

# TORTURE AND DEATHS IN POLICE CUSTODY — A VIOLATION OF RIGHT TO LIFE

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Right to life is an evolution from the concept of natural rights. Natural rights are inherently moral rights which every human being at all times ought to have simply because of the fact that he is a rational and a moral being.<sup>1</sup> The natural rights are given by God to man. They are inherent, fundamental and sacred rights which can neither be taken away by any individual nor be restricted by any authority.<sup>2</sup>

The doctrine of natural rights passed into a realm of practical reality and influenced the drafting of the Magna Carta (1215 A.D.), British Bill of Right (1689), The Declaration of Independence (1776), The Declaration of Right of Man and Citizen (1789) and formed part of the US Constitution.<sup>3</sup> Gradually, the concept of natural rights developed. The traditionally known natural rights came to be known as fundamental rights in modern democracies.<sup>4</sup> The US Constitution served as a beacon. Taking a cue from it almost every modern constitution contains a chapter on fundamental rights. The constitution makers of India also incorporated them in Part III of the Indian Constitution and called them "Fundamental Rights."<sup>5</sup> The Indian Constitution guarantees the right to life under Article 21, which reads as;

"Protection of life or personal liberty –

No person shall be deprived of his life or personal liberty except according to procedure established by law."

It guarantees right to life and personal liberty as our fundamental right which nobody can be deprived of except according to procedure established by law. The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and comingling with fellow human beings.<sup>6</sup> It also includes protection against torture or cruel, inhuman or degrading treatment in any form. It was held by Bhagwati, J., that any act which damages or injures or interferes with the use of any limb or faculty of a person, either permanently or temporarily would be within the inhibition of Article 21 of the Indian Constitution.<sup>7</sup> Everyone has a

right to live with human dignity. Neither the Central Government nor the state government has the right to take any action which will deprive a person of the enjoyment of these basic essentials.<sup>8</sup>

The responsibility of protection of the right to life lies in the hands of the government of the country and its various organs. In a democracy, policeman is a custodian of law.<sup>9</sup> Police is the branch of the government which is charged with the preservation of public order and tranquility, the promotion of the public health, safety and morals and the prevention and detection of crimes.<sup>10</sup> The police while being a visible symbol of the authority of the government are expected to safeguard the interest of citizen with regard to their basic right.<sup>11</sup> But the protectors of these rights have become their major violators. There are numerous incidents of torture and deaths in police custody. Torture by police comes into the picture during interrogation. Police is under a legal duty and has a legitimate right to arrest a criminal and to interrogate him of an offence. But the law does not permit a policeman to use third degree methods or torture of the accused in custody during interrogation with a view to solve the crime. When a policeman indulges in third degree methods he only degrades himself to the level of the criminal or perhaps he compares even less favourably with the criminal in his custody.<sup>12</sup> Torture by police becomes an issue of concern when those who are entrusted with the task of protecting the life and liberty of the people violate it. It further degrades the image of the police.

“Torture” has not been defined in the Constitution or in other penal laws. “Torture” of a human being by another human being is essentially an instrument to impose the will of the “strong” over the weak by suffering.<sup>13</sup> Torture includes any harassment that causes suffering, physical or mental. Rudeness by word of mouth, repeatedly calling a man to the police station, and then making him wait for long hours is also a brutality of a kind.<sup>14</sup> Physical assault, denial of food, drink, sleep and toilet facilities, continuous interrogation over long period, use of third degree methods, stripping of men and womenfolk, rape of women and death in police custody are the ways of torture by police.<sup>15</sup> Torture and deaths in police custody is a daily routine in one part of India or the other, though the type of torture inflicted and the number of deaths in police lockups varies from state to state. The victims are ordinarily men and women mainly belonging to the socio-economically disadvantaged strata of the society, their defencelessness as a factor grows against them.

In this background there are certain key questions which require consideration and in this paper an attempt has been made to answer them. They are - (1) What is the protection provided against torture by police at the international and the national level? (2) What is the judicial response to torture and deaths in police custody? (3) What remedial measures can be adopted to eradicate torture and deaths in police custody?

There are various provisions provided for protection against torture by the police, both at the international and national levels. Internationally, members of the United Nations have committed themselves to promote and respect for and observance of individual rights and freedoms. The philosophy of the United Nations Charter affirming the dignity of man based on the pillars of social justice finds reflection in the Universal Declaration of Human Rights.<sup>16</sup>

The Covenant on Civil and Political Rights, 1966; the Covenant on Economic, Social and Cultural Rights, 1966 and the Optional Protocol on Civil and Political Rights, 1966 were adopted to give life and content to the Universal Declaration of Human Rights. These documents are a source of inspiration for national and international efforts to promote and protect human rights and fundamental freedoms. They are binding commitments and legal obligation made in the international arena by a state towards its own citizens and others. The provisions of these four documents have influenced various national constitutions.<sup>17</sup> India is one such example. Part III of the Indian Constitution which deals with fundamental rights reflect the civil and political rights as mentioned in the Universal Declaration of Human Rights.

