Torture and the Law: An Indian Perspective

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Abstract

Torture of a fellow human being by another human being is essentially an instrument to impose the will of the ‘strong’ over the ‘weak’. Over the years, the incidence of torture has only increased, with the methods becoming highly complex, involving psychical and/or physical exhaustion. These include deprivation of sleep, food and drink; sometimes combined with forced physical activities or forced standing for hours or even days. Freedom of movement and perception is restricted by confining the person to a very small dark room and his self-esteem is eroded by deprivation of toilet facilities and clothing or by constant verbal abuse. Inspite of checks posed by various laws including the International Humanitarian Law, such inhuman practices continue unabated. This article describes the Indian scenario of this world-wide phenomenon, with a view to sensitize the readers about this scourge on the society.

Introduction:

Since time immemorial man has been attempting to subjugate his fellow human beings. Those in power are used to twisting and turning the people through violence and torture, and torture under custody has become a global phenomenon. Men, women and even children are subjected to torture in many of the world’s countries,[1] even though in most of these countries, the use of torture is prohibited by law and by the international declarations signed by their respective representatives.

A problem of increasing occurrence and repugnance had been the methods of interrogation and torture perpetrated upon prisoners and detainees. Reference, in this context, is irresistibly drawn to ‘modus operandi’ exercised by the British Security Forces in suppressing armed insurgency and terrorism carried out by Republican and Loyalist groups in Northern Ireland in 1969. Between 1971-74, allegations of maltreatment and assault by the security forces arose increasingly. Almost during the same period, a few well-publicized cases occurred, exposing the vulnerability of the ordinary public to aggressive tactics of the police and the subsequent inadequacy of the enquiries to address the public issues. The landmark case [2] is that of one, Jim Kelly, aged 53, who was arrested by the police in ‘drunk and disorderly’ state and was tortured afterwards. During coroner’s inquest, police officers admitted sitting on the victim, punching him, squeezing his testicles and throwing him into the back seat of the van, etc. At the police station he was allegedly pulled from the van, banging his head on the floor and dying shortly thereafter. Interestingly, three postmortems were carried out (including the one at the instance of the family at their own expense) with all the pathologists attributing death to “heart failure”. However, the pathologist engaged by the family did conclude that Jim Kelly had suffered more injury than can be reasonably expected in a man who resists arrest; and, that the systemic effects of such injuries, in one way or the other, contributing towards death. A verdict of “misadventure” was brought in after the coroner had emphasized that the pathologists had given the cause of death as “heart failure” and that the Jim Kelly was drunk and had exerted himself. However, with the development of the common law and more radical ideas imbibing human thought and approach, such inhuman practices have progressively been discouraged.

Indian Scenario:

India’s refusal to ratify the UN Convention against Torture was primarily based on the contention that its laws were adequate enough to deal with crimes committed by the representatives of the State. Section 330 and 331 of the Indian Penal Code[3] have been enacted to punish those who voluntarily cause hurt or grievous hurt with an object to coerce the sufferer to confess to his guilt or give information respecting the commission of a crime or a misconduct, or to restore property or satisfy any claim or demand respecting thereto. Though the sections are generally worded, the provisions are mostly brought into requisition against police personnel acting in furtherance of obtaining confession through unmoded methods. Indeed, the police personnel in an attempt to win the tributes of superior officers or to avoid censure for slackness to discover the culprit(s) / solve the case get tempted to extend involuntary confession. Another driving force
in this context may be the assumption that the law would not admit in evidence anything said to the police, unless, it is substantially corroborated by the discovery of ‘the fact’ in consequence of confession / information (Section 27 Indian Evidence Act [4]. The ambit of these sections is wide enough as to extend to all policemen then present, but, who do nothing to prevent torture and either stand uncourted or withdraw from the scene for fear of getting themselves implicated therein. Such an observation came to be seen in Sham Kants’ case,[5] wherein it was held that “the learned trial Judge was quite wrong when he did not hold accused No.1 (ASI) guilty of abetment only on the ground that although he was present, he had not actively participated in beating the suspect.”

