

Extra-Judicial Killings: A Threat to Democracy

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Abstract: *Extra judicial killings have become a very serious problem these days as it is the worst form of human rights violation, irrespective of sex or age. Brutal forms of violence are performed by these law enforcing agencies. These violence are done under the name of investigation and interrogation and sometimes these interrogations lead to the death of the victim. Viciousness in legal care is as genuine an issue as in police guardianship. Abuse and ruthless attack is every day schedule of authorities prompting the huge number of passing in guardianship. From torture to death, several fundamental rights of a person (recognized by the Indian Constitution) are hampered, while in the custody. Supreme Court and other courts have given several guidelines in several cases regarding the arrest, bail and several rights of the victims for their protection from such violence. Despite those guidelines and advisories, the violence is still on its peak throughout the country. This article tries to analyze the causes and different methods of custodial violence, and how it contradicts with our legal system and what are the different provisions under our law for protecting the rights of the victims.*

Keywords: Extra Judicial Killings, Brutal, Assault, Maltreatment, Judicial Custody, Contradicts, Torture, Death, Fundamental Rights, Victims

1. Introduction

Under a Democratic Rule, the basic objective and duty of the government is to provide every citizen equal right, opportunities, liberties and to provide all other essential benefits which are necessary for human rights in a civilized society. But there are certain activities which are major threat to democracy. This threat or activity in present day is known as Extra Judicial killings or Custodial Violence. Extra Judicial Execution is a term which has become very common in modern times. The term states that an alleged accused has been prosecuted/ killed before receiving the orders of such prosecution from the court of law. The executive authority of the state, usually, police are responsible for the safety and security of the accused from pre-trial stage to post trial stage and if the alleged accused dies while staying in the police custody raises a doubt on the integrity and conduct of the police. This may lead to the reasons such as gross negligence by the police, or commission of any unlawful act by the police for achieving their vested interest, or omission of their duties vested on them by the statutes and any such possibilities ascertained by the court from the facts and circumstances of the case.

The term “**Audi alteram partem**” which says that “both sides must be heard” which forms the basis of protecting the accused when they are under trial. Every person has a right to be heard and every accused shall be given a fair trial before the court of law. But if the accused is killed before facing a fair trial then, it would mean the mockery of the due process of law and infringement of fundamental rights which are given to the accused by the Indian Constitution. Some of the violations under Constitution of India are Article 14 which establishes equality before the law and equal protection of law, Article 21 which gives Right to life and Personal Liberty, Article 22 which gives protection against arrest and detention against certain cases and so on.

As it is impossible to pinpoint an exact time for the beginning of this atrocity in the history of India. there has been a series of events in history which leads to the occurrence of the Extra-judicial execution in the modern era.

There is no history on formation of police in the long-drawn ancient history of India but there are some scattered Hindu Scriptures which give insights about the earlier Indian Criminal Law system of India which comprised from the scripts of Manu-Smriti or the Manu code which stated that the torture is necessary for the preservation of peace and avoiding crimes. The Mohammedan law taught the principle of an eye for an eye which became quite prevalent in the Mughal dynasty.

In oldest times, the code of Manu was followed in many states or a territory which was ruled by the kings. The king was the judge, jury and executioner, the state was controlled by his officials. Many of those officials tortured the accused for unravelling the truth and also some were tortured or forced to accept the crimes which they did not commit and sometimes, those tortures lead to the death of the accused. It can be also said that many such irregularities resulted in many untraceable deaths in the times of Kings and Princes. In Mughal period, during the time of Akbar reign, he avoided harsh treatment to the criminals but after him, the deaths of alleged accused and convicts were continued.

After the falling down of the Mughal and the emergence of the British colonies in India. The British became one of the contributors in the atrocities by using torture as a means of interrogation of the accused involving the kotwals for torturing and killing prisoner without trials. Even After getting independence from the British there have been several events of extrajudicial killings popularly known as Fake encounters in India were witnessed. The modern police using law under the pretext of Section 46 of Cr.P.C. and section 96 of IPC encounter the accused before the trial. They try to twist the facts to show that the killing was legal and cannot be questioned by anyone.

