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BREAKING THE CYCLE: THE USE OF THIRD-DEGREE TORTURE IN LAW ENFORCEMENT INVESTIGATIONS

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INTRODUCTION

In India, the legal system follows the Due Process Model. This model assumes that human memory, particularly in emotionally charged contexts, can be inherently inaccurate. Within this framework, confessions extracted from individuals in police custody are viewed with caution due to the potential for coercion, whereby suspects may be inclined to utter what they perceive the authorities desire, rather than the truth. Moreover, this model acknowledges the possibility of witnesses being swayed by undisclosed biases or vested interests, underscoring the necessity for impartial oversight to safeguard the accused's rights.

Consequently, the countries following the Due Process Model have created a series of regulatory measures aimed at evaluating the admissibility of custodial confessions. These regulations span over various provisions within the legal framework, from Sections 161 to 164 of the Code of Criminal Procedure 1973¹, in conjunction with Sections 24 to 27 of The Indian Evidence Act, 1872². Furthermore, constitutional safeguards against compelled self-incrimination are enshrined within Article 20(3) of the Indian Constitution³.

Even with these regulatory frameworks and constitutional precautions, the Indian criminal justice system encounters challenges arising from restrictions and gaps in these provisions as well as the use of coercive questioning techniques by law enforcement. The integrity of the criminal justice system is frequently compromised by those suspected making false confessions or statements as a result of this intersection of circumstances.

This paper delves into the underlying reasons behind statements and confessions obtained

¹ Code of Criminal Procedure, 1973, § 161,162,163,164, No. 2, Acts of Parliament, 1974 (India).

² The Evidence Act, 1872, § 24,25,26,27, No. 1, Acts of Parliament, 1872 (India).

³ INDIA CONST. art. 20, § 3

under coercion by law enforcement agencies and magistrates. The initial section examines the measures and tactics employed by police, such as third-degree torture, to circumvent proper investigative procedures, thereby infringing the right against self-incrimination. Subsequently, we explore the reasons behind the implementation of these coercive measures. Following this, we assess various efforts and solutions to address this issue.

EXAMINING POLICE CONDUCT

The Police plays a pivotal role in the investigation process, with statements made to the Police Investigating Officer by witnesses being essential to initiate a trial. Section 161 of the Code of Criminal Procedure, 1973⁴, outlines the rules of examination of witnesses by the police, commonly referred to as ‘police interrogation’. Individuals questioned are obligated by law to respond truthfully to all inquiries, except those that might potentially incriminate them. In this provision, any police officer of a rank not lower than specified by the state government is authorized to orally question ‘any person’ believed to have knowledge of the facts and circumstances related to the case. The term ‘any person’ includes the accused as well. However, accused individuals retain the privilege to remain silent during police interrogation through the “right against self-incrimination” as per Section 161 (2)⁵ and Article 20(3)⁶ of Indian Constitution. This right lies for the protection of the accused from improper compulsion by the authorities, thereby contributing to the avoidance of the miscarriages of justice.⁷

Despite the expectation of protecting rights, police often become infringers upon them. “Nothing has tarnished the image of the police more than brutality directed against persons in police custody”.⁸ In 2019, India estimates 1723 custodial deaths have been occurred which constitutes 5 deaths every day⁹ indicating a grim reality where third degree torture and custodial deaths have become commonplace in police investigations.¹⁰

Police routinely engage in the practice of employing third-degree torture on suspects in their custody. They often resort to extra-legal and violent methods for case detection and

⁴ Code of Criminal Procedure, 1973, § 161, No. 2, Acts of Parliament, 1974 (India).

⁵ Code of Criminal Procedure, 1973, § 161(2), No. 2, Acts of Parliament, 1974 (India).