The official machinery for the protection of human rights in this country was set in motion by the then President’s assent to the Protection of Human Rights Act,[6] which came in to force on September 28, 1993. Section 3 of the Act provides for the setting up of the National Human Rights Commission (NHRC) and Section 21 for the setting up of the various State Commissions (SHRC). The Act also provides for the designation of certain courts of Session in each state as Human Rights Courts, by the state in consultation with the Chief Justice of its High Court. All these Commissions were given the powers of civil courts vide Section 13(1), with the power to summon any person to give evidence relating to the matter under consideration (Sec. 13(2)), failing which they could be punished under Sections 176 (omission to furnish information) & 177 (giving false information) of the IPC. Section 18 provides for “interim relief” (monetary compensation) to the victim, which could be recovered by the State from the accused officials. However, despite such elaborate Acts and Articles in place, along with the requisite machinery, the mindset of the average policeman continues to exist in a medieval time warp and torture by the custodians of the law continues unabated against those very persons, safe-guarding of whose rights and liberty, is their legal duty. This can very much be gathered from the list of police excesses displayed by the NHRC in its web-site.[7] The excesses listed include torture, illegal confinement and false implications and the methods of torture vary from beatings to amputation of the male organ to blinding to gang rape to even death of the victim.

Usual postures adopted by the police to evade responsibility include: (i) showing that the body was found on the road-side or the railway-track so as to pass it off as a case of accidental or suicidal death, or (ii) to make out a case that the arrested person died after he jumped / fell out of the building while trying to escape, or (iii) jumped/ fell out of the running vehicle as he was being transported to some disclosed site / place to effect some recovery, etc.

Exemplifying such like postures through citations will make the things catchier. Nilabati’s [8] is an apt case in this series wherein the State’s plea that the deceased had escaped from the police custody by chewing off the rope with which he was tied and was then run over by the train, was disbeliefed by the Hon’ble Court after appreciation of the evidence in entirety including the postmortem report showing some injuries on the face being of postmortem origin and the report of the Forensic Science Laboratory showing incompatibility of two cut ends of the rope in respect of physical appearance. The next to be cited is the case of death of one Anil Kumar,[9] aged about 21 years, wherein exceptionally intriguing behavior of the police came to be voiced when the police showed Anil’s death to be the result of ‘suicide’ by jumping from the building and converting it into 304-A (causing death by rash or negligent act) in pursuant to demonstrations of the residents and the enquiry report submitted by the SDM. Interestingly, the Hon’ble High Court, while hearing the petition moved by the deceased’s mother seeking justice and compensation for her son’s death, expressed dissatisfaction over the approach of the police in dealing with the matter and raised queries over observations and conclusions made in the CFSL report especially criticizing the suggestion made in the report that “it seems that the deceased could have attempted crossing the parapet wall to get on to the grid and fallen from a height of about 15 feet to hit the ground on his left.” and asked the scientist to explain as to how it found mention in the report, as normally such observation was to be made on specific query from the investigating agency. Compensation to the tune of Rs. 9.95 lakh was directed to the kin of the deceased and it is perhaps, the first time that the State has been asked to pay such a huge amount of compensation to the victim’s family. And, finally the case was got registered under section 304 IPC (culpable homicide not amounting to murder).

Apart from the police, there are several other governmental authorities like Directorate of Revenue Intelligence, Directorate of Enforcement, Intelligence agencies like the Intelligence Bureau (IB), Central Bureau of Investigation (CBI), CIA, etc., which have the power to detain a person and to interrogate him. There are instances of torture and death in custody of these authorities as well. For example, the Apex Court took suo moto notice of the death of Sawinder Singh Grover [10] during his custody with the Directorate of Enforcement and after getting an...
enquiry conducted by the Additional District Judge, directed the CBI to lodge a FIR and initiate criminal proceedings against all persons named in the report. Directorate of Enforcement was also directed to pay a sum of Rs.2 lakh to the widow of the deceased by way of ex gratia payment at the interim stage. Our experience derived through the cases conducted at the institute during the preceding ten years shows that deaths in custody may broadly be categorized in two groups, viz: i) death due to or precipitated by medical condition under peculiar circumstances, and (ii) death due to another person’s action/behavior including those occasioned from police torture in custody or during restraint or after release from the custody (when death could reasonably be traced to effects of injuries). Majority of cases were due to or somehow related to medical condition and our results stand substantiated by the literature available on the subject. However, the literature often speaks of a third category also wherein death is attributed to deceased’s own causal actions i.e. self-harm (deliberate or circumstantially triggered).