In the recent few years, the number of deaths has increased rapidly. Suspects in a police custody or judicial custody suffer from physical torture, psychological torture, Sexual torture and sometimes rape and all these eventually leads to death of the suspect and these events come under the purview of Extra judicial killings or custodial violence. The

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recent incident of George Floyd by the US police, custodial deaths of Jayaraj and his son Fenix in Santhankulam, the recent encounter of the wanted gangster Vikas Dubey by UP police, the encounter of suspects of Priyanka Reddy rape case by Hyderabad police and finally, Mathura rape case are perfect examples of extra judicial execution by fake encounter and custodial violence through sexual harassment.¹

Custodial Violence is a big threat for a democratic society as it will create a sense of insecurity in the minds of citizens towards the state which would eventually lead to increase in number of unreported crimes as citizens would stop taking help of police and their trust towards our judicial system would gradually start to diminish. There are various Reasons for custodial violence pressure of the people for fast investigation, greed for money, inefficiency of working skills of the police department, etc. There are also some social factors which makes the police to use custodial violence. In our nation, we are acclimated with think as far as 'tit for tat' and 'tooth for tooth'. Therefore, even the complainant themselves force the police or even sometime bribe police officers to torture the suspects of a particular crime. This situation in India is getting far more serious and worse and it requires a detailed discussion from the present cases and to find the loop holes in legislation and implementation to hold them accountable for their actions. The reason for such atrocities is important to discuss before finding any plausible conclusion.

Violation of Rule of Law

“Rule of law” is a basic structure of a democratic state as democracy guarantees liberty, equality and fraternity and these words are also mentioned in the preamble which is the basic structure of our constitution. The principles of rule of law is very much supportive to this structure and rule of law is one of the basic features of a democratic country and violation to any principle of rule of law can be a crucial issue and a threat for a democratic country.

The principles of rule of law are supremacy of law, equality before law, accountability to law, fairness of law and separation of powers. Supremacy of law, means that a country is governed by the laws of the country and not by the people nominated in the country. Hence no one is above law and constitution but while a person or a suspect is tortured or force used on him in the police or judicial custody then it's a clear violation of supremacy of law.

Extra judicial killings are kind of violence which are done by those who are responsible for the protection of the law and the citizens.² Custodial violence is a broader term which includes torture, assault, death, sexual abuse, rape, all behind the bars. Every citizen has few fundamental rights including those in the articles 20, 21 and 22(1) of the Indian constitution which must be followed in at most good faith. If

we see the legal framework of our country, both constitutional and statutory, there are few provisions relating to safeguards arrest, detention, custodial torture and other crimes in custody.³ One causing torture, assault, injury, death or any kind of violence on the body of the person in custody can be punished under the substantive law (IPC, 1860). Also, there are several legal rights available to the persons in custody which are safeguarded by the procedural law (Cr.P.C., 1973 and Indian Evidence Act, 1872).

The violated principle through custodial violence is “equality before law”. This principle makes sure that there should be no discrimination to any citizen and everybody is subject the same law. But in a custodial violence when a suspect dies due to violence or use of force and is not given a proper chance of fair trial then it's a clear violation of this principle. The Next infringed principle is “Fairness in application of law”. It means Laws should be applied to everyone fairly and without any arbitrariness and while a suspect suffers through various tortures in police or judicial custodial violence and not given a chance for proper trial, then it's a clear violation of this principle.⁴

Since the weaker and poor people of our society lack the means and support to fight for their rights and so they are most vulnerable to the offence of custodial violence. People under the shield of their uniform and authority take advantage of these people or just say they release their pressure on them. Although there are constitutional and statutory provisions in the Cr.P.C. and the IPC to safeguard the liberty and other fundamental rights of those under the police custody, yet the number of cases of torture and deaths in police custody is growing every day.⁵ We can say that worst form of violations of human rights take place in the police custody during long interrogations or taking confessions for the purpose of evidence. This is a kind of a violence which can be either mental or physical or both as it includes several kinds of torture, third degree, harassment, brutality, use of force not warranted by law, etc. It also includes illicit confinement, capture which is unjust or on unlawful or on deficient grounds utilizing third degree strategy, on the suspects, mortifying them, utilizing grimy language, not permitting them to rest, blackmailing admission under tension, cushioning up of extra proof, abuse of the force with respect to cuffing not permitting to meet advice or relative to charge, disavowal of food and so forth. One of the main reasons for increasing in the cases of custodial violence is that the victims are not able to protest against it, as the people in uniform can produce false evidence against them. Many cases of deaths in the custody are not shown on the records, neither the complaints against them are received due to brotherhood.

