

VIOLATIONS OF THE RIGHTS OF THE ACCUSED AND THE CONVICTED IN INDIA

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Summary:

Although protection of the "rights" of the accused and the convicted as well, in the administration of criminal justice across the world has been developing over time, yet, those rights are violated in some form or other in several countries. In pre-independence India, the government enacted the Indian Evidence Act in 1872, and the Indian Code of Criminal Procedure in 1898. The second one has been amended in 1973 incorporating the significant features contained in the Universal Declaration of Human Rights, 1948 and the International Covenant on Civil and Political Rights, 1966. Several articles of the Indian Constitution as well as several statutes provide important safeguards to the accused and the convicted in criminal justice administration. In this paper, the author takes a critical look at the protection of those safeguards. The facts presented, demonstrate that despite the presence of procedural safeguards, outrageous violations of the rights of the accused and the convicted are still prevalent in India.

Key Words: *India, right of the accused, right of the convicted*

INTRODUCTION

The concept of the protection of rights of the people accused of committing crime and rights of prisoners in the administration of criminal justice has been continually changing and developing over time. In ancient times, in the absence of formal criminal justice apparatus, the accused was deemed as a sinner. Crime was equated with "sin" — transgression against God's will (Pfohl, 1985). Consequently, a criminal looked upon as a sinner could not claim any right for himself. Though the Medieval Era witnessed striking reforms in the rules in terms of the accused's right to self-defense, a new meaning was accorded to the human rights perspective in the administration of criminal justice with establishment of the Universal Declaration of Human Rights in 1948. The defense of the rights of the accused and convicted prisoners came to be recognized as the legitimate objective of international and national communities. The significant features of the International Covenant were gradually adopted by the legal systems of common-law as well as non-common-law countries of the world. The features contained in the Universal Declaration of Human Rights, 1948, were given added strength

by the adoption of the International Covenant on Civil and Political Rights in 1966 (Batra, 1989).

Despite the induction of the procedural safeguards of human rights (as set forth by the two International Covenants, into codified laws of most countries of the world), the rights of the accused and the convicted imprisoned offenders in the administration of criminal justice are still being violated in some form or other world-wide.

In this paper, the focus is on India. India has a longstanding parliamentary democracy with a free press, a civilian-controlled military, an independent judiciary, and active political and civic organizations. Significant human rights abuses, especially violations of rights of people accused of committing crimes (the undertrials who are detained in police custody) and rights of the convicted who are imprisoned (prisoners' rights) are quite prevalent in the administration of criminal justice in India, despite extensive constitutional and statutory safeguards. Considering the vastness of the area of criminal justice administration in India, the purpose of this paper is to critically evaluate the following two aspects — physical violence against the undertrials detained in police custody,

and prisoners' rights. First, a brief background of the development of the Indian Code of Criminal Procedure is delineated. Second, physical violence sustained by the undertrials in police custody is evaluated. Third, the situation of the convicted prisoners' rights are reviewed. Finally, a conclusion is drawn based on the realities discussed in previous sections.

A BRIEF BACKGROUND OF THE INDIAN CODE OF CRIMINAL PROCEDURE

India is a secular country. The concept of the administration of justice in India had been influenced for centuries by different age-old religious beliefs. For instance, under the Hindu Jurisprudence, the administration of criminal justice was carried out in accordance with the socio-religious doctrines coming from Vedic revelations like the *Srutis*, *Smritis*, *Puranas*, *Nibandh*, and *Granthas*. The judicial functions were conducted by the village assemblies (assemblies of seniors and leaders of villages), or the Kings themselves. The Hindu doctrine of criminal justice administration, both in the Vedic and post-Vedic communities and kingdoms paid little or no attention on the right of the accused because the accused was not recognized as an individual who could claim to have any right (Chakraborti, 1996). In other words, once an individual was accused of committing a crime, he lost all the rights he could claim before the accusation. Another instance comes from the Muslim concept of the administration of justice, based upon the scriptures and principles of the Quoran. The Muslim philosophy of the administration of justice looked upon the accused as a sinner; consequently, the sinner had to be subjected to social deprivation (Mehraj-Ud-Din, 1985).

With the advent of the British rule in India significant modifications were made in the prevailing administration of criminal justice. The British ruled India for almost two centuries (1757 to 1947). They transformed India into one country. During those two centuries, the British common law gradually pervaded the Indian legal system and founded firm roots in the system of the administration of criminal justice in the entire Indian sub-continent. The second half of the last century witnessed a spurt of an inordinate number of enactments and legislations. The Code of Criminal Procedure was written in 1860 for the first time. Varied repeals and replacements were brought into the criminal procedure from 1860 through 1898. The Code was finally formulated in 1898. After independence, several modifications have been made in the Code. The amended version is known as the Code of Criminal Procedure, 1973 (Dutta, 1990).

