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The Erosion of Due Process in the Indian Criminal Justice System: A Critical Analysis of Police Atrocities

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ABSTRACT

This paper examines due process as a fundamental pillar of the Indian criminal justice system, which requires the State to exercise its coercive powers in a manner consistent with fairness, legality and respect for individual rights. The Constitution of India provides procedural safeguards against the arbitrary deprivation of life and liberty through Articles 14, 20, 21 and 22. Repeated instances of police atrocities, including custodial violence, torture, illegal detention, forced confessions and extrajudicial killings, have nevertheless raised serious concerns about the erosion of due process in practice. This paper critically analyses the extent to which police misconduct erodes constitutional protections and undermines public confidence in the administration of justice. It examines the historical foundations of policing in India and the structural factors that contribute to the abuse of power, including inadequate accountability mechanisms, political interference, institutional inefficiencies and a culture of impunity. It considers the role of the judiciary in protecting fundamental rights through landmark judgments and procedural guidelines designed to curb police excesses, and it assesses India's commitments under international human rights norms while highlighting the disconnect between legal guarantees and their implementation. Particular emphasis is placed on the disproportionate impact of police atrocities on marginalised and economically vulnerable sections of society. This paper argues that the failure of due process reflects not merely individual misconduct but wider systemic failures, and that strengthening accountability, ensuring independent investigations and promoting rights-based policing are essential to preserving constitutional values, protecting human dignity and reinforcing the rule of law in India.

Keywords: *Due process, criminal justice system, police brutality, custodial violence, human rights, police accountability, rule of law, fundamental rights, constitutional safeguards.*

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I. INTRODUCTION

Custodial violence refers to violence inflicted upon an arrestee while in police custody. No person shall be deprived of liberty save in accordance with the law. Police officials must act within their lawful limits, and no inhuman act of custodial treatment may be visited upon an arrestee, who retains the right to dignified treatment under the law. The torture of a person who is helpless and in no position to retaliate, undertaken to elicit information, is a reprehensible method of investigation and a crude means of crime detection. Custodial violence presents a serious and persistent problem for the Indian legal system. Although many decisions of the Supreme Court have condemned the practice and laid down guidelines to control it, it is deeply disturbing that custodial deaths continue to increase. In *Gauri Shanker Sharma v. State of U.P.*,¹ the Court observed that it is generally difficult, in cases of death in police custody, to secure evidence against the police officers responsible for resorting to third-degree methods, since they are in charge of the police station records, which they do not find difficult to manipulate. The Court further observed that the offence is of a serious nature, aggravated by the fact that it is committed by a person who is supposed to protect citizens rather than misuse his uniform and authority to brutally assault them while in custody. Death in police custody must be viewed seriously, for otherwise the law would take a stride in the direction of a police raj; it must be curbed with a heavy hand, and the punishment imposed should deter others from indulging in such conduct, leaving no room for leniency.²

II. THE CONCEPT OF CUSTODIAL VIOLENCE

Custodial violence generally means any form of violence that an arrested person suffers while in custody or detention. It includes physical cruelty, mental torture and sexual harassment. The term denotes the use of physical force to torture, hurt or abuse a person, so as to cause or intend to cause injury, by a police force exercising custody. According to its dictionary meaning, violence is behaviour that physically hurts or damages a person through a substantial application of force or energy. Such torture, or the infliction of immense pain upon body or mind, is carried out to extract information, to compel a confession or simply to punish the person.³ Custodial violence is a violation of the inalienable dignity of the person. It not only humiliates the victim but reduces him to a sub-human level. Such torture produces a deep and often irreparable wound

¹ *Gauri Shanker Sharma v. State of U.P.*, AIR 1990 SC 709 (India).

² LAW COMMISSION OF INDIA, 273RD REPORT ON IMPLEMENTATION OF 'UNITED NATIONS CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT' THROUGH LEGISLATION (2017).

³ UPENDRA BAXI, THE CRISIS OF THE INDIAN LEGAL SYSTEM (Vikas Publishing House 1982).

upon the spirit, which is felt keenly yet is not easily healed, and it destroys the victim both physically and mentally. Victims live in constant fear and horror as they recall the atrocities they survived in police custody.

III. CONSTITUTIONAL PROVISIONS PERTAINING TO CUSTODIAL VIOLENCE

Article 14 guarantees equality before the law. Under this article, an accused person must be treated as equal to every other person before the law, and it is the duty of the State, as the guardian of the law, not to deny to any person equality before the law.

Article 19 protects the right to freedom of speech and expression, among other freedoms, although reasonable restrictions may apply to persons in the service of the State.

Article 20 provides protection in respect of conviction for offences, through the safeguards set out in clauses (1), (2) and (3).

Article 21 guarantees the right to life. Protection from torture is recognised as a fundamental right under Article 21, which provides that no person shall be deprived of life or personal liberty except according to the procedure established by law. This procedure refers not only to enacted law but also extends to the principles of natural justice.