As all the administrative bodies in the countries are required to work according to the bye laws or just, we can say they

¹<https://www.jurist.org/commentary/2020/07/akshat-bhushan-extrajudicial-killings-and-police-impunity/> (Last Visited Oct 14, 2020)

² Tanmoy, Law of Custodial death and violence in India, Advocatetanmoy Law Library (Sept. 30, 2020), <https://advocatetanmoy.com/2018/03/12/law-of-custodial-death-and-violence-in-india>.

³ Manmeet Singh, Custodial Violence in India, Legal Service India, <http://www.legalservicesindia.com/article/1893/Custodial-Violence-in-India>.

⁴ Joginder Kumar v. State of Uttar Pradesh, (1994) 4 SCC 260.

⁵ Deeksha Saggi, Custodial Deaths and Role of Judiciary: A Critical Analysis, Latest Laws (Jul. 25, 2020), <https://www.latestlaws.com/articles/custodial-deaths-and-role-of-judiciary-a-critical-analysis>.

are required to work according to their derived powers from the statutes under which they have been formed. But in the case of custodial violence, those who are required to maintain law and order in the society, are only violating the doctrine of rule of law. They get the powers from the law and they should not take the same in their own hands and must exercise the powers lawfully. Democracy is the basic right of every citizen, which is actually curtailed by the police, which indirectly makes the people afraid of police and ultimately people see police as their enemy. Generally, people feel themselves safe in the police station but these types of cases actually make the police station one of the worst places.

The provisions of the UDHR has been perused by the Supreme Court in the part-3 of the fundamental rights in the constitution of India. Any kind of torture is not bearable during interrogations, examinations or cross examinations and the state government is directly liable for any kind of torture, death during torture or any such other things in the custody. Articles 21 of the constitution binds the state to protect the fundamental and all other rights of every victim. And so these acts of torture during police custody or in any custody must be guaranteed by the state.

In the last few years few amendments have been done in our substantive law as well as in the procedural law for the prevention of custodial abuses and deaths. Section 376 was amended under the Criminal Law Amendment Act, 2013.⁶ Another important amendment is the insertion of section 114(A), in the Indian Evidence Act, 1872. Both these sections 376 and 114(A) of the IPC and Indian Evidence Act, respectively talks about the rapes in the police custody.

Under the Cr.P.C. Amendment Act, 2005⁷, section 176 of the Cr.P.C. was inserted with its subsection (1), according to which if one dies, disappears or raped while in the police custody or custody authorized by the magistrate or the court, an inquiry will be held by the judicial magistrate or the metropolitan magistrate (within whose local jurisdiction, the offence has been committed), in addition to the police inquiry.

Also, the Parliament the Cr.P.C. Amendment Act, 2008,⁸ which talks about the custodial safeguards to the persons in the custody. Salient features of the same are:

- Curbing the power of arrest
- Protection of women in custody
- Victims and Witness Protection

What brutality actually happens in custodial violence and cases related to custodial violence?

The police authorities commit the act of savagery upon the people in their care under the name of investigation and interrogation and this violence sometimes leads to custodial deaths of the suspects. The brutality of this wrongdoing is that it is submitted upon the residents by the very individual who is viewed as the protector of the people and law an

order. The protection of a person from torment and maltreatment of intensity by police and other law implementing officials is a crucial and big issue in a democratic rule. The main reason behind it is that the victims of such violence are not able to challenge it. The cops utilize their official situation to change or destroy evidences against themselves. Death in custody is by and large not appeared on the records of the lock-up and then the stories of encounters are made which are generally fake encounters. Any complaint against torture is not treated or investigated properly because whole department is helping one another at that moment. Custodial violence not only includes physical torture but also includes emotional, psychological, sexual violence in police custody and mental torture. All these tortures leave big impact on the minds of suspect even after they are released.