Within the framework of the International

Covenant on Human Rights, countries with varied religious, ideological or cultural backgrounds are urged to cooperate in the implementation of universal standards of human rights across the world. Repeatedly the U.N. General Assembly has emphasized that no country should be allowed to disrespect basic and entrenched rights like the right to life, freedom from physical violence, and the right to fair trial on the ground that a departure from these universal standards might be permitted under national or religious laws. Despite the insertion of such fundamental guarantees at international and national levels, the forty-first session of the United Nations Commission of Human Rights (held at Geneva in March, 1985) revealed mass violations of human rights of the "under-trial" (accused) and "convicted" individuals in at least eighty-five countries (Dhagamwar, 1993).

India is a member of the United Nations. The significant features contained in the Universal Declaration of Human Rights, 1948, and the International Covenant on Civil and Political Rights, 1966, have been incorporated into the Indian Code of Criminal Procedure, 1973. Theoretically, the Indian criminal justice system accords recognition to the rights of the accused and convicted individuals through the various constitutional provisions and provisions contained in the Indian Code of Criminal Procedure, 1973. As for the Indian Constitution, some of the significant safeguards in those areas are provided by Articles 20, 21, 22, 39(A), etc. of the Constitution. These Articles provide the right to life or personal liberty, freedom from physical torture (inflicted by criminal justice personnel) etc. to all citizens. Additionally, in 1978, the Supreme Court introduced "due process" into Article 21 (Venugopal Rao, 1991). The point is, fundamental rights of the accused and the convicted mentioned in the Constitution are sought to be realized through procedure duly established by law, e.g. the Indian Code of Criminal Procedure, 1973. It has been brought in close conformity with the spirit of the Constitution to provide the requisite safeguards (Venugopal Rao, 1991). However, despite having those safeguards, the unpleasant fact is the rights of the accused and the convicted continue to be violated even during this decade.

PHYSICAL VIOLENCE IN POLICE CUSTODY

Police officers can apprehend the suspect/accused with or without a warrant (according to section 41, Indian Code of Criminal Procedure, 1973). Upon apprehension, the accused is brought into police custody. Although the accused is kept in police custody, according to the law, the accused should not be detained more than twenty-four hours (section 57, Indian Code of Criminal Procedure, 1973) without a court hearing on detention.

This right of the accused is almost always violated despite the fact that at that stage of criminal processing the accused has not been proven by the state as guilty of committing the crime. In fact, people accused of committing common crimes most frequently spent several months, sometimes more than a year, in police custody (Dhagamwar, 1993).

When an accused is taken into police custody, he is entitled to have a friend, relative, or any other person who is known to him to be informed that he has been arrested and told where he has been detained (Dhagamwar, 1993). The Supreme Court gave this ruling in *Joginder Singh v. the State of Uttar Pradesh* case in 1980. Nevertheless, this right of the accused who is detained in police custody is almost always violated by police agencies (Dhagamwar, 1993).

While in police custody, these people suffer from physical torture at the hands of police personnel. The law prohibits torture, and confessions extracted by force are inadmissible in court (according to the Indian Evidence Act, 1872). Furthermore, torture of the accused and the convicted is prohibited under Indian law, under sections 330 and 331 of the Indian Penal Code (Dhagamwar, 1993). Nevertheless, there is credible evidence that torture is common throughout India, and that police authorities frequently use torture even during interrogations (U.S. Department of State, 1996). Custodial abuse/violence is deeply rooted in police practices. The prevalence of torture by police in detention facilities throughout India is borne out by the number of cases of death in police custody.

Despite the relentless campaign of the National Human Rights Commission and judicial injunctions against police brutality and lawlessness, the nationwide phenomenon of custodial deaths continues to surface with disturbing frequency. For instance, the growing incidence of custodial violence in West Bengal has now become a sensitive political issue much to the embarrassment of the ruling Left Front government. The custodial death toll in the state since the Left Front coalition came to power in 1977 is accounted to 220 (until July, 1995) much to its discomfiture (The Hindu, August 11, 1995). Reports of custodial deaths revealed that from April 1994 to May 1995 out of 108 deaths in India, 30 took place in West Bengal. This was spelt out in a July 18, 1995 letter written by Justice Ranganath Mishra, then chairman of the National Human Rights Commission, to the West Bengal Chief Minister. Though the 1995-96 annual report of the NHRC based on the figures from January 1994 to March 1996 reveal that the number of custodial deaths in West Bengal has reduced to some extent, recent happenings (ten custodial deaths in West Bengal from January to July, 1997) point to a continuing pattern of widespread custodial deaths (The Telegraph, August 6, 1997).