In all these cases the inquest proceedings had been conducted by the executive magistrate as contemplated in section 176 of the CrPC.[11] This section is designed to provide a check on the working of the police or to calm any alarm that has been created in the mind of the public in cases of death occurring under some specific circumstances. A recent amendment in the said section requires the inquest proceedings to be conducted by a judicial magistrate. The amendment (effective from 23.06.2006) provides that “in case of death or disappearance of a person or rape of a woman while in the custody of the police, there shall be a mandatory judicial inquiry and in case of death, examination of the dead body shall be conducted within 24 hours of death”. It is worth focusing here that in the light of this amendment; the Hon’ble High Court took objection to the inquiry proceedings having been conducted by an SDM rather than by a judicial magistrate in the case of custodial death of Anil Kumar mentioned earlier.[9]

As far as the issue of compensation is concerned, Article 9(5) of the International Covenant on Civil and Political Rights 1966 (ICCPR) provides that “anyone who has been the victim of unlawful arrest or detention shall have enforceable right to compensation”. However, India expressed specific reservation to the effect that Indian Legal System did not recognize a right to compensation for victims of unlawful arrest or detention and thus did not become a party to the Covenant. Notwithstanding all this, the Apex Court through judicial activism evolved a right to compensation in cases of established unconstitutional deprivation of personal liberty or life. The ‘Bhagalpur blinding case [12] was the first case where the question of the quantum of the compensation was considered by the Hon’ble Supreme Court. The working principles for calculating the quantum of the compensation was laid down in another case [13] from Bihar. In 1994, the Hon’ble Supreme Court introduced the concept of “personal liability”[14] wherein the State could recover the compensation paid to the victim or his family from the official concerned, as a deterrent to the said officers indulging in the atrocities.

It has been furthered that this compensation was based on strict liability and was recoverable from the State, which shall have the right to be indemnified by the wrongdoer. It was observed that the objective was to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of the compensation) must be left to the criminal courts in which the offender is prosecuted, which the State was duty-bound to do under the law. Amongst the judgments of other countries cited by the Apex Court in this context, the judgment of the Court of Appeal of Newzeland in Simpson Case [15] deserves mention wherein the issue had been dealt in a very elaborate manner. Each of the five members of the Court of Appeal delivered a separate judgment but there was unanimity of opinion regarding the grant of pecuniary compensation to the victim, for the contravention of his rights guaranteed under the Bill of Rights Act, notwithstanding the absence of an express provision in that behalf.

**Conclusion:**

The Hon’ble Supreme Court laid down in DK Basu’s case [16] the guidelines to be followed in all cases of arrest or detention to combat the evil of custodial crime and bring transparency and accountability therein. However most of the recommendations made by the Hon’ble courts or the various NGOs from time to time are only observed more in the breach and not adhered to. Though most of the rules and instructions regarding the prohibition of torture are incorporated in the curriculum of training of the police force, the basic mind-set has not changed. Hence the need of the hour is to put in serious thinking and concerted efforts by all concerned—the State, the voluntary organizations, the society, etc so as to bring in the needed change in the attitude of the custodians of law.
Bibliography:

4. The India Evidence Act, 1872. Act 1 of 1872.
9. Phoolwati Vs State (UT of Chandigarh) and others, CWP No. 11943 of 2007, Pb & H High Court.
16. DK Basu Vs the State of West Bengal. 1997(1) SCC 416.