



CUSTODIAL VIOLENCE: AN ANATHEMA IN ANY CIVILIZED SOCIETY

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Abstract:

The police are entrusted with several tasks in a democracy that are typically the responsibility of every person. Because they are a part of society, police play a crucial role in it. Without question, the police provide a service that is entirely focused on ensuring the safety and security of every member of society. In any civilized society, violence against inmates is unacceptable. It is the responsibility of law enforcement agencies, especially the police, to actively work toward eliminating this reprehensible behavior from their ranks. Police will not gain the public's respect, cooperation, or an honorable place in society until this is accomplished.

Keywords: Criminal justice, assault, rape in custody, violence in custody, violator.

Introduction

Whatever the definition of the term may be in the various legal frameworks, the police have always been and will continue to be the primary organization within the criminal justice system in all political systems. Police have traditionally overseen upholding the law and keeping everything in order. Since law and order were essentially synonymous in the developed world's civilizations, the police could handle crimes and vices, which stood for breaking the law or failing to enforce it.¹

To hold the deviant and the criminal accountable, the police served as a symbol of the law

¹ P.D. Sharma, *Police and Criminal Justice Administration in India* (1985), p.64

and applied forceful legal consequences. The judiciary came into being as a protector of constitutional law and a defender of citizens' fundamental rights as democratic liberalism and its accompanying idea of civil liberties gained ground in the West. However, in contrast to the police in the colonial world, the West did not contest the police's fundamental duty, which is to safeguard the people—a function also known as proper law enforcement.²

The institution of police has been seen as society's conscience keeper throughout Western history. Even the harshest opponents of law enforcement in the West, who abhor police brutality and denounce police tactics, acknowledge that the police are a more significant agency than the judiciary and that a large portion of the caliber of criminal justice is based solely on police performance³

The social conscience and the system of checks and balances are very beneficial, but when the chips are down and lawbreakers start abusing people's bodies and public property, the police are the only agency left to face the risks and uphold the law for society to survive and continue. The police are tasked with several tasks in a democracy that are typically the responsibility of every person. Because they are a part of society, police play a crucial role in it. Without question, the police provide a service that is entirely focused on ensuring the safety and security of every member of society.⁴

Torture in police custody is referred to as custodial violence. Nevertheless, neither the Indian Constitution nor any other penal code defines the term torture. Police abuse of victims during detention is simply a means of using suffering to impose the will of the powerful over the weak. It is a grave breach of human dignity that has the power to severely damage a person's personality.⁵

Custodial rape⁶, custodial suicide, custodial homicides, attacking individuals in detention,

²*Ibid.*

³Packer.H. L, *The Police and the Community*, (1969), Stanford Law Review, Vol.22, pp.1314-1317

⁴ P.D. Sharma, *op cit*, pp.64&65

⁵ Alphonse L. Earayil& James Vadackumcherry,*Police and the Society* (1985), p. 4.

⁶ Section 376-A to 376-D defined custodial rape and prescribes punishment for the same. 376(2) reads whoever-(a)being a police officer commits rape-

- (i)within the limits of the police station which he is appointed, or
- (ii)in the premise of any station or house whether or not situated in the police station to which he is appointed; or
- (iii)on a woman in his custody or in the custody of police officer subordinate to him; or
- (iv).....Shall be punished with rigorous imprisonment for a term which shall not less than 10 years but which may be for life and shall also be liable to fine.

stealing items from a search scene, stealing valuables when mahazars are being made, and theft by police officers are all common stories in the press and media. There have been numerous reports of deaths while a person is in police custody; however, a thorough examination of the circumstances leading up to the murder of the victim reveals that the police officer's actions, which resemble the dynamics of a mob, are what cause the deaths. Torture in custody is a problem that has been documented throughout India. A confession usually signals the start and conclusion of a criminal inquiry. Most of the time, a suspect's arrest comes before the matter is investigated. A lengthy illegal detention period that involves torture is frequently followed by an arrest. In India, encounter killings are reported in frightening numbers. If the police are certain, based on their "conviction," that the suspect under custody was involved in a significant crime, the person is frequently slain, purportedly in an "encounter." In many nations, using violence and instilling fear in the populace are regarded as the worst ways to deter crime. The requirement to modernize and humanize the police has been disregarded by the state. To reduce crime, the state police are frequently subject to tremendous pressure.⁷