Article 22(1) provides that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice. Article 22(2) provides that every person who is arrested and detained in custody shall be produced before the nearest magistrate within twenty-four hours of arrest, excluding the time necessary for the journey from the place of arrest to the court of the magistrate, and that no such person shall be detained beyond that period without the authority of a magistrate.⁴

IV. TRANSPARENCY AND ACCOUNTABILITY OF THE ADMINISTRATION

In a democracy, the executive functions as a trustee of the citizens and must build trust through its actions. It is the duty of the judiciary to keep a check on the executive and to hold it accountable. In *Delhi Airtech Services Pvt. Ltd. v. State of Uttar Pradesh*,⁵ the Court observed that, when officials or bodies acting on behalf of the State exercise legal powers, they should act with greater fairness, timeliness and responsibility, observing all the norms of good governance and remaining fully answerable to the public for their actions. In *Centre for Public*

⁴ V.N. SHUKLA, CONSTITUTION OF INDIA (14th edn. Eastern Book Company 2023).

⁵ *Delhi Airtech Services Pvt. Ltd. v. State of Uttar Pradesh*, (2011) 9 SCC 354 (India).

Interest Litigation v. Union of India,⁶ the Court affirmed that, when governmental action causes harm, citizens may approach the courts, which exist to protect rights and to ensure that the government acts fairly and responsibly.⁷ Public officials must discharge their duties honestly and competently, and they must be held accountable where they fail to act as required or make improper decisions. In *Express Newspapers Pvt. Ltd. v. Union of India*,⁸ the Supreme Court held that, even where the motive behind the exercise of power is good, the use of power for a wrong purpose amounts to a misuse of power; where power is not exercised honestly for its true purpose, the action is invalid and is treated as a fraud on power.

V. PRESUMPTION OF INNOCENCE AND FAIR TRIAL UNDER CRIMINAL JURISPRUDENCE

In a free society, the criminal justice process must operate within the confines of the rule of law. Any criminal justice system rests on the principle that a person is innocent until proven guilty. This principle derives from the Roman law maxim *Ei incumbit probatio qui dicit, non qui negat*, attributed to the Roman Emperor Antoninus Pius. Custodial violence and the torture of the accused violate this principle. The right to a fair trial is an important facet of the principles of natural justice, which serve as a means of achieving the rule of law. H.L.A. Hart observed that natural justice refers to the equal treatment of persons without bias or personal interest, ensuring that decisions are made fairly and honestly.⁹ As John Rawls explained, natural justice connotes fair rules, fair judges and fair trials, directed at ascertaining the truth and protecting justice. In *John v. Rees*,¹⁰ Lord Megarry stated that, even where a case appears simple or the result seems obvious, it remains important to adhere to the rules of natural justice, for everyone should have a fair opportunity to be heard.¹¹ Many cases that appeared open and shut at first proved to be otherwise, or were altered upon discussion. When decisions are made against persons without affording them an opportunity to speak or explain their position, the result causes resentment and a sense of injustice. Fairness and due process should therefore never be short-circuited.¹²

⁶ *Centre for Public Interest Litigation v. Union of India*, (2012) 3 SCC 1 (India).

⁷ LAW COMMISSION OF INDIA, 152ND REPORT ON CUSTODIAL CRIMES (1994).

⁸ *Express Newspapers Pvt. Ltd. v. Union of India*, AIR 1986 SC 872 (India).

⁹ Aparna Chandra & Mrinal Satish, *Torture in India: A Study of Custodial Violence and Legal Responses*, 28 NAT'L L. SCH. INDIA REV. 1 (2016).

¹⁰ *John v. Rees*, [1970] Ch. 345 (Eng.).

¹¹ *Id.*

¹² BAXI, *supra* note 3.

VI. INTERNATIONAL FRAMEWORK FOR THE PROTECTION AGAINST CUSTODIAL VIOLENCE

A. The Prevention of Torture Bill, 2010

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, which India signed on 14 October 1997, aims to prevent torture and to provide victims with adequate remedies. As a signatory, India is required to ratify the Convention, but it has not done so even after many years.¹³

The Prevention of Torture Bill, 2010, was introduced in the Lok Sabha. Under the Bill, torture is defined with reference to grievous hurt: a public servant who tortures a person in order to obtain information or a confession, thereby endangering that person's life, limb or health, is liable to be punished with imprisonment of up to ten years.

B. Guidelines on arrest and detention

In *D.K. Basu v. State of West Bengal*,¹⁴ the Supreme Court laid down the following guidelines. Police personnel carrying out the arrest and interrogation of suspects should bear accurate, visible and clear identification and name tags bearing their designations, and the particulars of all such police personnel who handle the interrogation of the arrestee must be recorded in a register.

