

"Upholding Human Dignity: Addressing Custodial Violence and Police Brutality in Contemporary India"

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Abstract - Custodial violence and the misuse of police power have emerged as critical human rights concerns in contemporary India, posing significant challenges to the country's democratic development and the well-being of its citizens. This paper delves into the complex issue of custodial violence, encompassing physical and psychological torture within the custodial setting, and examines the historical and systemic factors contributing to its persistence. Drawing on international human rights standards and the United Nations Charter, the paper emphasizes the need for a collective effort, involving governmental, societal, and institutional stakeholders, to address and prevent custodial violence.

The paper highlights the systemic challenges within India's police force and the urgent need for comprehensive reforms to align it with democratic principles and human rights standards. It underscores the role of national human rights institutions, particularly Human Rights Cells, in promoting transparency and accountability within the police force. Additionally, the paper examines cases of custodial deaths and police brutality in India, emphasizing the crucial role played by the National Human Rights Commission in ensuring justice for the victims and their families..

Index Terms Custodial Violence, Human rights.

INTRODUCTION

Custodial violence and the misuse of police power have become significant human rights issues, posing substantial obstacles to the development of democracy and the well-being of individuals in contemporary societies. The term "custodial violence" encompasses all forms of physical and psychological torture inflicted on individuals in police custody. This reprehensible practice is not only a crime against humanity but also a blatant violation of fundamental human rights. In countries like India, the prevalence of custodial violence is a complex issue, often occurring not merely due to individual misconduct but rather because of systemic pressures. The custodial setting can be judicial, police-related, or within institutions responsible for the care of inmates, such as hospitals or homes. Regrettably, this abuse has persisted unchecked since the British colonial era, largely due to the implicit support of senior police officials, bureaucrats, politicians, and even the judiciary.

In recent years, custodial crimes have garnered significant attention from the public, media, legislature, judiciary, and human rights commissions. Judicial activism, extensive media coverage, the initiatives taken by the National Human Rights Commission, and the intervention of civil society have all demonstrated a collective commitment to combatting torture and upholding human dignity.

The wielding of power has the potential to corrupt individuals, and police officers are not immune to this phenomenon. While the police are granted powers to enforce the law and ensure public safety, there are instances where the desire to swiftly solve a case or personal greed motivates them to use their authority illegally. Article 21 of the Indian Constitution stipulates that no person shall be deprived of their life or personal liberty except in accordance with the established procedure of the law. This constitutional provision serves as an inherent safeguard against torture or assault by the state or its agents. However, regrettably, instances of torture and assault have become

prevalent in police practices, and in numerous cases, custodial deaths have amounted to what can be considered 'custodial murder'. Such custodial violence casts serious doubt on the credibility of the rule of law and the administration of the criminal justice system.

Every offender has the right to be tried and punished in accordance with the law, and any form of punitive action taken outside the ambit of the law is considered illegal. Furthermore, regardless of the gravity of the crime committed, every individual, even the most dangerous criminal, is entitled to be treated with human dignity. The courts have even discouraged the routine practice of handcuffing the accused unless it is absolutely necessary. Various international conventions universally recognize human rights as inherent and inviolable.

There is substantial evidence pointing to an alarming increase in police deviance in India. Cases of brutality, extortion, and other criminal acts committed by police officers across different regions of the country are frequently reported in Indian newspapers. According to data from the National Human Rights Commission, the number of complaints related to "deaths in police custody" reported to them has risen from 136 in 1995-96 to 183 in 2002-03. During the same period, complaints regarding "illegal detention/arrest" increased from 112 to 3,595, while other reports of "police excesses" rose from 115 to 9,622.

These figures highlight the urgency of addressing the systemic issue of custodial violence in India and reinforce the need for robust measures to ensure that the rights and dignity of all individuals, even those accused of crimes, are fully respected and protected.

CHARTER OF THE UNITED NATIONS

The Charter of the United Nations stands out as a visionary and unparalleled document adopted by nations worldwide. Its remarkable scope and provisions for peace and progress lay the foundation for collective security and action, marking a historic achievement in political history. Central to this charter's vision is the recognition that the world must reaffirm its faith in fundamental human rights to achieve peace and prosperity for future generations. Article I of the Charter emphasizes the importance of international cooperation to promote and uphold human rights and fundamental freedoms for all, irrespective of race, sex, language, or religion.