The widespread use of torture in detention in India is not solely the product of administrative incompetence. Additionally, it is the outcome of India's other justice systems' indifference to this matter. Scarecrows are no more of a deterrent than meagre compensations granted after lengthy cases spanning decades. Violence that occurs in police and court custody is the main category of custodial violence. Two more types of violence that occur during incarceration besides death are rape and torture. Violence against inmates is not a new occurrence. To stop police officers from using torture to coerce confessions or other information, laws were passed in response to complaints made under Sections 330, 331 & 348 of the IPC, Sections 25 & 26 of the Indian Evidence Act, Section 76 of the Cr.P.C., and Section 29 of the Police Act, 1861.

These days, police questioning procedures routinely involve the use of torture in detention. There is a brief public outcry, but everything is forgotten as soon as the occurrence is no longer in the news.⁸ The extent of torture that occurs in police custody in India is demonstrated by a 1992 report by Amnesty International, which states that between 1985 and 1991, 425 people died while under the care of police and security services because of torture. The Rajyasabha was informed by the government itself that 46 people died in police custody in 1993—that is, between January and March—because of torture. But in the year 2002, the numbers were raised to 1053. These numbers highlight the concerning scope of the issues. According to the NCRB's 2002 crime data, there were 84 reported fatalities in custody, 34 charges filed, and 32 police officers charged, but no convictions that year.⁹

⁷ James Vadackumcherry, *Police Criminology and Crimes* (2002), p. 14

⁸ (1994) Cr.L.J. Vol. 96 p. 28.

⁹ N.V. Paranjape, *Criminology and Penology* (2005), p. 305.

When the term "torture" is used concerning police custody, it means that extreme pain or suffering—either physical or mental—is deliberately inflicted to get information or a confession from the person in custody, or a third party, or to coerce or induce them to reveal the truth. However, it excludes pain or suffering that is solely a result of, incidental to, or inherent in a legal consequence.

Nothing has damaged the reputation of law enforcement more than abuses committed against individuals under police supervision. Torture in the third degree and fatalities in custody are now considered essential components of police investigations. The Indian Police Act of 1861's Section 23 outlines the responsibilities of a police officer, which include discretion, vigilance, activity, and purity in their performance.¹⁰

In its landmark ruling in *D.K.*¹¹, the Supreme Court voiced its worry about crimes being committed while a person is in custody during an inquiry or questioning and established some guidelines that concerned police personnel should abide by. *West Bengal State v. Basu*. To prevent custodial abuse, the following fundamental "requirements" must be adhered to in all cases of arrest or custody until appropriate legislative arrangements are made: -

The arresting officers and those conducting the arrestee's interrogation should be appropriately identified, conspicuously displayed, and appropriately marked with a name tag. All of these police officers' details who deal with the arrestee's interrogation must be entered into a register.

When making an arrest, the police officer must write up a memo documenting the incident. This memo must be witnessed by a minimum of one person, who can be a respected resident or a member of the arrestee's family. It must include the time and date of the arrest and be countersigned by the arrested person. A person who has been arrested or detained and is being held in custody in a police station, during questioning, or in a lock-up has the right to notify a friend, relative, or another person concerned about their welfare that they have been arrested and are being held at a specific location as soon as is reasonably possible unless the person testifying to the arrest memo is that person's friend or relative. The police are required to notify the arrestee of the time, place, and venue of their custody. As soon as the individual is placed under arrest or is detained, he must be informed of his right to have someone informed of his arrest or imprisonment. At the location of detention, a diary entry containing all the information about the friend, relative, or person notified must be prepared. If the arrestee wishes it, he or she should also be inspected at the time of the arrest; if there are any serious or minor injuries, these should be noted at that time. Both the person being arrested and the arresting police officer should sign the inspection

¹⁰ N.V. Paranjape, *Criminology and Penology* (2005), p. 306.

¹¹ AIR 1997 SC 3017.

memo. A qualified physician should examine the arrested person every 48 hours while they are being investigated in custody.