There are two instruments *i.e.* Code of Conduct for Law Enforcement Officials adopted by the United Nations General Assembly on 17th December, 1979 and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the United Nations General Assembly on 10th December, 1984. The first instrument is a code of conduct for those who exercise police powers stating that they shall respect and protect human dignity, prohibits torture, protect the health of persons in their custody.<sup>18</sup> The second instrument requires each state party to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.<sup>19</sup>

All these instruments have served as beacon lights showing the path of justice and humanity to all the Nations.

The Constitution of India and the penal laws provide various provisions for the protection against torture by the police in India.

Article 21 of the Constitution of India advances the object of Article 3 of the Universal Declaration of Human Rights which provides for right to life, liberty and security and also Article 6 of the International Covenant on Civil and Political Rights 1966, which says that every human being has the inherent right to life. The Supreme Court of India has declared any form of torture or cruel, inhuman or degrading treatment, death in custody during investigation or otherwise to be a violation of right to life and within the inhibition of Article 21.<sup>20</sup>

Sections 330 and 331 of the Indian Penal Code deal with causing hurt and grievous hurt respectively for the purpose of extorting confession or to compel restoration of property. The principle object of these sections is to prevent torture by police. The offence is complete as soon as hurt or grievous hurt is caused to extort confession or any information. The police officer by inflicting hurt or grievous hurt becomes party to a crime or offence punishable under the Indian Penal Code.

The statutory right of the police to carry on investigation is available under Chapter XII of the Criminal Procedure Code *i.e.* sections 154 to 176. Section 164 of the Cr. P.C. provides that any Metropolitan Magistrate or Judicial Magistrate may record any confession or statement made to him in the course of investigation. No confession shall be recorded by a police officer on whom any power of a magistrate has been conferred under any law. Section 57 of the Cr. P.C. provides that no police officer shall detain in custody a person for more than twenty four hours and the detainee has to be produced before the nearest magistrate. It is the duty of the magistrate under section 54 of the Cr. P.C. to inform the arrested person about his right to get himself medically examined if he has complaints of physical torture or maltreatment in police custody. Section 176 of the Cr. P.C. makes it obligatory on the nearest magistrate to hold an inquest into the cause of death of a person in the custody of police.

Sections 25 and 26 of the Indian Evidence Act provide for confessions to police officer by the accused while in custody of the police. Section 27 of this Act provides as to how much a confession or information received from an accused may be proved. The significance of these three sections is to protect the person charged with crimes from being exposed to illtreatment by the police. It is a substantial rule of law that confession made to a police officer in the absence of a magistrate is inadmissible in the court of law.

The Supreme Court of India, through progressive and humanistic interpretation has enlarged the scope of Article 21 so as to include within its purview the rights of the suspects and the accused with a view to protecting the interest of innocent and preventing abuse and misuse of police powers. By doing this, the Supreme Court has elevated immunity against torture and deaths in police custody to the status of fundamental right under Article 21 though it does not specifically enumerate it as a fundamental right in the Constitution. The cases on torture and deaths in police custody can be classified according to the measures and guidelines delivered by the apex court. The classification is as follows - (1) state responsibility which includes guidelines to the State Government guidelines to the District Magistrate, free legal service, compensation by the State; (2) individual responsibility; (3) tortious act.

The Apex Court directed the state authorities to re-educate & inculcate in the constabulary the respect for human being,<sup>21</sup> to ensure that the legal requirement to produce an arrested person before a Judicial Magistrate within 24 hours of the arrest is scrupulously observed.<sup>22</sup> In *Sheela Barse v. State of Maharashtra*<sup>23</sup>, the Supreme Court directed the government to produce pamphlets in local languages setting out the rights of the arrested persons and these pamphlets to be placed in each police station & read out to all the detainees. Also that the women detainees must be kept separate from the male detainees and a women officer present during interrogation of women detainees. Verma, J., in *Nilabati Bahera v. State of Orissa*<sup>24</sup> held that it is an obligation of the state to ensure that there is no infringement of the indefeasible right to a citizen to life except in accordance with the law while the citizen is in its custody.

