



A study of the right to remain silent and custodial violence by police in Indian state of Uttar Pradesh.

Prakhar Tiwari[1], Harsh Yadav[1]

UG student at Dr. A.P.J. Abdul Kalam Institute of Forensic Science and Criminology, Bundelkhand University, Jhansi (U.P.) India[1]

Abstract: When the word human rights come in light, it covers lot of things that must be highlighted by author to the people because the subject is extremely complicated. The adversary judicial system in India, which major premise is the presumption of innocence of an accused person unless proves guilty. The Indian judiciary also provides fair opportunity for the accused to defend himself and everyone have the right of social, economic and political justice but it seems that lately the Uttar Pradesh police have played the role of both judge and investigator and at the time it successfully deliver instant justice[1]. Maltreatment is the result of daily increasing to large number of death in custody. The problem of death resulting in police custody or caused due to fake encounter is still increasing which, sometimes, shakes the confidence of the people in the democratic system of the country besides creating the problem of abuse of human rights.

Objective

In this article an attempt to analysis of custodial violence and its affect on right to silent. In this article the author will also focuses on the right to remain silent and the role of student and media spreading the awareness of custodial crime and police atrocities in the state.

Introduction

“Torture in custody flouts the basic rights of citizens and is an affront to human dignity. It is the naked violation of human dignity and degradation which destroys, to a very large extent, the personality. In all custodial crimes that are of real concern is not only the infliction of body pain but the mental agony which an individual undergoes within the four walls of police lock-up. It is the face of torture. The term custody means to take care of somebody/something [2]. It is a state being guarded, or kept in prison temporarily, especially by police. There are two types of custody. (A) Police custody. (B) Judicial custody. Police custody means that police has the physical custody accused, where judicial custody means an accused is in the custody of concerned magistrate. In other word the accused is lodged in police station lockup while in later it is jail. Death in police custody is a curse spread all around and challenging the justice system. On the basis of gathered data custodial violence can be isolated in two types. (A) Torture in police

custody. (B) Torture in judicial custody. Behavior of police officer toward the prisoners is a matter of deep concern.

If these all things are exposed in the context of most populated state of India "Uttar Pradesh", so shocking result to be seen. No doubt the state of Uttar Pradesh not only most populated but also has highest number of crime. Simultaneously, arbitrary action of police is an alarming problem for Uttar Pradesh.

Here a look at police action in Uttar Pradesh

(A). African national assault- according to complaint, the students and their parent were harassed in the name of investigation [3]. As the result they were so stupefied to attend the school and college even board exam.

(B). A man with name of Balister died at Jhansi Nawabad police station [4]. The deceased was picked up by special operation group in connection with a robbery case. Police claimed that Balister committed suicide but household alleged that they had not allowed fulfilling the sufferer while his condition deteriorated and out of control.

(C). Sumit Gurjur encounter [5]- it was alleged that the police arbitrarily arrested Sumit Gurjur. The family claimed that there was no criminal case against Sumit, but a reward of 50000 rupees was announced for killing Sumit by planning of police.

(D). Puspendra Yadav case- according to the police, he was involved in illegal mining. He was killed in police encounter in Gursari police station. Police claimed that he fired on SHO of moth Dharendra Singh Chauhan. SP President Akhilesh Yadav called the encounter fake and alleged that the police killed Puspendra Yadav. Currently this case is seeking for CBI probe in Allahabad High Court.

(E). Munna Bajarangi case is seeking for justice [6]- the single bench of Allahabad high court declined to pass order for a CBI probe into the murder of a gangster Prem Prakash Singh alias Munna Bajarangi inside Bagpat jail.

(F). Allahabad high court has issued direction to NHRC on alleged police aggression in Aligarh Muslim University.

(G). NHRC issued a notice to U.P. police chief on various complaints of violation of human rights violation in arbitrary action of police undertaken during CAA protest in the state.

This type of action is the result of operation clean which is governed by U.P. government. As a citizen of India everyone has right to social, economic and political justice and they have also right to life with liberty, which are basic human rights. The common people start praising the incident of such judicial killing. They do not think that it was these suspect/accused persons today but tomorrow it could be anyone may be from their family. The Supreme Court held in case of *Public Union Civil Liberties vs. Union of India* [7] that the encounter killing must be investigated independently because it affects the rule of law and criminal justice system also. When any case catches high media attention then the police under pressure catch innocent person and frame the charges of crime, Praduman Thakur murder case is classic example of it. Many cases come out to be a burning issue with regarding human rights. The trend of fake encounter and custodial