The local magistrate should receive copies of all paperwork, including the arrest memo, for his records. It may be possible for the arrested person to see his attorney while being questioned, but not all the way through. Every District and Headquarters should have a police control room where the officer making the arrest will notify the public within 12 hours of the arrest regarding the arrest and the arrestee's place of custody. This information will also be prominently displayed on a notice board at the police control room. The Supreme Court held that in addition to the regular departmental sanctions against the offending officer, the officer in question may face contempt of court penalties for failing to adhere to the conditions. To avoid human rights abuses and combat incidents of torture, the Indian government finally passed the Protection of Human Rights Act, of 1993, realizing that custodial violence and torture constitute grave breaches of human rights. The Commission has periodically given directives and called meetings with the superintendent of police and the district magistrate to discuss how to put appropriate measures in place to stop torture in detention and shield innocent individuals from violations of their fundamental rights.

In the case of *State v. Sundaramoorthy*¹², the Madras High Court determined that police custody is warranted due to the violation of an individual's rights, specifically the fundamental rights protected by Article 21 of the Indian Constitution. The Protection of Human Rights Act, 1993's section 36(1), which deals with "matters not subject to the jurisdiction of the Commission," needs to be amended because state governments utilize it as a way to avoid the NHRC. Efficient custodial management in conjunction with ongoing monitoring by non-governmental groups such as the National Human Rights Commission (NHRC) and others dedicated to safeguarding and advancing human rights would effectively tackle the issue of rape, torture, and death in custody inside the nation.¹³

It is felt that this type of amendment will have a restrained effect on individual officers in custodial violence and torture. The Law Commission recommended that a section 114-B be added to the Indian Evidence Act 1972, to introduce a rebuttable presumption that injuries sustained by a person in jail custody presumed to have caused by the police officers. The antiquated Indian Police Act of 1860, which establishes the composition and operations of the Indian police forces, ought to be promptly repealed. To allow the investigating officer to continue questioning the arrestees, special investigation rooms equipped with contemporary amenities should be made accessible. Women and juveniles should have separate accommodations, and there should be enough female police officers on duty to oversee them.

¹²2008 Cr.L.J. 898.

¹³ 47 *J.L.L.I* (2005), p. 518.

The police now have unimaginably broad arrest powers thanks to the passing of social, economic, and other laws. This provides the potential for misbehaviour and preventable custody. It is necessary to assess these arrest capabilities and take the appropriate corrective action. A police complaints board made up of a retired district and session judge as chairman, a retired superintendent of police, a prominent senior citizen with administrative experience, and other retired police officers should visit the scene and gather information to investigate and validate the complaints of violence and death in custody. It is important to teach police officers that their primary duty is to serve the public, not to harass them. The public should be encouraged to willingly assist the police by reducing the use of force to the bare minimum. The police must operate with complete impartiality and be unaffected by political pressure to gain the public's cooperation and support. Police officers of all grades need to receive the appropriate training and be up to date on the most recent methods for investigating and detecting crimes. Increased surprise visits by senior officers to police stations and other comparable units would aid in the early identification of those detained without authorization and abused.

It is urged that, in addition to a court conviction, any officer found guilty of concoction, falsification, or third-degree methodology of investigation should be removed as a matter of course in order to purge the police force of such unwanted components and enhance public perception of the police. In any civilized society, violence against inmates is unacceptable. It is the responsibility of law enforcement agencies, especially the police, to actively work toward eliminating this reprehensible behavior from their ranks. Police will not gain the public's respect, cooperation, or an honourable place in society until this is accomplished. Strong police-public relations: These days, strong police-public relations are essential. The goal of the police should be to serve the public, not to serve as a director. They should act as public servants. Police must serve as people's friends and allies. As it is successful in Uttarakhand and has received positive public feedback, a police station visit week should be implemented nationwide and become a part of the paradigm for future policing. They gain more exposure in this way. Thus, community policing would enhance police management.

Selection of competent candidates: To enhance police administration in the future, competent candidates must be chosen. To recruit better people, the selection procedure should be made more objective and scientific, and the police officers' qualifying emoluments should be significantly changed. They are capable of meeting societal demands, but they also need to understand their responsibilities; this is only achievable if the selection process is altered.

Use of scientific methods: The techniques the police employ when conducting investigations are a big factor in the poor reputation that the force has earned. They are incredibly inhumane and harsh. These approaches need to be modified, and scientific techniques like mind mapping and the Narco Test should be applied.