It is the duty of the Magistrate or the Sessions Judge before whom an accused appears to inform the accused of his right to free legal services.<sup>25</sup>

Judicial activism has led to the granting of exemplary compensation under Article 32 of the Indian Constitution to the victims of police atrocities. Grant of compensation not only provides some succour and recompense to the unfortunate victims of police torture but also serves as a preventive measure to some extent. The Supreme Court in *Rudal Shah v. State of Bihar*<sup>26</sup> for the first time openly declared that compensation ought to be paid for the violation of right to life under Article 21 of the Indian Constitution. The court ruled out that the state must repair the damages done by its officers by paying compensation to the victims. But there is no basis for the quantification of the amount of exemplary costs. And this is the reason that the amount of monetary compensation varies in various cases. Quantum of compensation depends on peculiar facts of each case or is left to the individual judge who decided the case.<sup>27</sup> The court has further pointed out in a few cases that it would be open to the state to recover the amount of compensation from the police officer who inflicted torture on the accused. So the individual police officer is made responsible for his illegal acts and also liable to pay fine and face rigorous imprisonment. The Supreme Court in *Gauri Shankar Sharma v. State of U.P.*,<sup>28</sup> the Calcutta High Court in *State v. Sunil Biswas*<sup>29</sup>, the Karnataka High Court in *V. Shekhar v. State of Karnataka*<sup>30</sup> have made the concerned police officials liable to pay fine and have also awarded rigorous imprisonment. Few cases have been directed by the Supreme Court for the CBI to investigate.<sup>31</sup>

Ray, J., in *Saheli v. Commr. of Police, Delhi* has held that the state is liable for the tortious act of its employees under the law of torts and that an action for damages lies for bodily harm which includes battery, assault, false imprisonment, physical injuries and death. The same was reiterated in *Golaka Chandra*

*Jain v. D.G. Police.*<sup>32</sup> This point was also discussed in *Nilabati Bahera v. State of Orissa* and it was stated that such a claim is based on strict liability made by resorting to a fundamental right in addition to the remedy in private law for damages for the torture resulting for the contravention of the fundamental right.

The Indian judiciary has no doubt been very sensitive to the torture and deaths in police custody. The judiciary has not only provided justice to the kins of victims of police excesses but has also been policing the police. To make this a living reality for all, some practical correctional steps and measures are required to be taken by the police as well as the society at large — the people, the politicians, the bureaucrats, and the media.

It is necessary to remove the deficiencies found in the legal provisions of India. An amendment of section 54 of the Cr. P.C. making medical examination compulsory and mandatory before and after the police remand is necessary which would benefit the accused. The Law Commission of India has recommended in its 113th Report the insertion of a new section 114-B in the Indian Evidence Act to provide for a rebuttable presumption by the court against the police officer having custody of a person of causing the injury when it is proved that it was raised while the person was in custody.<sup>34</sup>

Intensive education and training of the police personnel at all levels is the keystone of bringing up a humanised police. The object of training should be to make the policemen skilled, competent and to have a sense of justice righteousness, professional ethics. Since torture and death in custody take place during the interrogation of suspects, the interrogating officers should possess these qualities which would reduce use of force.

It is important to encourage the use of modern techniques of investigation. Scientific aids cover a wide variety of services ranging from the sophisticated forensic laboratories to a small simple equipment at the police station level for lifting finger prints. There should be a supply of lie detectors, recording of evidence by audio visual computers, trained technicians, foot print and finger print experts, photographers at the police station level. This would help the police in collecting evidences.

The mass media can help in strengthening the police-public relations and can also police the police. This can be done by way of advertising and awakening through radio, television, newspapers, slogans, posters, leaflets, tapes, calenders, etc. Delhi Police is the first police organisation in the whole country to have employed this modern tool very sincerely with the objective of informing and educating the people, and seeking their co-operation. This has been quite successful. This kind of technique should be adopted by the police

in other states also.

The non-governmental organisations (NGOs) should also be encouraged. Police organisations and the people at large should give them all kinds of assistance to curb the violation of fundamental rights. These NGOs should take up such cases, give the victims assistance and also take up their cause to the court. There should also be an organisation of the police officers who are retired to act as a watchdog and provide counselling and guidance to police rank and file.

Monitoring of torture and deaths in police custody is very essential. The government officials are not conscious of the fact that it is a grave crime and needs attention. There are no datas, records, or statistics available on torture and deaths in police custody. If there is torture, it is a crime under hurt and grievous hurt of IPC. It is very strange that all cases of torture and deaths in custody are a crime under IPC yet it is not mentioned anywhere in any of the national institute dealing with crimes *e.g.* National Bureau of Crimes and Records. The same IPC offences, when committed by policemen against suspects and victims become much more grave and serious. It should be listed separately like any other offence only then its importance and necessity to curb will be realised.