Since the adoption of the Universal Declaration of Human Rights, the United Nations has developed a comprehensive strategy aimed at realizing the human rights objectives outlined in the Charter. This strategy relies on a body of international rules and standards that now cover nearly every aspect of human life. To strengthen this legislative foundation, an extensive network of human rights mechanisms has been established. These mechanisms serve to further develop international standards, monitor their implementation, encourage compliance, and investigate human rights violations. The strategy is reinforced by various public information campaigns and a technical cooperation program, offering practical support to states in their efforts to promote and protect human rights. These structures and activities enable the United Nations to play a central role in setting standards and providing leadership in the pursuit of human rights and fundamental freedoms.

However, promoting and protecting human rights is a collective effort, not one to be shouldered by a single organization. The United Nations' practice in the field of human rights is grounded in the fundamental premise that universal respect for human rights requires the joint endeavors of governments, individuals, groups, and societal institutions.

In the past two decades, many countries have become parties to major human rights treaties, thereby assuming a legal obligation to implement international human rights standards. Human rights involve relationships among individuals and between individuals and the state. Therefore, the primary responsibility for protecting human rights lies at the national level, with each state being accountable. Nationally, the best protection for human rights is ensured through appropriate legislation, an independent judiciary, the enactment and enforcement of individual safeguards and remedies, and the establishment and strengthening of democratic institutions. Activities aimed at promoting human rights and fostering a human rights culture should also primarily be considered a national responsibility. The most effective education and information campaigns are those designed and executed at the national or local level, taking into account the local cultural and traditional context.

When states ratify a human rights instrument, they either directly incorporate its provisions into their domestic legislation or commit to fulfilling the obligations contained in the instrument through other means. Consequently, universal human rights standards and norms are now enshrined in the domestic laws of most countries. However, the mere existence of protective laws may not be sufficient if these laws lack the necessary legal authority and institutions to ensure the effective realization of human rights.

The challenge of effective implementation at the national level has garnered significant international attention and action in recent years. The rise of domestic governance in many countries has underscored the crucial role of democratic institutions in upholding the legal and political foundations of human rights.

It has become increasingly evident that the full enjoyment of human rights necessitates the establishment of a national infrastructure dedicated to their promotion and protection. In recent years, many countries have established institutions with the specific mandate of safeguarding human rights. While the precise functions of these institutions may vary from country to country, they share a common purpose and are collectively referred to as national human rights institutions.

These institutions, in their diverse forms and structures, play a vital role in overseeing human rights within their respective nations. They serve as essential safeguards against human rights violations, ensuring that domestic laws and policies are in alignment with international human rights standards. National human rights institutions also contribute to raising public awareness of human rights issues and can serve as intermediaries between citizens and the state in addressing grievances related to human rights abuses.

In summary, the United Nations Charter, a groundbreaking and visionary document, underscores the critical importance of fundamental human rights in the pursuit of peace and progress. The international community has since developed a comprehensive strategy to uphold these rights, encompassing a wide range of rules and standards. This strategy is reinforced by an extensive network of human rights mechanisms, public information activities, and technical cooperation programs.

However, it is crucial to acknowledge that promoting and protecting human rights is a collective endeavor that extends to governments, individuals, groups, and societal institutions at the national level. As nations commit to international human rights treaties, they must ensure the effective implementation of these rights through domestic legislation and the establishment of democratic institutions. National human rights institutions have emerged as key players in this effort, working to protect human rights, promote awareness, and serve as intermediaries between citizens and the state in addressing human rights grievances.

This collective commitment to human rights is a testament to the enduring significance of the United Nations Charter and its vision of a world in which fundamental rights and freedoms are upheld, paving the way for lasting peace and prosperity.

PROTECTION OF HUMAN RIGHTS IN SITUATIONS OF TERRORISM & INSURGENCY

The global impact of terrorism on human life and fundamental rights is evident, with tragic incidents such as the attack on the United Nations offices in Baghdad in 2003, claiming the lives of the Special Representative of the Secretary-General, Sergio Vieira de Mello, and many others. Terrorism not only inflicts direct harm on individuals but also poses a broader threat to the stability of governments, the integrity of civil society, and the overall peace and security of nations. Moreover, it has the potential to impede social and economic development, further jeopardizing the enjoyment of human rights on a societal level.

While protecting the security and rights of individuals is a fundamental responsibility of governments, the measures adopted by some states to combat terrorism have, in recent years, posed significant challenges to human rights and the rule of law. Instances of torture and ill-treatment in the name of counter-terrorism have been reported, often accompanied by a disregard for legal safeguards against such abuses. The practice of returning individuals suspected of terrorist activities to countries where they may face human rights abuses violates the international legal principle of non-refoulement.

