

SPEECH OF HON'BLE MR. JUSTICE VIJENDER JAIN, CHIEF JUSTICE, PUNJAB AND HARYANA HIGH COURT ON CUSTODIAL DEATH AT ARMY INSTITUTE OF LAW, MOHALI ON 2.5.2007.

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Justice R.L.Anand, Acting Chairperson; Shri B.C.Rajput, Member; Shri N.K.Arora, Member and Shri K.K.Bhatnagar, Member of the Punjab State Human Rights Commission, members of the legal fraternity, ladies and gentlemen.

The use of torture while in custody has been universally condemned and disapproved. Article 7 of the International Covenant on Civil and Political Rights 1966 states that 'no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'.

Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, was adopted by the General Assembly in 1975. The Convention against Torture that was adopted by the General Assembly on 10th December, 1984 defines torture as "For" the purposes of this Convention, the term 'torture' means "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession.

Historian Badriana P. Bartow explained the trauma of torture in his own words, "Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone paralyzing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself."

Custodial violence may be either physical, emotional or mental. It leaves its permanent impact on the victims.

Custodial deaths have been on rise in the country. The entire system of police force is questionable. The apex Court attributed this to the "devilish devices adopted by those at the helm of affairs who proclaim from rooftops to be the defenders of democracy and protectors of peoples' rights and yet do not hesitate to condescend behind the screen to let loose their men in uniform to settle personal scores, feigning ignorance

of what happens and pretending to be peace-loving puritans and saviours of citizens' rights.”

A Bench comprising Justice Doraiswamy Raju and Justice Arijit Pasayat, made these observations while awarding Rs. 1 lakh to a family, which lost its breadwinner due to torture in police custody.

Recalling the words of Abraham Lincoln, the Bench said: “if you once forfeit the confidence of our fellow citizens you can never regain their respect and esteem.”

I am not justifying the action of the death of innocent persons in custody at the hands of the police but they alone are not responsible for the same. The cooperation of the general public is another handicap which an investigating agency has to face. People seldom cooperate with the police in the investigation of the crime. Outdated police rules still govern the police department.

Rules and laws will have to be changed according to the needs of society. Law cannot remain static; it has to change according to the needs of modern times. The Punjab Police Rules were framed in 1934 when there was little scientific investigation and modern gadgets of communication. We have entered the space age and as such, if we want better services, public cooperation is also needed.

The right to live with human dignity enshrined in Article 21 derives its life and breath from the directive principles of State policy particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 as held by the Supreme Court in *Bandhua Mukti Morcha* case. (1984) 3 SCC 161 and (1991) 4 SCC 417.

There are constitutional safeguards for a person's life and liberty specified under Article 21.

The third report of the National Police Commission in India released in 1996, expressed deep concern at the increasing incidents of custodial violence and deaths in lock-ups. It emphasised that the quality of a nation's civilization can be largely measured by the methods it uses in the enforcement of criminal law.

Role of Judiciary

Judicial decisions have also ushered in prison reforms in India, while holding that a person in prison does not become a non-person.

Arvinder S. Bagga v. State of U.P. (1994) 6 SCC 565 aptly observed, “Torture is not merely physical, there may be mental torture and psychological torture calculated to create fright and submission to the demands or commands. When the threats proceed from a person in authority and that too by a police officer, the mental torture caused by it is even more grave.

Subek Singh v. State of Haryana (2006) 3 SCC 178, Supreme Court expressed concern over the growing number of custodial violence in the country and the police using third degree methods to interrogate the accused. The Bench said: “Unfortunately, police in the country have given room for an impression in the minds of the public; that whenever there is a crime, investigation usually means rounding up all persons concerned and subjecting them to third degree interrogation in the hope that someone will spill the beans. Police are branded as inefficient even when there is a short delay in catching the culprits in serious crimes. The expectation of quick results in high profile or heinous crimes builds enormous pressure on the police to somehow catch the offender. The need to have quick results tempts them to resort to third degree methods.”