violence is really worrisome. The term encounter is not mentioned anywhere under the constitution of India. In police language it is used where the clash between security forces/ the police and criminals. There is no provision in Indian law to do the encounter anywhere, there are some rules that force the police to attack the criminals and thereby justify the death of offender. In almost all forms an encounter, the police generally point out the self-defense operation. Section 46 of CRPC state that if a criminal tries to escape the arrest or tries to escape the police grasp or attack the police, they may be able to retaliate, another provision has given in IPC[8] section 100 in right of private defense, which directly authorizes an officer to retaliate but only in self-defense. In the case of Nirmal Singh Khalon vs. State of Punjab [9], the apex court held that right to free trial and investigation is applicable on both, the victim and accused under article 21 of India Constitution. In case of custodial violence there is very less and less witness come forward against the police, they think that, if they raise voice against the police, police may implicate them any fake case. In other type of custodial violence, it may also during police interrogation. It is a right of suspect/accused to remain silent; no one can compel him to expose such thing which is against him. It is right against self- incrimination. According to the data of U.P. government, U.P. police had conducted 1,038 encounters and killed 32 persons killed and 238 were injured. Such huge number is raising alarming problem for human rights. According to Asian Centre of human rights, there were 1674 custodial deaths between 1April 2017 and 28 February 2018[10]. On an average India recorded 5 deaths per day per day.

Data of NCRB on custodial crime2018 [11]

States	Registered cases	Arrested	Convicted /discharge
Andhra Pradesh	97	0	1 / 10
Chhattisgarh	255	19	1 / 3
Madhya Pradesh	172	18	20 / 356
Maharashtra	401	319	2 / 0
Uttar Pradesh	90	131	5 / 131
Rajasthan	3340	3	1 / 7
Gujarat	170	174	0 / 10

According to the data of NCRB, in India, 5429 cases were registered of custodial crime in different sections. If have a look at the date this is almost clear the custodial violence is a big issue and also a matter of deep concern. There is very the top 7 states of India which are affecting human rights broadly.

View of Apex court on right to silent

Nandini Satpathy vs PL Dani [12]

Smt. Nandani was a chief minister of Orissa and one time minister at national level. She was directed to appear at the vigilance police atation for being examined in a case against her under prevention of corruption act. She was interrogated with a reference to a long list of questions, given to her for answer. According to Nandani Satpathy, the major questions were against her. She would have exposed herself, if she answered those questions. The police booked her the section 179 of Indian penal code 1860. Which prescribes punishment for refusing to answer of such question which asked by a public servant. The case reached to the Supreme Court and

honorable court held the accused/suspect cannot be forced to give evidence against her/him, all police interrogation are relevant but not self- incriminatory.

State of Bombay vs Kathi Kalu Oghad

In this landmark case Supreme Court had discussed the constitution guarantee against self-incrimination. The issue, in Kathi Kalu, was whether handwriting and fingerprints sample were curtailed the article 20(3), in other order whether forcefully an accused provide their finger impression or handwriting sample, was equivalent to compelling them to be a “witness” against themselves [13]. The Supreme Court held that there was no infringement of article 20(3) of the constitution in compelling an accused/suspect to give his sample of handwriting or fingerprints to the investigator and also held that the section 27 of I.E.A. did not curtail article 20(3) unless compulsion was used in obtaining.

Selvi vs State of Karnataka [14]

In this case judiciary and technology had come to face to face with each other. India had seen a fight between technology and humanity. Issue involved in Selvi vs State of Karnataka-
-Narco analysis, brain mapping and polygraph test could be used as constitutionally.
- Whether these techniques curtail article 20(3) and article 21 rights to life with liberty.
-Whether a person permitted to take without consent administration of impugned techniques in subject of criminal justice, provided that safeguards are in place.

The apex court held that the consent of accused is mandatory for the administration of polygraph test. Even when the accused has given consent any of these tests, the result cannot be admitted as evidence because the accused does not exercise conscious control over response during the test. These three cases plays vital role in the admissibility of forensic lie detector test. These cases depict the journey of forensic evidence, which was stated in 1961 and ended in 2010 with the case of selvi vs state of Karnataka. These cases are very important for the aspect of forensic science.

-The Supreme Court held in the case of Om Prakash vs State of Jharkhand that, “it is not a part of duty of police personnel to kill the accused just because of him, is a criminal.”

-The apex also held in the case of Nirmal Singh vs State of Punjab that the right to investigation and fair trial applicable to accuse/suspect and victim under article 21 of constitution of India. The article 21 also states that no person shall be deprive of his life and personal liberty, this means fair criminal trial.

Ryan school murder-

Driver Ashok Kumar was toured by police using third degree [15]. When police had booked him on charges of murdering a 6 year old child of Ryan International School in gurugram, then he never thought he would walk free. A criminal lawyer Mohit Verma was an advocate of Ashok Kumar, when he met him in bhondsi jail and heard him, how police had toured him to get confession. The police had greatly intimidated him and even told him to wrong confession in front of media. He had been brutally tortured with electric shock by police.