⁶ INDIA CONST. art. 20, § 3

⁷ Saunders v. United Kingdom, (1997) 23 EHRR 313

⁸ Nirman Arora, *Custodial Torture In Police Stations In India: A Radical Assessment*, 41 JILL, 513, 513 (1999)

⁹ Dr J. Lakshmi Charan, *Custodial Torture in India: Intersection of Criminal Law and Constitutional Rights*, SCC ONLINE (March 23, 2024) <https://www.sconline.com/blog/post/2024/03/23/custodial-torture-in-india-intersection-of-criminal-law-and-constitutional-rights/>

¹⁰ ARORA, *supra* note 8

occasionally resort to staged encounters to eliminate notorious criminals. “These techniques range from the direct and explicit use of physical assaults to tactics that were both physically and psychologically coercive to lesser forms of duress”.¹¹ Various forms of physical torture inflicted include slapping on ears until bleeding, inserting live electric wires into body crevices, laying nude on ice slabs, denying food, water, and sleep, and forcing victims to drink their own excreta, among others.¹² The alarming rate of custodial deaths and widespread torture reflects a systemic failure, with even police personnel acknowledging flaws in the administration and legislation that seemingly authorize such egregious acts¹³. This reality highlights the urgent need for comprehensive reforms within the criminal justice system to ensure the protection of human rights and the prevention of abuses of power.

REASONS BEHIND THE USE OF TORTURE

Law certainly expects an investigator to unravel the mysteries of a sordid crime, but it does not approve of his turning into another criminal in order to solve a crime.¹⁴ However, under the due process model, the police have to establish the crime in the court beyond doubt which leads to solving the case by “any means”. The pragmatic logic of third-degree interrogation is thus an articulation of the internal structural contingencies affecting police violence.¹⁵

1. Duration of custody

“Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.”¹⁶

Failure to adhere to the 24-hour presentation rule constitutes a breach of procedure by the arresting officer. In such instances, the magistrate is endowed with the authority to summon the said police officer to elucidate the allegations and furnish details regarding the custodial status of the detained individual. Subsequently, the magistrate possesses the discretion to either grant bail or remand the individual to police custody. This temporal limitation often places significant pressure on law enforcement, leaving them with a mere 12 to 13-hour

¹¹ Saul M. Kassin, *Police-Induced Confessions: Risk Factors and Recommendations*. 34L. & Hum. Behav., 3, 6 (2010)

¹² KASSIN, *supra* note 11

¹³ *Ibid*

¹⁴ ARORA, *supra* note 8

¹⁵ THE WIRE, <https://thewire.in/books/police-torture-interrogation-jinee-lokaneeta-excerpt> (last visited April 7, 2024)

¹⁶ INDIA CONST. art. 22, § 2, Code of Criminal Procedure, 1973, § 57, 167, No. 2, Acts of Parliament, 1974 (India).

window for interrogation. Consequently, an overburdened and stressed police force may resort to the utilization of torture as a perceived expedient method to obtain requisite information, further creating a loop in itself.

2. Distrust towards the profession as well as the justice system.

The second major reason for employing third-degree interrogation tactics stems from a deep-seated distrust within the police profession. Statements made to the police under Section 161¹⁷ are not considered substantive evidence in court, as they are neither sworn nor subjected to cross-examination. Additionally, Section 162¹⁸ prohibits the practice of obtaining witness signatures on these statements, reflecting concerns about their reliability. This lack of evidentiary value for statements made to the police contrasts with Western countries, where such statements are verified and carry weight in court. Consequently, Indian police officers feel their credibility is undermined by a system rooted in colonial legacy, leading to a sense of insecurity¹⁹. This distrust within the police profession can lead to the use of torture as a means to compensate for perceived inadequacies or weaknesses in the justice system. When police officers feel that the legal system does not adequately support their efforts or protect their interests, police officers may see torture as a shortcut to obtaining evidence or as a way to assert control in situations where they feel powerless.

Another reason is the distrust towards the justice system. Police officers feel compelled to use violence not because of circumstances beyond their control, but rather as a means to uphold justice. They argue that the justice system often fails to produce results, especially for those without political connections, leading them to believe they must act outside the law to ensure justice. As one officer stated, "Who will come and testify against the accused? Trials take years, and witnesses must wait and travel."²⁰ This highlights the complex motivations driving police conduct, even in the face of legal constraints.

