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Historical perspective of custodial Tortures in India

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Abstract

The history of crimes and criminals is as old as human civilization itself and torture has been considered as the most barbarous act against humanity as it constitutes the very denial of the essence of human rights. Custodial violence is a very broad term and it includes deaths, rape, torture, illegal arrest and detention, false implication, disappearance from police custody and other police excess. The practice of brutal behavior and severe punishment for criminals were prescribed in various hindu scriptures in ancient India. Torture and violence have been identified with the police in India ever since the Vedic age (2000 to 1400 B.C.). In fact, the contemporary penology has its roots in ancient India. All the barbaric methods of torture such as cutting of tongue, pouring molten hot lead in the ears, throat cutting the limbs, whipping etc. were well known and were part of the law of the land. During medieval period especially in pre -Mughal period the justice was made less intricate. There was no place for individual's liberty; severe punishments were inflicted on them. But it was Jahangir who interdicted the cutting of noses and ears, but he left other forms of amputation untouched. Thus the history of custodial violence has been the past and parcels of the history of mankind and it apparent from the study that very harsh punishment was prescribed for the criminals and suspects from the time immemorial. There were no legal procedures in various cases and summary justice by king seemed to have been the ordinary course. In this article an attempt has been made here to trace out the Genesis of the custodial violence in India. The historical retrospection of custodial violence has been divided under three heads, viz. Ancient India, Medieval India and Modern India, under these three heads, the position of criminals, accused and detainees in ancient times has been discussed.

Keywords-1. Custodial torture **2.** Custodial violence **3.** inhuman treatment **4.** Qisas **5.** Diya **6.** divut had **7.** Punishment.

I. Introduction

The history of crimes and criminals is as old as human civilization itself and torture has been considered as the most barbarous act against humanity as it constitutes the very denial of the essence of human rights. The practice of brutal behavior and severe punishment for criminals were prescribed and practiced in ancient, medieval and modern era. Custodial violence is a very broad term and it includes deaths, rape, torture, illegal arrest and detention, false implication, disappearance from police custody fake encounter and other police excess. The history of custodial violence has been the past and parcel of the history of mankind. The historical retrospection of custodial violence has been divided under three heads, viz. Ancient India, Medieval India and Modern India, under these three heads, the position of criminals, accused and detainees in ancient times has been discussed.

II. Custodial Violence during ancient period

The practice of brutal behaviour against criminals and suspects by the law enforcement machinery was a common phenomenon in ancient India. Maharishi Ved Vyas, while explaining his conception of virtue and sin pointed out the acid test for virtue is the sensitivity for the wellbeing of others whereas inflicting of pains to others is sin.¹ These high ideals of life and philosophy of sages and saints were well followed even in case of prisoners, criminals and accused in ancient period in India. However, in the second phase of ancient period custodial violence was on peak. Tortures, rapes, deaths, illegal arrests, false implications and other police excesses were common incidents in ancient India. Very severe punishments for criminal were prescribed in various Hindus scriptures. In fact, the contemporary penology has its roots in ancient India.² All the barbaric methods of torture such as cutting of tongue, pouring molten hot lead in the ears, throat cutting the limbs, whipping etc. were well known and were part of the law of the land.³

Torture and violence have been identified with the police in India ever since the Vedic age (2000 to 1400 B.C.).⁴ The Rigveda makes a specific mention of thieves (taya or sutayas) and robbers (taskars).⁵ These thieves and robbers were subjected to barbarous treatment by the hands of the representative of the king. During this period, punishment was considered to be a sort of expiation which removed impurities from the man of sinful prompting and reformed his character. Justice by various ordeals, such as, the ordeals of fire, water, poison and single combat etc. was delivered which were very harsh.⁶ It seemed that these ordeals and oaths were like magic and were only meant to frighten the parties in telling the truth.

During the epic period (1400-800 B.C.), torture was certainly practiced on prisoners by the police.⁷After the epic period, the next was the period of law and philosophy. Torture and severe punishment during this age too was widely frequent phenomenon.⁸ According to Manu and Narada, eight sites would be selected for infliction, such as private parts, the abdomen, the tongue, the two

hands, the two feet, the eyes, the nose and two ears.⁹Manu emphasized the necessity of torture to protect the society from the hands of criminals. He held that after considering the inclination of the

offender, his antecedents and capacity punishment should be given.¹⁰He said that men who are guilty of crime and have been punished by the king go to heaven and become pure like those who perform meritorious deed.¹¹