What is essential for protecting right to life is a police system and a police force with efficient and scientific techniques which would help in reducing the use of force, torture and third degree methods. The police being the central agency of the criminal justice system cannot function in violating the human rights. It has to function with all other institutions which make it functional *i.e.* the prosecution, advocates, judges and functionaries in the correctional services. All have to come forward and take initiative to eradicate torture in police custody.

#### NOTES & REFERENCES

1. M.G. Chitkara, HUMAN RIGHTS : COMMITMENT AND BETRAYAL (1996) at 1.
2. M.P. Jain, POLITICAL THEORY (1985) at 312.
3. *Supra* n. 1 at 10.
4. *Id.* at 2.
5. James Vadackumchery, HUMAN RIGHTS AND THE POLICE IN INDIA (1996) at 19.
6. *Francies Coralie v. Union Territory of Delhi*, AIR 1981 SC 746; (1981) SCC 608.
7. *Id.* at 609.
8. *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802.
9. Shankar Sen, *Force of Disorder - Maladies Afflicting Indian Police*, THE STATESMAN, February 16, 1991.

10. S.M. Afzal Qadri, *POLICE AND LAW - A SOCIOLEGAL ANALYSIS* (1989) at 1.
11. Sahilendra Mishra, *POLICE BRUTALITY : AN ANALYSIS OF POLICE BEHAVIOUR* (1986) at 2.
12. R. Deb., *PRINCIPLES OF CRIMINOLOGY, CRIMINAL LAW AND INVESTIGATION* (1991) at 276.
13. *D.K. Basu v. State of W.B.*, AIR 1997 SC 743 at 747.
14. *Supra* n. 11 at 2.
15. *Ibid.*
16. Subhram Raj Khowa, *Human Rights : Institutional Arrangements*, in Naoram Sanjaoba, ed., *HUMAN RIGHTS : PRINCIPLES, PRACTICES & ABUSES* (1994) at 66.
17. Articles 3, 5, 8 and 9 of the *UNIVERSAL DECLARATION OF HUMAN RIGHTS*, 1948; Articles 6, 7, 9, 16 of the *COVENANT OF CIVIL AND POLITICAL RIGHTS*, 1966.
18. Articles 2, 5, 3, 6 of the *CODE OF CONDUCT FOR LAW ENFORCEMENT OFFICIALS*, 1979.
19. Article 2(1) Part I, Article 10(1) of Part I, Article 14(1) of the *CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT*, 1984.
20. *Prem Shankar v. Delhi Admn.*, AIR 1980 SC 1535; *Sunil Batra v. Delhi Admn.*, AIR 1980 SC 1579; *Kishore Singh v. State of Rajasthan*, AIR 1981 SC 625; *Khatri v. State of Bihar*, AIR 1983 SC 1086; *Sheela Barse v. State of Maharashtra*, AIR 1983 SC 376; *Nilabati Bahera v. State of Orissa*, AIR 1993 SC 1960; *State of Madhya Pradesh v. Shyam Sunder Trivedi* (1995) 4 SCC 262; *D.K. Basu v. State of W.B.* 1997 Cri. L.J. 743.
21. *Kishore Singh v. State of Rajasthan*, AIR 1981 SC 625.
22. *Khatri v. State of Bihar*, AIR 1981 SC 928.
23. AIR 1983 SC 376.
24. AIR 1993 SC 1960. Also see *D.K. Barn v. State of West Bengal* 1997, Cri L.J. 743.
25. *Khatri v. State of Bihar*, AIR 1981 SC 928; *Suk Das v. UT of Arunachal Pradesh*, AIR 1986 SC 991.
26. AIR 1983 SC 1086.
27. *Saheli v. Commissioner of Police, Delhi*, AIR 1990 SC 513; *P. Rathinam v. State of Gujarat*, (1993) 2 Scale 631; *Nilabati Bahera v. State of Orissa* AIR 1993 SC 1960; *Arvinder Singh Bagga v. State of UP*, AIR 1995 SC 117; *Thankappan v. Union of India*, AIR 1997 SC 1539; *Parna Thamma v. Chief Secretary, Karnataka* 1996 (1) All India Cr.L.R. 125.
28. 1990 (supp.) SCC 656.
29. 1990 Cr. L.J. 2093.
30. 1990 Cr. L.J. 1100.
31. *Mohan Lal Sharma v. State of UP*, (1989) 2 SCC 600; 1994 Cr.L.J. 2197; AIR 1995 SC 31.
32. 1992 Cr.L.J. 2901.
33. N.K. Shinghal, *Study on Custodial Deaths in Delhi : Causes and Remedies*, 11PA, (1992) at 72-73.