3. Admissibility of statements by the Magistrate

Non-evidentiary value of the statements made to the police does not negate the fact that

¹⁷ Code of Criminal Procedure, 1973, § 161, No. 2, Acts of Parliament, 1974 (India).

¹⁸ Code of Criminal Procedure, 1973, § 162, No. 3, Acts of Parliament, 1974 (India).

¹⁹ LOKANEETA, *supra* note 15

²⁰ Rachel Wahl, *Justice, Context, and Violence: Law Enforcement Officers on Why They Torture*, 48 LAW & SOC'Y REV. 807, 824 (2014)

statements made to the magistrate is admissible in evidence and may be used to corroborate or contradict a statement made in the Court. Section 164 provides a special procedure for a competent Magistrate to record confessions and statements. The object behind recording of statements under this section is that the Magistrate unlike police, can administer oath and obtain signature over the statement. However, how does the magistrate ensure voluntariness from the person making the statement? It gives the person making statements a warning and adequate time to think and reflect. An enquiry is made about his/her condition in custody and thoroughly assured of no torture or pressure from extraneous agents. The magistrate carefully considers whether statements are provided voluntarily. Although this section acknowledges the significance of ensuring individuals that provide statements without constraint, it doesn't entirely address the potential for coercion or pressure that may persist. Even with the magistrate's authority to administer oaths and collect signatures, there could still be instances where individuals feel compelled to furnish false statements due to fear or intimidation. Moreover, the magistrate's assessment of voluntariness relies on subjective interpretations, which may not fully grasp the coercion or pressure felt by the individual. While Section 164 incorporates certain safeguards, it may not completely forestall involuntary statements from being admitted in court.

MEASURES UNDERTAKEN & FURTHER SUGGESTIONS

Now let's analyse the various measures undertaken by the various authorities to prevent this misuse of power. The Supreme court has taken a decisive stance on cases involving torture and deaths in police custody, thereby, declaring the use of third-degree methods to be violative of Article 21 of the Constitution.²¹ Referencing recommendations from the National Police Commission's Third Report, it emphasised the importance of avoiding unnecessary arrests suggesting the issuance of notices instead, except in cases of heinous offenses.²² In the landmark case of D.K. Basu v. State of West Bengal²³, the court outlined specific norms for arrest and detention.

Despite the provisions safeguarding rights of victims of custodial torture, The National Human Rights Commission (NHRC) recorded a total of 914 deaths in police and judicial custody in

²¹ Kishore Singh v. State of Rajasthan AIR 1981 SC 625

²² Joginder Kumar v State of U.P. AIR 1994 SC 1349

²³ 1997 Cri. L.J. 743

the year 2020, with over five deaths per day in police custody reported in 2019²⁴. Recommendations from the Law Commission of India, particularly in its 152nd and 273rd Reports, aimed at reducing custodial crimes and ratifying the United Nations Convention Against Torture, have seen limited implementation, highlighting the gap between recommendations and concrete action.

However, recent directives from the Supreme Court, such as the mandate to install CCTV cameras in police stations, offer a glimmer of hope in curbing custodial violence, provided they are effectively implemented by state authorities. Despite legal interventions, instances of torture persist, with a significant portion of police officials justifying such actions as necessary for the greater good of society, as revealed in the Status of Policing in India Report 2019. This underscores the ongoing challenge of ensuring accountability and addressing custodial abuse within law enforcement agencies, raising pertinent questions regarding the efficacy of existing mechanisms in policing the police, as posited by Justice V. R. Krishna Iyer, "Who will police the police?"²⁵.