Similarly, Narada referred the inhuman practice of pouring hot oil into the mouth, ears and thrusting red-hot iron into the mouth of a criminal sentenced to death.¹² Kautilya observed that awarding of punishment must be regulated by consideration of the torture and nature of Crime, time

and place, strength, age, conduct earning and monetary position of the offender.¹³ He recommended eighteen kinds of torture to elicit information from the accused.¹⁴ Burning of limbs, tearing by wild animals, trampling to death by elephants and bulls, cutting of limbs and mutilation were in practice. He held that if a person killed another intentionally he was to be put to death with torture.¹⁵ This means judges should always consider the relevant circumstances before deciding the actual punishment. However, in cases of harassment of prisoners, if anyone puts hindrance to sleep, sitting down, meals, answering calls of nature, or movement putting fetters (in judge's lockup or in prison house) the fine should be three panas, increased by three panas for him to who did it and for him who causes it to be done successively.¹⁶

A person should not be put to torture whose offence is trifling or who was a minor, aged, sick, intoxicated instance, overcome by hunger, thirst, traveler, who has overcome, whose meal was undigested or who was weak.¹⁷ Furthermore, under no circumstances a pregnant woman or one who had not passed month after delivery should be put to torture.¹⁸ Those who violate or cause to violate the above rules should be punished with the first fine, also for causing death by torture.¹⁹ In the case of very grave offenders, there shall be nine strokes with a cane, twelve whip-lashes, two thigh encircling, twenty two slaps, two types of scorpion biting two kinds of suspensions, needle in the hand, burning one joint of a finger, making the accused drink rice gruel and then preventing him from passing urine, heating in the sun for a whole day after making him drink fat, causing him to lie on coarse green grass for the whole-night in winter.²⁰ Similarly, a condemned criminal was also burnt to death after having fastened him on a stake.²¹ Yajnaralkya recommended death sentence by burning.²²

Arrested culprits were taken into custody.²³ In order to clear him of alleged guilt bails were also granted.²⁴ During this period, in the presence of the complainant and the witnesses, the accused whether local or foreigner shall be questioned about his country, caste, family, name, occupation, wealth, associates and residence.²⁵ Answers were compared with the statements of others.^{26,27} Generally male criminal feet were tied while putting in the prison. Iron fetters were generally used to bind the feet of the culprit. Wooden handcuff was also known. Many prisoners died as a result of the torture inflicted upon them and the privations they endured.

They were left without food or water. Suffering from the cold or the heat, lying helpless in their own excrement, usually sick, often leprous, their nails, hair and long beard frame beaten three times a day with whip, canes or bludgeons,²⁸ conditions of jails and prisons during this period was

Deplorable. Dandin refers to one of the savage ways of trampling to death of elephants. He also makes mention of death by ill-treatment & torture.²⁹ In his time, the policeman were also known as Rajpurusas, Nagarikas or Raksins .

The punishments were generally severe for offences, such as abetment of crime. The offender was banished from the state or was put into prison and his property was confiscated. The literature of ancient India provides ample references to prisons. Prisons were generally located in an underground dungeon or in an out of the way place and were properly walled.³⁰ Some were bound hand and foot, or chained to a wall, or thrown into ditch where they were at the mercy of wolves, and, jackals, rats and cats, and soon meet their death, or a prisoner might be stretched out on his neck, his jaws wrenched open forcibly and kept part by the insertion of red hot iron or copper wedges and urine poured down his throat. Other instrument of torture were employed, cauldrons filled with burning and corrosive liquids, sharp swords, saws, razors, iron nails, needles, hatchets and pincers.³¹

Similarly, from the Harisacharita it appears that the condition of the prisoners was far from

satisfactory. They bore haggard looks with long boards and their bodies looked dark due to dirt. Kautilya, however, has devoted a whole chapter to "Trial and torture to elicit confession. "From which we learn that cruel modes of torture were reported in order to extort confession.³²The Pregnant women, or who have delivered a child within a month should not be tortured. Torture of women shall be half of the prescribed standard." Ascetics and Brahmans well-read in the Vedas should not be tortured but subjected to surveillance and banished from the country.' Moreover in the time of torturing an accused special care must be taken so that he is not tortured to death. If the accused do not confess his guilt (each day a fresh kind of torture may be employed." Kautilya describes the various kinds of torture which were in use in his days. There are in Vague four kinds of torture (Karma)- six punishments (Satdandah) severe kind of whipping (Kasa), two kinds of suspension from above (Upari nibandhau), and water-tube (Udaka nalikacha)." There are some persons who must not be subjected to torture. Ignoramuses, Youngsters, the aged, the afflicted, persons under intoxication, lunatics, person suffering from hunger, thirst or fatigue from journey.