Furthermore, certain countries have experienced a deterioration in the independence of their judicial systems, while the establishment of exceptional courts to try civilians has compromised the efficacy of regular court procedures. Repressive measures have been employed to silence the voices of human rights defenders, journalists, and marginalized groups, diverting resources from social development initiatives to the security sector, thereby impacting the economic, social, and cultural rights of many.

A holistic approach to counter-terrorism is advocated, one that places respect for human rights and the rule of law at its core. This involves the development of comprehensive national strategies that not only focus on preventing terrorist acts and holding perpetrators accountable but also address the underlying conditions conducive to the spread of terrorism. These conditions include the lack of rule of law, human rights violations, discrimination based on ethnicity, nationality, or religion, political exclusion, and socioeconomic marginalization.

Key to this approach is the active engagement and leadership of civil society, the condemnation and prohibition of human rights violations, as well as prompt investigation and prosecution of such violations. Additionally, ensuring the rights of victims of human rights abuses through measures such as restitution and compensation is vital. This comprehensive perspective underscores the complex interplay between human rights and terrorism, necessitating a concerted effort to uphold fundamental rights in the context of counter-terrorism. The intended audience for this guidance includes state authorities, national and international non-governmental organizations, legal practitioners, and individuals committed to safeguarding and promoting human rights amid the challenges posed by terrorism and counter-terrorism efforts.

Custodial Torture

The issue of custodial deaths and torture has been a significant concern in India, with alarming statistics pointing to the extent of this problem. Over the last two decades, 1,888 custodial deaths have been reported, and while 893 cases were registered against police personnel, only 358 were formally accused. Shockingly, just 26 policemen were convicted during this period, highlighting the systemic challenges in ensuring accountability for these grave violations.

The situation is even more distressing when compared to the official statistics. Reports from the National Campaign Against Torture (NCAT) suggest that approximately five people died in custody every day in 2019, indicating a much graver situation than officially reported. This discrepancy raises serious doubts about the accuracy and transparency of the data provided by the Crime in India statistics.

Encounters

In addition to custodial deaths, encounters involving the police have also drawn significant attention. The National Human Rights Commission's (NHRC) annual report for 2018-19 highlighted 164 deaths due to police encounters during that year, with Uttar Pradesh and Assam reporting the highest number of such cases. Despite investigations and recommendations for disciplinary action in several instances, the number of prosecutions and convictions has been relatively low, reflecting the challenges in ensuring accountability and transparency in encounter cases.

Systemic Reforms Within India's Police Force

The need for systemic reforms within India's police force has been a long-standing issue, underscored by the landmark judgment of the Supreme Court in the Prakash Singh case in 2006. Despite the critical directives issued by the court, the progress towards implementing these reforms has been slow, with little substantial change observed in the functioning of the police over the years.

Perceptions of the police force being unprofessional, insensitive, brutal, and corrupt persist among the public, highlighting the urgency of reform. These negative perceptions, although not universally true, necessitate conscious efforts to address and rectify them. Moreover, the role of the police in ensuring a safe and secure socio-cultural environment, as well as fostering economic progress, highlights the indispensable need for comprehensive reform in this sector.

The historical legacy of India's police system, originating from colonial times, continues to influence its functioning today. Rooted in the 1861 Police Act, which was designed to maintain control and domination over the native population, the system's focus on cost-saving and isolation from the public has contributed to its current challenges. The neglect of the Peelian Principles in favor of the Irish Constabulary model has further perpetuated the adversarial relationship between the police and the public, emphasizing the necessity of reforming the outdated foundations of the police system.

Numerous commissions and committees appointed by state and central governments have attempted to address the issues within the police force, with the Report of the National Police Commission representing a comprehensive analysis of the weaknesses and needs of modern India. However, despite the valuable recommendations provided by these bodies, the implementation of reforms has been sporadic and insufficient, leaving the police force entrenched in its colonial-era practices and modern-day challenges.

Efforts to implement the recommended reforms have been lacking, with only nominal and fragmented changes observed in some areas. A concerted and comprehensive approach is required to overhaul the police system, ensuring that it aligns with the principles of democracy, impartiality, and the rule of law, thereby fostering trust and confidence among the public.

Functioning of Human Rights Cells in State Police Headquarters

The establishment of Human Rights Cells in the police headquarters of all Indian states, initiated by the National Human Rights Commission (NHRC) in 1999, marks an essential step toward ensuring that complaints regarding police conduct, including instances of custodial violence, illegal detention, and false implication in cases, are addressed effectively. With a considerable number of complaints related to police behavior, the need for enhanced in-house vigilance and a system that promotes sensitivity and accountability within the police force has become increasingly evident.