While these measures offer important steps towards fostering transparency, accountability, and respect for human rights, they may not fully eliminate the underlying causes of custodial abuse or prevent instances of coercion or duress during interrogations. Additional efforts are needed to address systemic issues, rebuild trust, and strengthen legal safeguards within the criminal justice system. Some of the suggestions which have been already discussed previously under various reports include equipping the police officials with body cams for recording real time data and preserving footage for a specific period, installation of CCTV cameras in police stations covering entry-exit routes, lockups and interrogation rooms, undertaking physiological-physical-medical tests of investigation officers to ensure that they are mentally and physically fit. Some other suggestions include surprise visits to police stations, upgradation in the process of recruitment, training police on human rights courses, etc.

In considering legal measures to address custodial violence, an extension of the 24-hour window afforded to the police for investigation to a minimum of 48 hours is proposed. This extension aims to alleviate the burden and time constraints faced by police officers, allowing for more thorough and deliberate investigative processes. Additionally, augmenting the

²⁴ UNITED NATIONS CONVENTION AGAINST TORTURE, www.uncat.org (last visited April 7, 2024)

²⁵ Prem Chand (Paniwala) vs Union of India, AIR 1981 SC 613

evidentiary value of statements and confessions obtained by the police could be achieved through measures such as allowing witnesses or accused individuals to sign these statements. However, it is imperative that any such measures are implemented in alignment with the broader strategies outlined previously.

Addressing the issue of distrust towards law enforcement requires a multifaceted approach. Both citizens and police officers must cultivate trust in one another and in the justice system as a whole. Achieving this mutual trust necessitates improvements in police behaviour and ongoing efforts to enhance the efficiency of the judicial process, particularly in expediting trials. By fostering a sense of confidence in the justice system's ability to deliver timely and fair outcomes, public trust in law enforcement can be bolstered, contributing to a more harmonious and cooperative relationship between police and the communities they serve.

CONCLUSION

The problem of custodial torture within India's criminal justice system presents a complex challenge that demands urgent attention and comprehensive reforms. Despite various laws and constitutional safeguards aimed at protecting individuals in police custody, abusive interrogation tactics such as third-degree torture persist, resulting in grave violations of human rights thereby, undermining public trust in law enforcement institutions. While efforts have been taken by various authorities, like the Supreme Court and national commissions, the continued occurrence of custodial deaths and the normalization of such actions among some police officers portrays the inadequacy of such existing measures. The prevalence of custodial violence reflects systemic failures within the criminal justice system and highlights the urgent need for more robust accountability mechanisms.

One of the crucial aspects that requires immediate attention is extension of the time provided for police investigations. Currently, the 24-hour window given to the police for investigation, specifically interrogation, often leads to coercive measures as officers feel pressurised and rushed to obtain information within the limited 24-hour time frame. Therefore, extending this period to a minimum of 48 hours would allow for more thorough and deliberate investigation, further reducing the likelihood of resorting to abusive methods.

Additionally, norms should be established in order to increase the reliability of statements obtained during interrogations. Mandating witnesses to sign statements would enhance their

evidentiary value and provide greater transparency in the investigative process.

Installation of better surveillance systems, such as body cameras and CCTV in police stations, is another critical step towards addressing custodial violence. Body cameras equipped with GPS tracking and recording capabilities would serve as a deterrent against misconduct while providing objective evidence of interactions between police officers and individuals in custody. Similarly, CCTV cameras covering entry-exit routes, lockups, and interrogation rooms would enhance transparency and accountability, reducing the likelihood of abuse and ensuring proper oversight of police conduct. Furthermore, to build trust between citizens and law enforcement, police behaviour should be checked regularly, expediting judicial processes, and fostering a culture of accountability are essential in this regard. By demonstrating a commitment to fairness, transparency, and respect for human rights, law enforcement agencies can rebuild public confidence and strengthen their relationship with the communities they serve.

To sum up, policymakers, law enforcement, the judiciary, and civil society must work together to address custodial violence. Only by maintaining a commitment to reform and upholding the values of justice and fairness can meaningful progress be made. India can work toward a future where custodial violence is eliminated and the rights and dignity of every person are respected and upheld by placing a high priority on protecting human rights and upholding the rule of law.

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