A memo of arrest must be prepared at the time of arrest, recording the time and date of arrest. The memo must be attested by at least one witness, who may be either a family member of the arrested person or a respectable member of the locality where the arrest is made, and it must be countersigned by the arrested person.

A person who is arrested, detained or interrogated in custody at a police station, interrogation centre or other lock-up has the right to have a relative, friend or well-wisher informed, as soon as practicable, of the arrest and the place of detention or custody. This requirement does not apply where the person to be informed has already signed the arrest memo as a witness.

Where the friend or relative of the arrested person lives outside the district, the time and place of arrest and the venue of custody must be notified by the police within eight to twelve hours after the arrest, through a telegram routed via the District Legal Aid Authority and the concerned district and police station.

¹³ NATIONAL HUMAN RIGHTS COMMISSION, GUIDELINES ON CUSTODIAL DEATH/RAPE CASES (Revised Guidelines, 2010).

¹⁴ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416 (India).

The arrested person must be informed of the right to have someone notified of the arrest as soon as the arrest or detention is made.

An entry must be made in the diary at the place of detention recording the arrest, the name of the person informed and the names and particulars of the police officers in whose custody the arrested person is held. The entry should record all events from the departure of the police officers from the police station to the bringing of the arrestee into custody, including the names of all police officers involved and the mode of transportation, with details of any vehicle used, and the name of the next friend of the arrested person who has been informed of the arrest.

The arrested person may request a physical examination at the time of arrest, and any minor or major injuries must be recorded. The inspection memo should be signed by both the arrested person and the arresting officer, and a copy must be given to the arrested person.

The arrestee must undergo a medical examination by a qualified doctor every forty-eight hours during detention in custody. The examination should be conducted by a doctor on the panel of approved doctors constituted by the Director of Health Services of each State or Union Territory, and the Director should prepare such a panel for all tehsils and districts.

Copies of all documents, including the arrest memo, must be sent to the area magistrate (Illaq Magistrate) for his record.

The arrestee has the right to meet a lawyer during interrogation, although not throughout the interrogation.

A police control room should be established at every district and State headquarters, to which information regarding the arrest and the place of custody must be sent by the arresting officer within twelve hours of the arrest, and the control room should prominently display this information on a notice board.¹⁵

VII. RECOMMENDATIONS

Custodial violence is a heinous practice that encompasses physical, mental and sexual harassment, as well as fake encounters. It constitutes a breach of the human dignity enshrined in the Constitution of India. The guidelines mandated in *D.K. Basu* should be implemented strictly. The Prevention of Torture Bill, 2010, should be enacted, with provisions for the

¹⁵ AMNESTY INTERNATIONAL, INDIA: TORTURE, ILL-TREATMENT AND DEATHS IN CUSTODY (Amnesty International Publications 2020).

payment of compensation to victims of torture and for the conferral of adequate authority to investigate complaints of torture.¹⁶

Police officers are duty-bound to protect the life and liberty of the public. There is therefore a need to establish strict norms to curb brutal and inhuman acts. Police personnel should be properly trained to handle psychological and social situations, and they should be sensitised to the fundamental rights of the people.¹⁷

VIII. CONCLUSION

This paper has examined the deterioration of due process by critically analysing police brutality within the Indian criminal justice system. It has demonstrated that, although the Constitution of India offers procedural protections under Articles 14, 20, 21 and 22, the practical application of these protections frequently fails because of recurrent acts of custodial violence, unlawful detention, torture, coerced confessions and extrajudicial action.

This paper concludes that the protection of individual liberty, justice and the rule of law requires due process. In examining the nature and scope of police brutality in India, it finds that police misconduct is a persistent problem that disproportionately affects underprivileged and economically vulnerable segments of society, notwithstanding constitutional guarantees.¹⁸ On the basis of these findings, this paper recommends comprehensive police reform, independent investigative procedures, improved accountability measures, human-rights-based training and rigorous adherence to judicial pronouncements. Strengthening institutional supervision and transparency is essential to rebuilding public confidence in law enforcement.¹⁹ In conclusion, a democratic society founded on the rule of law must safeguard due process. The police must respect the rights and dignity of every individual while operating within the bounds of the Constitution. Only through effective reform and accountability can India ensure that justice is administered equitably, that human rights are upheld, and that the constitutional promise of due process is fully realised.²⁰

¹⁶ LAW COMMISSION OF INDIA, *supra* note 2.

¹⁷ M.P. JAIN, INDIAN CONSTITUTIONAL LAW (9th edn. LexisNexis 2023).

¹⁸ NATIONAL HUMAN RIGHTS COMMISSION, *supra* note 13.

¹⁹ DARIUS REJALI, TORTURE AND DEMOCRACY (Princeton University Press 2007).

²⁰ AMNESTY INTERNATIONAL, *supra* note 15.