Nonetheless, human rights advocates and attorneys have applauded the most recent ruling by the Supreme Court, which states that no one can be subjected to a polygraph, narco, or brain mapping exam without their agreement. The apex Court characterized the forced administration of this test as a "unwarranted intrusion" on an accused person's liberty in a landmark decision. The court was deliberating over some petitions submitted by multiple defendants, including Godmother Shantokhben Jadeja and Arun Gawli, challenging the investigation's use of drug testing, brain mapping, and narcoanalysis on. The court further stated that the "Guidelines" of the National Human Rights Commission must be followed, even in situations where an individual willingly agrees to undergo this test to prove their innocence.

Transparency in the investigation's conduct is essential. Developing specialist cells to handle various serious crimes such as kidnapping, extortion, murder, auto theft, and organized cybercrimes is necessary for a top-notch investigation. As a result, techniques for holding police accountable to the public should be developed that are trustworthy, open, and efficient.

Police must adopt new techniques, sources, vehicles, weapons, and other modern amenities as part of their modernization. So that crime can be reduced and public trust can be gained, police effectiveness is increased. The State Government should correctly allocate the trends per modernization in each district for modernizing police stations by bringing science and technology into their work to create a more advanced police force akin to that of other nations. A council to analyze civilization should be established with funds to determine how best to channel the modernization process. Invoking science to its fullest extent is necessary to serve as both a deterrent against the use of unwarranted force and a record of police intent to follow the letter of the law. Therefore, during police questioning, audio and video technologies must be used. An additional issue that separates rural from urban communities. The police department is severely impacted by the inability to access wireless devices. Thus, remote control equipment ought to be introduced to enhance law enforcement management in rural regions. The reputation of the police can be enhanced by modernizing them to increase their efficiency.

Quick Response to Complaints: People want the police to do more than just listen to their issues; to improve police administration, the police must respond quickly to complaints from the public. Police must also work on this site to provide them with swift justice. For the police to function properly, the investigation wing must be kept apart from law and order. It is necessary to make the PCR both technologically sound and high-tech. Provision of suitable facilities: A shortage of resources, sufficient force, transportation, etc., is a common problem facing the police. They are unable to do their duties effectively until and unless they are dissatisfied with their jobs. Therefore, the police need to be provided with enough facilities in order to reduce corruption and increase efficiency. The current police force is inadequate and out of step with the level of crime. Enhancing personnel

management is necessary. At the State and District levels, more police should be hired, especially for the constabulary. This problem so requires careful planning that emphasizes security. The government ought to furnish law enforcement officers on the ground with improved housing, healthcare, education, and other social amenities that are essential for their home lives. Better working circumstances should be sufficiently provided for police officers who are on the beat and work nonstop in the field. They must be appropriately armed and outfitted. Improved area-specific transportation equipment facilities are necessary to maintain effective police administration. **Appropriate Use of Powers and Rights:** When police exercise their powers and rights beyond what is reasonable, they must do so responsibly. To change officers' attitudes and behaviours, police education standards must be raised.

Creation of a Public Relations Branch: To protect the public from police misconduct and problems, every police station needs to have a Public Relations branch. Employees in these branches need to be regular people who not only file complaints but also work to provide victims with justice. Better communication between the public and the police will arise from it. **Improved ties with the media:** Since everyone is connected to the media, whether directly or indirectly, and since the media is the only means for the general public to interact with each other, police must take action to improve relations with the media.

Conclusion

Within reason, police torture offenders: The use of third-degree techniques by police during investigations has drawn harsh condemnation and is a source of embarrassment for both the police and the public. According to the police, there is no first-degree strategy for dealing with reformed offenders. On the other hand, it is a fact that no civilized community, and much less so in a democratic society, can accept the use of third-degree tactics of torture, abuse, and assault against suspects when doing the necessary steps to identify the true perpetrators. It is an affront to human decency. Therefore, in order to increase the quality of police work, officers must exercise their authority responsibly and adhere to **Give the Police Complaint Authority, NHRC, and SHRC more teeth:** The Police Complaint Authority should be given a great deal of authority so that they can investigate or prosecute negligent police officers on their own. The State and National Human Rights Commissions should keep an eye out for human rights abuses and act quickly to compensate victims of crime and deliver justice. Corrupt police officers who engage in torture or fictitious encounters ought to be prosecuted. To teach the other police officers a deterrent lesson, they must receive severe penalties.