In the famous Mathura rape case, where a young tribal girl was raped by two policemen in the police custody and later on, they were also acquitted by the supreme court. Aftermath, the meaning of the word 'consent' was explained in this case. It is a perfect example of sexual violence in police custody.

Another case of custodial violence is the Bhagalpur blinding case in Bihar. In the years between 1979-1980 crimes like kidnapping, abduction, extortion, Theft and murders was rapidly increasing in Bhagalpur. So, the police officers in order to get information or to take confessions of the suspects started to use a very brutal way of torturing the suspects which were under trial by pouring acid into their eyes which eventually use to lead to the cause of immediate blindness of the suspects as their eyes were being burned or destroyed through acids. During the years 1979-1980, a total of 31 victims of this brutality were reported. This had been the first case in which the question of giving monetary compensation to the victims had been considered. It was alleged that the policemen had blinded the suspects and three police officers were convicted for taking law into their hands. These are some most brutal cases of torture.

Another famous case of custodial violence is D.K. Basu vs State of west Bengal, in this case supreme court while giving judgment issued certain guidelines for the police while handling, arresting or interrogating a suspect and also supreme court said that custodial violence is a attack on the human dignity.

Causes Of Custodial Violence⁹

1) **Work Pressure-** Day by day as crimes are increasing in the society police in India need to do critical tasks and deal with numerous complicated situations such as Riots, Unrest in public, corruption and other situations which affects Law and order. As soon as a crime is committed police is start being pressurised from various sources for better performance and for rapid investigation. This leads to create an environment of work pressure from Government as well as Public which results in brutal

⁶ Criminal Law Amendment Act, 2013, No. 13, Acts of Parliament, 2013.

⁷ Cr.P.C Amendment Act, 2005, No. 25, Acts of Parliament, 2005.

⁸ Cr.P.C Amendment Act, 2008, No. 05, Acts of Parliament, 2009.

⁹Manmeet Singh, *Custodial Violence in India*, <http://www.legalservicesindia.com/article/1893/Custodial-Violence-in-India.html> (last visited Oct 14, 2020).

behaviour by the police on criminals for getting information or to get their confession. Criminals nowadays are very much prepared, solidified and furnished with current weapons. A customary cop conveying a little pistol or even a weapon commonly gave to him is no match to them. Hence, a powerful criminal can get away from the grasp of law very easily. The Indian police today gets itself powerless in its offices like current weaponry and gear, transport administration and correspondence organization and, all the more critically, in present day preparing which is essential to make police office more proficient and compelling in law authorization.

- 2) **Greed for Money**-One of the reason for custodial torture and which is one the verge of increasing day by day is Greed for Money. At Police Station, many Policemen use brutality and torture the suspects and innocent people to extract money from them. The courts give more importance to the FIR and the matter in the FIR written actually depends on the policeman on duty when the FIR was registered. For example, while inquiring a dacoity case, police can generally compromise a legit man, even beat him up or essentially keep him in the care until he gives cash. Oversight happens after the episode has happened or when it is past the point of no return and keeping in mind that an endeavour can be made to rebuff the police officer concerned, he can easily manipulate the evidence against him. This is one of the reason for increase in corruption in the police department also.
- 3) **Punitive Violence**- There are not many police officers who believe in not letting the criminal pull off a wrongdoing. It is really accepted by them that aside from a sound beating, there is no other method of controlling offenders so they use various means and ways to torture the criminals so that people should have a state of fear in their mind when they are about to commit a crime.
- 4) **Positive re-enforcement**- As the situations are, for example, a policeman, or a sub Inspector, who is brutal or uses tortures methods on the suspects or criminals, and operates his way of work only on short cuts and is habituated about the methods he uses, to get results. The production of result makes the pressure on his superiors, with the result that all his sins and tortures act on criminals are and have to be forgiven or ignored. In due course and sometimes, such policeman gets promoted to a higher superior. This makes them use of third-degree methods not only in his own eyes but also in the perceptions of other policemen and his subordinates. Sometimes the policemen who are used to at using third degree of some policeman receives such wide appreciation that other policeman, requests for his assistance. He then goes like a superior and brutally uses third degree method on the suspects and gets results. This consistent encouraging feedback of third-degree technique when it produces results is a significant reason increment in savagery by police while in custody. Hence, positive reinforcement of Violence by police takes place because it helps rapid investigation.
- 5) **Lack of Proper Training**-Once in a while absence of legitimate preparing to the police authorities, regularly bring about increment of third-degree techniques. Appropriate preparing ought to be given to police and to their subordinates for not being severe towards public.