In Joginder Singh v. State of UP, (1994) 2 SCJ 230 and D.K. Basu v. State of Bengal, (1997) 1 SCC 416, the Supreme Court came up with certain guidelines:

“- bear identification tags while carrying out an arrest; make a detailed memo of every arrest; allow the detainee to inform his or her family or a friend of the arrest and place of detention; ensure that the detainee has a medical examination at the time of arrest and subsequently every 48 hours; and allow the detainee to meet a lawyer during interrogation.”

In D.K. Basu v. State of West Bengal, the Supreme Court observed that “Custodial violence, including torture and death in the lock ups, strikes a blow at the Rule of Law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be the protectors of law and the citizens.

Torture when committed under the shield of uniform and authority in the four walls of a police station or lock-up, makes the victim totally helpless and brings a slur on the system. The Protection of an individual from torture and abuse by the police

and other law enforcing officers is a matter of deep concern in a free society.”

Delhi High Court in December, 2006 awarded capital punishment to former Assistant Commissioner of Police RP Tyagi for a custodial death case of August, 1987. In this case two persons Mahendra Kumar and Ram Kumar were tortured to death. Mahendra Kumar was beaten with iron rods and later succumbed to his multiple injuries in the hospital. The court also imposed a fine of Rs.50,000/- on the ex-ACP and convicted two other police officers.

India has the highest number of cases of police torture and custodial deaths among the world's democracies and the weakest law against torture,” said Ravi Nair, who heads the South Asia Human Rights Documentation Center. “The police often operate in a climate of impunity, where torture is seen as routine police behaviour to extract confessions from small pickpockets to political suspects.” He said that laws governing police functions were framed under British colonial rule in 1861 “as an oppressive force designed to keep the population under control.”

A senior police officer in Meerut, on condition of anonymity, openly discussed torture methods with a visiting reporter. One technique, he said, involves a two-foot-long rubber belt attached to a wooden handle.

“We call this thing samaj sudharak,” the officer said, smiling, using the Hindi phrase for social reformer. “When we hit with this, there are no fractures, no blood, no major peeling of the skin. It is safe for us, as nothing shows up in the postmortem report. But the pain is such that the person can only appeal to God. He will confess to anything.”

Custodial death comes after custodial torture. In India, torture in custody is at present treated as an inevitable part of investigation. Investigations retain the wrong notion that if enough pressure is applied then the accused will confess.

The best way to prevent custodial death is to prevent custodial torture. The way to address one is to address both. How ?

Custodial torture must be made a crime.

Secondly, many cases of custodial torture could be prevented if law-enforcing agencies followed the existing laws relating to arrest and detention.

Thirdly, the public and especially concerned professional groups, must

closely monitor police practices to see that government promises are upheld.

Fourthly, the government may also give a serious thought of signing UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. Sixty years after independence and despite numerous concerns and guidelines issued by courts all over India, torture would still persist unabated.

Torture in Punjab

Although insurgency virtually ended in 1995, torture remains endemic in Punjab. A few selected case studies testify the use of torture in Punjab which does not face any insurgency at present.

On 11 January 2003, Makhan Singh, an alleged narcotics smuggler was produced before the Court in Ludhiana. He could barely walk and broke down before the Judge. When he showed the injuries he had suffered due to the police torture, every one was reportedly stunned. The judge ordered an immediate medical examination that confirmed torture. The Station House Officer (SHO) was merely transferred to police lines.

On 11 February 2003, Sanjiv Kumar, Vippan Kumar and Roshan Lal were picked up by Inspector Balkar Singh and two constables of Sadar police station of Chandigarh. They had reportedly protested against some Jalandhar police officials who had allegedly kidnapped two children from outside a marriage palace and tortured one of them to death in the first week of January, 2003. They were tied upside down and beaten up with iron rods and sticks till they lost consciousness. Once they regained consciousness, they were subjected to some brutal torture. The victims were admitted in the Government hospital in Chandigarh in the night of 12 February, 2003 in critical conditions. On 13 February, 2003, the Punjab and Haryana High Court issued a notice to the State of Punjab on the issue.

The maximum complaints in the Commission are against the police varying from 48% to 57% from 2000 to 2005.