The Buddhist period (B.C. 320-300 A.D.) was an age of great humanitarianism. Custodial torture in any form was strictly forbidden and special favors were given to prisoners-who happen to be women, aged or who had many dependants.³³ In this period offenders were arrested and punished severely. The bilanga-thalika or a 'gruel-pot' or 'porridge pot' or 'saucepan' was a torture in which the skull of the victim was first trepanned and then a red hot ball of iron was dropped in so that the brain boiled over like porridge. Although, Ashoka inherited from his forbears an efficient bureaucratic set

up, the stress was on the observance of the law at piety which in its turn was expected to lead to proper justice and reduction in crimes. Similarly, the status of women prisoners was not satisfactory in this period. Even female prisoners had their feet tied and put in prison.³⁴ Iron fetters were generally used to bind the feet of the culprit. Wooden handcuff was also known.³⁵ It was only in the second phase of ancient period that rights of women criminals had been given much attention.

III. Custodial Violence during medieval period

The study of the history of India reveals that the glorious Hindu period was subjected to intermittent invasions by the Muslims. The beginning was made by Mohammad Bin Qasim in 712 A.D. With the rise of Babar and fall of last Lodhi ruler in 1526; the administrative set-up by the Muslims begins to take shape on the Indian soil. With the advent of the Muslims, critical phase of Indian history begins.

The legal system in medieval India resembles with the ancient India. During the Mughal regime in India, the law of crime was the law of the land for the administration of criminal justice. According to Muslim law, there were two categories of crime. The first, includes crime of human and private nature and secondly, theft brigandage, extra – marital sexual relations, apostasy and wine drinking.³⁶ Similarly, in Muslim law, punishments for these offences were divided into Hadd, Quisas, Diya and Tazir. Quisas or retaliation meant in principle for tooth and eye for an eye with certain exception.³⁷ Diya or Diyut meant blood money. In certain cases, like international injuries, Diya was awarded to the victim on fixed scale. Hadd was a punishment for offences both of which (punishment and offences) were equally defined. If a man was guilty of adultery, he was stoned to death or put to death in an ordinary manner. If he was guilty of fornication, the punishment was scouring (one hundred stripes).³⁸

In fact, the hadd punishments, were severe, they may appear to us today even as barbarous. Some of the hadd punishments were amputation of limb or limbs, flogging etc. The main aim underlying these punishments was to deter criminals from committing those crimes which were injurious to the community of creatures.³⁹

Thus during this period, the sovereign and the law enforcement agency had acted arbitrarily and discretionary, while conducting investigations of crime Tazir, which was one of the major form of punishment during this regime, was a clear evidence of sovereign's independent attitude. Imprisonment was a very common form of punishment in Mughal India. The Quazi and Magistrate had a right to send anyone to prison for the offence or crime for which the punishment could be awarded and the accused had to show the sign of repentance to secure his freedom.⁴⁰ It was Abdul Fazal, one of the learned ministers of Akbar, who gave an interpretation that the Muslim rulers could award punishment to offenders.⁴¹

For the purpose of awarding punishment of imprisonment numbers of forts were used to confine offenders. However, there was no regular jail in the modern sense of the term during the

Muslim period in India. Generally forts were treated to be prisons during that regime. They used three noble prisons of castles in Mughal India. One was at Gwalior, second at Ranthambore, and the third at Rohtas. Criminals Condemned to death punishment were usually sent to the fort of Ranthambore. There are ample references where ordinary criminals were kept under guard in irons but not in prison.⁴² It was also found that solitary confinement was common in medieval India. However, the

account recorded by European Travellers, as well as the scattered case in the chronicles, shows that during Mughal period there was no proper arrangements for keeping criminal justice system the system worked remarkably well in the regime of Akbar the Great. Akbar was inspired by the high ideal of doing even handed justice to the people. He adopted a policy of tolerance and non-discrimination towards, all human beings and saw that no injustice is committed in his realm.⁴³ He tried to prohibit harsh treatment of prisoners. Jahangir, further followed the policy of his father Akbar. Further during his regime the procedure of the courts was simple and summary.⁴⁴ It was Jahangir who interdicted the cutting of noses and ears, but he left other forms of amputation untouched. During his reign, he never disgraced himself by inflicting the penalty of flying, but he occasionally punished the darker social and political crimes with dreadful death by impaling, strangling, tearing by wild beasts or trampling by elephants.⁴⁵

Further, Jahangir, was followed by Shahjahan, who himself spend his last eight years at a captivity of his son in the fort of Agra. At the time of Shajahan, the offenders could not get the generosity from the administration and any reform in prison administration.⁴⁶ Shahjahan's rule was taken over by his son Aurangzeb. Aurangzeb (1658-1707) the last great Mughal, emperors of India.

However, during the reign of Aurangzeb, arbitrary arrest and detention were less in numbers. On various occasion, he issued orders to Gazis that no one should be put to custody except of legal grounds (Waja-i-sharai), and that the Kotwal should not arrest any man except for theft, breach of peace and riot.⁴⁷ The emperor issued orders in 1672 for the speedy trial of the prisoners once every month, to release innocent and to issue directions for the quick trials of others.^{48, 49} It meant that during that regime there were adequate safeguards to prevent custodial violence.