One of the goals of police preparing ought to be to instruct right demeanor towards the public which comprises is always remembering that the government worker or a cop and his subordinates are the worker and not the ace of the network. Tragically, till date no preparation with such goal, has yet been given to police. Police ought to be given appropriate preparing which ought to incorporate a different course to give them information about the basic liberties and that they are here to ensure the common freedoms and not to abuse them and ought to understand that forces given to them ought not be abused for individual avarice.

Types of Custodial Violence

There are different methods of custodial violence which are applied to get the confession of the suspect and also for rapid investigation.¹⁰

- 1) **Physiological Violence**: In this method the morale and confidence of the suspect is broken or the suspect is demoralised so that he speaks the truth. It is done by communicating wrong information with the victim and is tortured mentally. It is additionally done through impulse or intimidation where the casualty is constrained or forced to perform exercises or to observe activities that torment him intellectually. The casualty is compelled to abuse social restrictions or is compelled to observe torment of different casualties. The casualty is denied of the essential needs like water, food, rest and latrine offices which results into mental badgering and disarray. Once in a while Pharmacological strategies like utilization of different medications to encourage torment of the casualty to cover the impact of torment is utilized. Giving threats and embarrassments which are coordinated towards people in guardianship or their relatives or companions additionally causes mental weight.
- 2) **Physical Violence**: There are additionally techniques which are commonly embraced to cause physical savagery or torment on the casualties like causing disfiguration and fatigue, making torment such a degree that the casualty feels dread of quick passing or compelling the casualties to rest on moist floor. Driving and keeping the kids remain bare in extraordinary chilly climate or under the sun in temperature for in excess of 30 degrees. Scratches and cuts are made on various pieces of the body with sharp items to cause torment. Now and again aggravations are utilized like stew powder, table salts and so on All these are applied on fragile parts or on open injuries of the casualty to torment them.
- 3) **Sexual Violence**: This is one of the most brutal ways of torture in the Police custody. Sexual violence has a very harsh social and psychological impact on the minds of its victims. It may start with verbal sexual abuse and humiliation targeting victims and may end up into rape. The violators or the perpetrators of this crime keeps on trying to find new techniques and new suspects or people to satisfy their own urge or need.

2. Conclusion

¹⁰Id.

Extra judicial killings or custodial violence have been deep rooted since the formation of human society and it is so old that the origin of this activity cannot be found but it is present every where in India. though many cases still go unreported in India. even the legislature and Human rights commission aren't able to stop this atrocity in India instead finding the reason for such atrocities the commission and other legislative bodies have failed to deal with the situation. It is clear from the facts that police in India are under a lot of pressure from its seniors and high command. Steps should be taken to find the people influencing their activities. most of the situation police are not willing to take an illegal action but the pressure of speedy justice and pressure from people at power forces them to act arbitrarily. Therefore, a stringent mechanism is needed to be developed which has the power to focus on those sectors where the people with influence goes free and unaccountable. Every officer including the top authorities has to be made accountable in front of the general public a need of transparency is required at very least. Even criminals who goes on attacking the cops has to be dealt in a more stringent manner and sometimes these criminals provoke in such a manner which police has to exercise force. There are millions of situations where we can see that police act with diligence or negligent. So taking consideration of all the situations. a committee should be setup to address this issues and elaborate directive must be passed and implemented to stop the extrajudicial killings.

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