

VIOLATION OF HUMAN RIGHTS BY STATE: A CASE STUDY OF CUSTODIAL VIOLENCE IN DELHI

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The quality of nation civilization can be largely measured by the respect it shows for the protection and promotion of human rights. The theme of human rights is of universal concern and it cuts across all ideological, political and cultural boundaries. It is for this reason that linkages between institutions relating to the protection of human rights between the countries are important.

An attempt has been made in the present thesis to understand the causes of the violation of human rights in India. To identify the reasons of occurrence of custodial violence and its effect on police image and people's participation in police. The study is analytical and descriptive in its nature.

India has made the most sincere efforts for the protection and promotion of Human Rights the world over and is the greatest champion of the human rights in the Third World. The impact of the universal Declaration of Human Rights on the drafting of Human Rights Chapters (Part III and IV) in the India Constitution.

However, the fact remains that there is a wide gap between theory and practice. All that is preached is not always put into practice and India is no exception. The denial of fundamental freedoms and human rights by the states creates the conditions of social and political unrest. It definitely sows the seeds of violence and conflicts within and between societies and nations.

Police atrocities are a common feature of Indian scenario. Some of the common feature of violations of human rights are the torture of arrested persons, the disappearance of suspects who ought to have been in regular police custody, deaths in fake encounters and at police stations, and undertrials denied in jails for years without trials. Extensive societal violence against women; female bondage and prostitution; trafficking in women; child prostitution, trafficking, and infanticide; discrimination and violence against indigenous people and scheduled castes and tribes; and widespread exploitation of indentured, bonded, and child labour. The statue book is presently disfigured by laws like Terrorist and Disruptive Activities Prevention Act, the National Security Act, and the armed Forces Special powers Act, which need closer scrutiny. Such laws make a mockery of human rights.

To research the issue of custodial violence in India is considerably difficult. The Indian

government has consistently prohibited independent human rights organizations from investigating allegations of torture in the country. These groups include Amnesty International, Human Rights Watch–Asia, the International Red Cross, the British Parliamentary Human Rights Group, and even the UN Human Rights Rapporteurs (India is obliged to permit access under the conditions of the International Covenant on Civil and Political Rights). Moreover, it has also consistently refuted many of the allegations that it permits torture, and it has, unconvincingly, stated that all those found to have practiced torture have been quickly and sufficiently punished.

Custodial violence, including torture and death in the lock-ups, are committed under the shields of "uniform" and "authority" between the four walls of a police station, lock-up and prison, where the victims are totally helpless. Police is, no doubt, under a legal duty and has legitimate right to arrest a criminal and to interrogate him during the investigation of any offence but the law does not permit use of third degree methods or torture of accused in custody during the interrogation and investigation with a view to solve the crime. End cannot justify the means. The interrogation and investigation into a crime should be in a true sense purposeful to make the investigation effective.

The custodial deaths are neither usual nor unknown. Such deaths take place not only in India but also in various other countries. These deaths definitely lead to custodial violence. There are various reasons for the custodial violence some of them are: –

Firstly, the growing political interference in the day-to-day working of police has turned the force into becoming the agents of the party in power. Secondly, a part of the problem also lies in the aggressive enforcement of law and order as a quick-fix solution to the problem of rising crime, without tackling the root causes for the increase in crime. Thirdly, there has been a malfunctioning of our criminal justice system. The basic criminal law in the country is made up of the Indian Penal Code, the Code of Criminal Procedure, and the Evidence Act. The fact that criminal justice system in India is in shambles because it is archaic, obsolete and oppressive in its nature. This is because of unhelpful laws like easy release of bail even to the desperate and dangerous criminals, delays in court trials, which result to the over-loading of court etc. All these definitely erode the public confidence in the legal process. Fourthly, the lack of proper infrastructural facilities – The absence of separate female lockups in many police stations has made it unsafe for women accused persons for detention at the police station after their arrest. Fifthly, due to the absence of proper supervision of the senior level officials, the junior level officials tend to violate the rights of the citizens. Sixthly, Obsolescent and outdated organisational system – One of the most important reasons for the inability of the police system is to confirm the demands of the human rights mandate, because of the continuance of an obsolete and outdated organisational system. The heart of the matter is that the basic rule of the police and its structure did not undergo any change. Seventhly, the working conditions of the policemen. According to the lower ranks of police officials, their working conditions are quite pathetic. They are highly dissatisfied with their pay structure. They do not have any fixed hours of work; family accommodation is not available to a majority of them and their promotion prospects are nil. Hence they adopt the short cut methods. It becomes difficult for them to be sensitive towards human rights under these conditions. Eighthly, lack of

accountability –As we see, for the past few years, there has been a total lack of control and accountability in the police system. This can be seen in the ambivalent attitude of the police to use third degree methods and the informal detentions.) with the punishment of death or life imprisonment.

Not all cases of death and injuries of accused persons should be attributed to custodial violence. The deaths may take place in custody because of natural causes (old age, illness etc); non-custodial use of force by police like handling a riotous mob; accidents or suicide during custody. Although the police does not normally have any direct responsibility in case of natural, accidental, suicide, or other deaths as discussed above. Still, they are being held responsible for their negligence and for not providing the medical aid.

The time of the need is to create a climate of respect for human rights, not only in the police, but the society at large – people, press, politicians, bureaucrats. In view of the discussion aforesaid, the following steps are considered necessary to effectively combat custodial violence in our country. First, the attitudinal change in the police from grass root level to the senior supervisory level and also to promote professionalism and to develop consciousness about the limitations of their power, authority and responsibility. Second, Organisational behaviour is largely the outcome of training and continuing education. Police training is archaic in content and methods. The emphasis is still more on muscle than on the mind. Human rights, if at all, form an insignificant module in the training programme and there is hardly any emphasis on human rights in the training of constables, who form 85 percent of the force. Respect for human rights is not rewarded. Hence, the education and training should be imparted to police officers at all levels, in order to sensitise them about the primacy of human rights. Third, create a strong public opinion against all forms of custodial violence. Fourth, making use of scientific aid and investigation Fifth, The National Police Commission has recommended that every state government should nominate Additional Session judge for every district (in consultation with high courts) to conduct a judicial inquiry in all cases of alleged rape of a women in police custody, death or grievous hurt caused to a person in police custody and death of two or more persons from police firing in the disposal of an unlawful assembly and submit report to the State government who shall punish the report together with action taken thereon within two months of the receipt of the report. Unfortunately no action has been taken in pursuance of this recommendation. The actions should be taken in order to control custodial deaths in our country. Sixth, another important measure to avoid custodial violence is to make the criminal justice system more effective. Seventh, The State Human Rights Commission should be made more financially strong. Eighth, senior police officials should not protect police functionaries at all when they are found guilty in the custodial crimes. Ninth, the guilty officials should be meted out with stringent punishments. Tenth, in order to stop the short-cut methods used by policemen, the government should allot ample of money on their training and also provide them with modern technology. Eleventh, there should be improved supervision on the working of police stations, particularly with regard to investigations and interrogation, which should be done by the investigating officers personally. Twelfth, the police should not succumb to pressures exerted by the politicians. Thirteenth, women police should interrogate the women detainees only. Fourteenth, there should be more

transparency in the police system as well as in the findings of magisterial inquest.

Though these recommendations could solve most of the problems in relation to custodial violence and deter public officials from indulging in violence, only if the Will to eliminate violence becomes the basic requirement.