Justice M.N. Venkatachaliah, Chairperson of the NHRC, emphasized the critical role of preserving human rights and dignity and the pressing need for the police force to promote and protect these rights. He highlighted the importance of police involvement in upholding human rights, acknowledging the increasing expectations of the public and the rising trend towards transparency and accountability. Justice Venkatachaliah emphasized the need to democratize the composition of the police force and expressed confidence that the establishment of human rights cells would contribute to the prevention and redressal of human rights abuses.

While discussing the significance of the Human Rights Cells, Shri D.R. Karthikeyan, NHRC Director-General (I), stressed the need to overhaul the system to prevent the occurrence or condoning of errors by individual members of the force. He underscored the complementary nature of the new setup with existing modes of addressing public complaints related to police actions, thus enhancing the police's responsiveness to human rights issues.

The Human Rights Cells, headed by an officer not below the rank of an Inspector General of Police or Additional Director General of Police, are expected to have both preventive and remedial value. While the NHRC will retain its authority to process complaints, the Human Rights Cells will be available as an agency for the NHRC to utilize under the Protection of Human Rights Act, 1993. The consultation with the Commission during the nomination of the officer in charge ensures a collaborative approach to the protection and promotion of human rights within the framework of the police force.

HUMAN RIGHTS AND ADMINISTRATION OF CRIMINAL JUSTICE SYSTEM

Human rights, stemming from the inherent dignity of every human being, serve as the bedrock of a democratic society. With its universal declaration emphasizing the importance of upholding human rights and dignity, the United Nations has made significant progress in promoting international human rights law. In the context of the criminal justice system, the protection and respect of human rights play a crucial role in maintaining societal peace and security, upholding the rule of law, and safeguarding the interests of both crime victims and the accused.

India, as a signatory to the Universal Declaration of Human Rights, has incorporated similar provisions within its legal framework to protect and promote human rights. The Indian Criminal Justice System, comprising the police, judiciary, and correctional institutions, is responsible for controlling crime, preventing offenses, and administering appropriate punishment. The fundamental rights guaranteed under the Indian Constitution serve as a safeguard against the violation of human rights, allowing citizens to seek recourse through the Supreme Court and High Courts when these rights are compromised.

While the judiciary has become a stalwart defender of human rights in India, the effective implementation of human rights varies across jurisdictions. There is a need for comprehensive research in the field of criminology to provide guidance to the courts in formulating laws that balance societal interests with the protection of the innocent. The Indian Constitution, along with the Human Rights Commission Act of 1993, ensures the protection of human rights and provides for the establishment of National and State Human Rights Commissions to investigate human rights violations.

Despite these safeguards, reports from international organizations like Amnesty International and the World Watch Institute have highlighted ongoing human rights abuses in the Indian criminal justice system, including incidents of torture, rape, and custodial deaths. While the Supreme Court has issued directives to improve the situation, the effective implementation of these directives remains a challenge, leading to a gap between normative claims and enforcement capabilities. It is essential to bridge this gap to ensure the meaningful protection and enforcement of human rights in the criminal justice system.

CASES OF CUSTODIAL DEATHS AND POLICE BRUTALITY IN INDIA (1998-2000)

During the late 1990s, India witnessed several cases of custodial deaths and police brutality that raised concerns about human rights violations within the country. This period saw instances of alleged police misconduct, negligence, and even criminal acts leading to the deaths of individuals in police custody. The National Human Rights Commission (NHRC) played a pivotal role in investigating and addressing these cases, ensuring that justice was served and compensations were provided to the victims' families. This article will discuss four notable cases of custodial deaths and police brutality in India during the years 1998-2000.

1. Death of Punjabhai Somabhai Thakor (Gujarat, 1995-96):

In 1995, Shri Punjabhai Thakor, a 55-year-old man, was a suspect in a theft case in Gujarat. He and two other suspects voluntarily presented themselves for interrogation on November 13, 1995. Tragically, during the interrogation, Thakor suddenly complained of giddiness and collapsed. He was rushed to a municipal hospital, but the doctor was unavailable. Head Constable Juwar Singh and another Constable, Balwant Singh, took him to the hospital, where he was later pronounced dead. It was discovered that rodents had bitten Thakor's body during his stay at the hospital.

The inquest Panchnama reported dark spots of beating on Thakor's back, buttocks, thighs, and legs. A magisterial inquiry found that the interrogation was conducted without proper arrest warrants and remand orders. It was observed that the police had acted negligently and not in accordance with the law. While the post-mortem report cited cardio-respiratory failure as the cause

of death, the NHRC refused to accept this explanation. Instead, the NHRC believed that police beating during the interrogation could have led to a cardiac failure resulting in Thakor's death. As a result, the NHRC directed the Gujarat state government to pay a compensation of Rs. 2 lakhs to Thakor's dependents, alongside the criminal case against the police officials.

