections 7 and 29 of the Act provide for dismissal, penalty or suspension of police officers who are negligent in the discharge of their duties or unfit to perform the same. This can be seen in the light of the police officers violating various constitutional and statutory safeguards along with guidelines given in D.K Basu v. State of West Bengal.

Sections 330, 331, 342 and 348 of the IPC have ostensibly been designed to deter a police officer, who is empowered to arrest a person and to interrogate him during investigation of an offence from resorting to third degree methods causing 'torture'.

Judicial Precedents:

Since the 1990s, the Supreme Court has come up with two innovative ways of dealing with custodial torture and custodial death cases namely, the right to compensation for custodial death and torture and the formulation of custody jurisprudence.

The case of **Sheela Barse v. State of Maharashtra** has provided for guidelines on rights of the arrested persons especially women. The court in this case also emphasised on the need for Magistrates to inform all arrested persons of their rights. Guidelines were also given by the Supreme Court in D.K Basu v. State of West Bengal with respect to rights of arrested persons. The most significant one being the arrestee should be subjected to medical examination every 48 hours during his detention by a doctor from the approved panel of doctors and copies of all prescribed documents should be sent to the concerned Magistrates. Also, the arrestee may be permitted to meet his lawyer during interrogation.

Other Authorities:

It has been recommended in the 177th Law Commission Report by the 16th Law Commission that requisite amendments should be brought about in the Code of Criminal Procedure making it the duty of the police officers in whose custody there are arrested persons that they should ensure their safety and holding them responsible for failure of the same. Thirty years hence, this amendment has still not been incorporated. The presence of an advocate during interrogation of the arrested person is also a recommendation that has been made. The 185th Law Commission Report also makes recommendation regarding rights of arrested persons with respect to the Indian Evidence Act, 1872 which are with respect to s. 27. The Mali math Committee

Report has also² Emphasized on the need for codification of the rights of the arrested persons.

Despite the above, the abominable figures regarding custodial torture have still not improved. One very simple reason behind this could be that persons who are supposed to protect people are themselves the wrongdoers. The criminal justice system in India is supposed to use the reformist approach;

Suggestion regarding prevention of inhuman act of torture by police under Indian scenario

without failure.

3) The public and especially concerned professional groups, including rights groups and the media must closely monitor police practices to see that government promises are upheld. The political opposition must also see to it that the DGP submits a report to the legislative assembly, and an investigative report, on every case of custodial death and torture.

4) The central government should be urged to ratify the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. The government has failed to ratify the treaty on spurious grounds that existing laws are good enough to prevent custodial torture which is evidently not the case. Were that the case, 60 years after independence and despite numerous concerns and guidelines issued by courts all over India, torture would not persist unabated as it does today¹) Custodial torture must be made a crime. This could be brought in by way of a special law

2, secondly, many cases of custodial torture could be prevented if law-enforcing agencies followed the existing laws relating to arrest and detention. The rules established by the Supreme Court, though not a complete remedy should be applied.

Conclusion:

The very ideas of a human being in custody save for protection and nurturing is an anathema to human existence. The word custody implies guardianship and protective care. Even when applied to indicate arrest or incarceration, it does not carry any sinister symptoms of violence during custody.

In a complaint of custodial torture, the court should not adopt a casual approach to it on the ground that it has been made by a habitual offender. It is a perennial problem of statecraft. It therefore, becomes imperative to evolve a system of state governance that allows the police to effectively maintain law and order and to prevent and detect the commission of a crime without jeopardizing legal rights; privileges and claims of laymen. Such a system obviously warrants appropriate control over the police in order to discourage them from exercising their power in a capricious manner. Similarly, an effective institutional grievance-redressal mechanism to vindicate 'police excesses' is also the need of the hour.