However, according to Sir Jadunath Sarkar, the Kotwals and Quazis of Mughal days were notoriously corrupt. Torture of extort confession was wide-spread and common.⁵⁰

IV. Custodial Violence during modern India

After the collapse of the Mughal Empire, the Britishers established their kingdom. Britishers showed great interest and enthusiasm in improving the Indian legal system on the basis of English

legal system. But even during their regime, the severe and barbarous treatments of punishments were not uncommon. There are many instances, where the inhabitants in police custody received harsh treatment on many occasions. The policy of British administration in India was based on coercion.

They maltreated the masses, denied civil liberties, discriminate and tortured them in many ways, in their own country. During that reign in India, there was no fundamental law guaranteeing the subjects rights and liberties. The rights of persons in custody were apprehended on many occasions. History of freedom movement in India provides glaring epitomes of torture, which Indians met under British rule during 1857-1947.

During the British rule in India, custodial violence was considered legitimate to maintain kingship and sustain the domination. Human rights phenomenon was like a curse for the police officers because their prime concern was to protect British rulers.⁵¹ History shows that custodial violence, including tortures, illegal detentions, rapes, deaths etc. in Police custody etc. was the rule of law in colonial's reign. In the year 1790, the punishment of mutilation was forbidden by law in Bengal, and criminal courts were directed to inflict imprisonment with hard labour in its stead. In 1833, attention of the British parliament was drawn to the anomalous and sometimes conflicting judicatures by which laws were hitherto being administered. Accordingly in that year an Act was passed which effected many changes in the constitution set-up of this country. An Indian law commission was appointed to prepare a uniform code of legal rules. The frequent report of brutality in lock-ups, rapes and death in custody and widespread corruption against the policeman compelled the government of the day to bring about certain changes in the law existing at that time. In the next three years, first the Civil Procedure Code, then Indian Penal Code and almost afterward the Criminal procedure Code was enacted. The Indian Penal Code was enacted in 1860; the Indian Police Act in 1861; the Indian Evidence Act in 1872 and Criminal Procedure Code, 1973 one by one came into force. The adoption of the Constitution brought a ray of hope for the victims of police torture. But, it is unfortunate, that despite of protecting the interest of public, police force bore stigma, for being violator of human rights. It is crystal clear from the apparent study that very harsh punishments were prescribed for the criminals and suspects from the time immemorial. In ancient Hindu period, the king was regarded as the fountain of justice and in case of any crimes he had the power to punish the guilty. There were no legal procedures in various cases and summary justice by king seemed to have been the ordinary course. During medieval period especially in pre-Mughal period the justice was made less intricate. There was no place for individual's liberty; severe punishments were inflicted on them. Criminals were subject to different kinds of torture. The conditions of prison and prisoners were deplorable. In fact during medieval period punishments were inflicted on the offenders to deter others to commit the same crime or offence.

However, it was due to the freedom of movement in India led by the Indians that Britishers for the first time, thought about the growing evil practice of custodial violence. Therefore, it is the right time for all human right activist and their common man supporters to join hands to fight against menace of custodial violence and hold governments accountable. Civilized society cannot be built with broken hands. Tortures thrive on the indifference of the general public. Our task must be to turn indifference into outrage and outrage into action.

References

1. Surender Singh, Rural Development and Human Rights in India- A Critique, quoted in P. M. Katare and B.C. Barik, Development Deprivation and Human Rights violation P.,109 (2002) .
2. Giriraj Shah, Indian Police - A Retrospects P.9 (1992) .
3. See, Manusmirti, Yajnavalkya Smriti, Narada Smriti, brihaspati Smriti and Katyayana Smriti; see also Shukla. Das, Crime and punishment in Ancient India PP.73-76 (1977).
4. S.K.Ghosh, Torture and rape in police custody P.15 (1993).
5. P.V.Kane, History of Dharamsastras PP.368-78(Vol. IIIrd ,1973).
6. S.K.Ghosh, The outcry of police Brutality P.34 (1983).
7. Venu Gopal.Rao , Facets of Crime in India P. 222 (1963).
8. Shukla.Das, Crime and punishment in Ancient India P.73 (1977).
9. NitaiRoy.Choudhry, Indian Prison Laws and correction of prisoners P. 23 (2002).
10. ManuSmriti 318 Vol. VIII. Kautilya's Arthasastra P.10(Vol. IV).
11. Madan, T.C., Indian Police, Its Development upto 1905 and Historical Analysis P.11 (1980).
12. Justice Gulab Gupta, Custodial Violence and Human Rights Commission P.286 Central Indian Law Quarterly, Vol. 12,(July-Sept. 1999)