2. **Death of Rameshwar Jat (Rajasthan, 1997-98):**

In 1997, Rameshwar Jat died in police custody in Nagaur, Rajasthan. He had been called to the police station for questioning in a case. According to the police, Jat remained in the police station until 4:15 PM and subsequently slipped out. However, the Additional District Magistrate conducted an inquest that contradicted the police's claims. It found that Jat had been illegally called to the police station and physically beaten by certain police personnel. Frightened by the beating, Jat had run away from the police station, falling into a dry well and sustaining fatal injuries.

The NHRC concurred with the findings of the inquest magistrate and awarded a compensation of Rs. 50,000 to Jat's dependents, in addition to the Rs. 50,000 already sanctioned by the Rajasthan state government. This case emphasized the need for accountability and punishment for police officials responsible for custodial deaths.

3. **Beating Death of Matloob Hussain (Delhi, 1996):**

In 1996, Matloob Hussain, a fruit vendor in Delhi, lost his life following a severe beating by two policemen from the Geeta Colony Police Station. The beating was a result of Hussain's failure to pay the illegal weekly "hafta" or protection money to the police. The Commission initiated proceedings based on reports received from the Sub-Divisional Magistrate of Shahadra, who had confirmed the severe beating inflicted on Hussain by two police officers.

The NHRC recommended disciplinary action against the Station House Officer (SHO) and the conduct of the Deputy Commissioner of Police (DCP) and the Assistant Commissioner of Police (ACP) to be scrutinized. It further urged the Delhi government to ensure an effective and expeditious trial of the errant officials and the implementation of schemes for the protection of petty vendors. The NHRC directed the Delhi government to pay a compensation of Rs. 2.5 lakhs to Hussain's next of kin, highlighting the need to protect vulnerable sections of society from police brutality and extortion.

4. **Suicide in Police Lock-Up of Thimmaiah (Karnataka, 1996-97):**

In Kolar, Karnataka, the Commission was informed about the death of Thimmaiah in the Mulbagal Police Station. Thimmaiah allegedly committed suicide by hanging himself with a nylon rope in the toilet of the police station. The post-mortem and inquest reports provided contradictory information, leaving doubt about whether Thimmaiah had indeed taken his own life.

The NHRC believed that the police officers responsible for Thimmaiah's custody were guilty of not preventing the suicide or addressing the situation adequately. Therefore, the Commission directed the Karnataka government to register a case against the police officials and the doctor who conducted the post-mortem for allegedly destroying evidence. The government was also instructed to pay an interim compensation of Rs. 2 lakhs to Thimmaiah's next of kin, with the option to recover this sum from the errant officials. The case underscored the importance of transparency and accountability in custodial deaths.

These cases of custodial deaths and police brutality during the late 1990s in India highlight the vital role played by the National Human Rights Commission (NHRC) in ensuring justice and compensation for the victims' families. The NHRC's investigations revealed instances of police misconduct, negligence, and in some cases, criminal acts leading to the deaths of individuals in police custody. While these cases represent unfortunate incidents, they also demonstrate the importance of upholding human rights and holding authorities accountable for their actions.

Conclusion

Custodial violence, police brutality, and the misuse of police power have become pressing human rights issues in contemporary societies, particularly in India. These violations not only infringe on individual rights but also hinder the progress of democracy and well-being. Cases of custodial violence and deaths have drawn the attention of the public, media, legislature, judiciary, and human rights organizations. Despite constitutional safeguards and international human rights standards, custodial violence remains a systemic problem, rooted in historical practices and systemic pressures.

The misuse of police power, motivated by the desire to quickly solve cases or personal gain, has raised serious concerns about the credibility of the rule of law and the criminal justice system. The custodial violence crisis in India includes police brutality, illegal detention, and other forms of police excesses, with statistics revealing a disturbing trend.

To address these issues, a comprehensive approach is needed, encompassing legal, institutional, and societal reforms. National and international human rights standards must be fully integrated into the Indian legal framework. The establishment of national human rights institutions, like Human Rights Cells in police headquarters, is a crucial step in ensuring accountability and transparency within the police force.

Furthermore, the Indian police system, which has historical roots in colonial practices, requires substantial reform to align with democratic principles, impartiality, and the rule of law. The implementation of these reforms should be monitored and evaluated to ensure meaningful change.

The international community, including the United Nations, plays a significant role in promoting and protecting human rights. India's commitment to upholding the Universal Declaration of Human Rights underscores the importance of a collective effort in safeguarding these rights.

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