No doubt stern actions are taken against persons found guilty in police custodial deaths besides holding the state liable in such cases. But still these cases are increasing. The reason behind it is the unlimited powers police enjoy under the existing legal system of the country. Being custodians of law, they are themselves in possession of police records. Hence it is very difficult to establish their guilt in cases of police custodial deaths. Consequently they easily escape from criminal liability in such cases. Recent establishment of Human Rights Commission is quite encouraging and may yield fruitful results regarding human rights in the country. It has been empowered to enquire into any complaint of violation of human rights and make recommendations to the government against guilty persons. But it is still doubtful that the commission would successfully prevent the police misusing their powers which ultimately become the cause of custodial death unless the same are curtailed through the some specific amendments. Police should use forensic lie detector test rather than third degree. There is lots of accurate technique in the field of forensic science like LVA [16] etc. Police should follow the guidelines of DK basu [17] and Selvi cases. In order to establish liability of the police in the case of custodial death, the presumption of guilt should be raised them. Thus, if any death takes place in police custody, the burden of proof should be lie on them to disprove that the same was not caused in their custody. During the training period of police they should give specific knowledge of human rights not only in India as well as whole world wide.

Role of media person or student

Besides political issue the media should also focus on the custodial violence and extra judicial killing in state even how many innocent people losing their lives because of the police action, torture, using third degree during police examination etc. It is a duty of media personnel to aware the people from the human rights violation. The arbitrary action of police is increasing day by day. Recently lucknow poster case of CAA protest also a part of arbitrary execution. That apex court also clarified that there is no certain law to putting up road side posters, these types of execution also curtail the right to privacy of an individual [18], which is protected under article 21 of India Constitution. In other hand not only law student but other stem of student have must also the knowledge of basic human rights and fundamental rights also, which would help to prevent them being bad with them. The NGOs should organize the seminars or workshop to spread the knowledge toward the human rights.

Conclusion

On the basis of gathered data it can be said that custodial violence is such big issue in the state of Uttar Pradesh. Indeed, police have got a lot of power in Indian law but only for using in right way. It is establish that the results of custodial crime are seeking for such amendment in crpc as well as in Indian evidence act. If the death take place in police custody, the burden must be lie on police, some specific provision should be given in chapter7 of India evidence act 1872. We accept that the police work under so much pressure regarding the pressure of media, political and other disturbances but in democratic country India people are real sovereign power. The police are only public servant; they have to protect the people from robbers, criminals, murders etc. This suggestion could change the image of human rights not only in India but also globally.

Reference

- [1]. <https://www.thehindu.com/opinion/op-ed/against-human-rights/article22882692.ece>
- [2]. <https://www.google.com/search?q=what+is+custody&oq=what+is+custody&aqs=chrome..69i57j0l7.17499j1j7&sourceid=chrome&ie=UTF-8>
- [3]. <https://www.newindianexpress.com/nation/2017/mar/30/assault-on-africans-withdraw-cases-against-civic-society-members-says-noida-residents-1587615.html>
- [4]. http://www.ijresm.com/Vol_1_2018/Vol1_Iss9_September18/IJRESM_19_80.pdf
- [5]. <https://www.amarujala.com/uttar-pradesh/meerut/sumit-gujjar-encounter-demanded-justice-in-panchayat-and-will-be-reply-to-bjp-in-lok-sabha-elections>
- [6]. https://en.wikipedia.org/wiki/Munna_Bajrangi.
- [7]. <https://www.casemine.com/judgement/in/5609ad2be4b0149711410b10#:~:text=%E2%80%9494%20People's%20Union%20for%20Civil%20Liberties,two%20persons%20of%20Lunthilian%20Village>
- [8]. Indian penal code 1860
- [9]. <https://www.drishtias.com/current-affairs-news-analysis-editorials/news-editorials/02-01-2019/print>
- [10]. <https://www.newsclick.in/high-numbers-custodial-deaths-police-butcher-basic-human-rights#:~:text=Asian%20Centre%20for%20Human%20Rights,2017%20to%2028%20February%202018>.
- [11]. <https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20-%20Volume%203.pdf>
- [12]. http://www.hrcr.org/safrica/arrested_rights/sathpathy_dani.html#:~:text=India%2C%20Nandini%20Sathpathy%20v.,P.L.%20Dani&text=Facts%3A%20Smt.,the%20Prevention%20of%20Corruption%20Act.
- [13]. <https://ijlpp.com/a-case-analysis-of-the-state-of-bombay-v-kathi-kalu-oghad-and-ors-air-1961-sc-1808/>
- [14]. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3166849#:~:text=In%20Selvi%20v%20State%20of,and%20personal%20liberty%20under%20Article
- [15]. <https://www.timesnownews.com/mirror-now/crime/article/pradyuman-thakur-ryan-international-school-murder-accused-juvenile-treated-as-adult-punjab-haryana-high-court/298038>
- [16]. <http://lva650.com/>
- [17]. <http://defensewiki.ibj.org/images/b/b6/Basu#:~:text=On%20December%2018%2C%201996%20in,measure%20to%20prevent%20custodial%20violence>.
- [18]. <https://www.livemint.com/politics/news/allahabad-hc-orders-removal-of-posters-with-details-of-anti-caa-protesters-11583752432008.html>