The facts from this state only confirms that even the Left Front regime has not been able to bring about radical reforms and discipline in police treatment with people accused of committing crime. While the West Bengal Chief Minister has been unequivocal in condemning police brutality, the State Government's contention that the deaths of under trials in police custody cannot be treated as "custodial deaths" sounds unconvincing (The Hindu, August 11, 1995).

The incidence of custodial deaths elsewhere in the country is equally alarming. During 1979-80, 30 men and boys were blinded in police custody in Bhagalpur (the state of Bihar) (Amnesty International News Service, February 14, 1997). In Delhi alone, 34 cases had been recorded in 1995 (The Hindu, August 11, 1995). Another case in point comes from the state of Gujarat. On February 10, 1997, seven detainees in Rajkot police custody were blinded by police personnel (Amnesty International News Service, February 14, 1997). Physical torture of the accused by policemen have been reported in states like Karnataka, Maharashtra, Madhya Pradesh, Jammu and Kashmir, and Punjab. "The fact that such brutal practices continue, despite the existence of guarantees in the Indian Constitution and safeguards in the general criminal law, demonstrates the extent of the continuing problem of torture in police custody" (Amnesty International News Service, February 14, 1997). The record of police behavior with the accused people in police custody is appalling despite a vigilant press and campaigns of civil rights groups. Brutal torture and use of third degree methods are still practiced by policemen to extract confessions in gross violation of the rights guaranteed by the Constitution. The central as well as state governments' lack of concern for the protection of these rights in a large measure accounts for the continuing police brutality.

The National Human Rights Commission has suggested that India should accede to the 1984 International Covenant against torture and other forms of cruel, inhuman, and degrading treatment or punishment. In the NHRC's opinion, it is better to prevent acts of violence in police custody than to take action after their occurrence. A recommendation of the Indian Law Commission in its 113th report of July 29, 1985, made on a reference by the Supreme Court, should be used to prevent such incidents. The Commission suggested insertion of section 114b in the Indian Evidence Act, 1872, to introduce a rebuttable presumption that injuries sustained by an accused in police custody should be considered to have been caused by police personnel in charge of the custody (The Telegraph, August 6, 1997). This would curb police use of torture. The NHRC supports another Indian Law Commission recommendation (made in 1988) that section 197 of the Indian Code of Criminal Procedure, 1973, be amended to obviate the necessity of

government sanction for prosecuting police personnel where a prima facie case of custodial violence has been established in a sessions judge inquiry.

RIGHTS OF THE CONVICTED PRISONERS

In India, prisoners are not classified according to the type of crimes for which they are convicted and imprisoned. They are classified by their social standings. Overall, there are three categories of prisoners. Class "C" prisoners include common criminals; they fall in the bottom strata of prisoners' stratification. For this type of prisoners, the use of handcuffs and bar fetters is common (U.S. Department of State, 1996). Class "B" prisoners — college graduates and taxpayers — are held under markedly better conditions. Class "A" prisoners are prominent individuals, as designated by the government, and are provided private rooms, visits, adequate food (which may be supplemented by their families), medical care, and recreational facilities. Class "A" prisoners are commonly held in government guest houses (U.S. Department of State, 1996).

India is not faced with jail/prison overcrowding, in general. However, jails/prisons in large jurisdictions are often overcrowded, due to the large population of inmates (Class "C" prisoners) on remand (Zvekić, 1994). For example, according to a statement in the Parliament in 1994 by the Minister of State for Home Affairs, New Delhi's Tihar Jail (considered one of the best-run in India), housed more than 8,500 inmates — in facilities designed to hold about 6,000 inmates (U.S. Department of State, 1996). Overall, physical conditions of prisons for Class "C" prisoners are poor. Medical care and recreational facilities are also inadequate. Furthermore, inmates are maltreated by the jail authorities. However, the Supreme Court had ruled to humanize the prison administration in terms of using bar fetters, handcuffs, solitary confinement, and physical violence (Venugopal Rao, 1991).

The Supreme Court considered the use of bar fetters on an inmate as torture, cruel or degrading treatment in terms of Article 5 of the Universal Declaration of Rights. According to the Court, it is humiliating, vulgar, and inflicts physical as well as mental pain on the inmate. Bar fetters are not reasonable except when the inmate is likely to escape or he is otherwise dangerous and desperate to harm others. Additionally, the Court recommended that bar fetters are not to be put on an inmate except in these two conditions. To ensure that jail authorities do not abuse their power, the Court in *Sunil Batra v. Delhi Administration* case (A.I.R. 1978 S.C. 1175) laid down specific procedural safeguards —

(I) it is absolutely necessary to put fetters, (ii) reasons must be recorded, (iii) the basic condition of dangerousness must be well-grounded, (iv) the fetters must be removed at the earliest opportunity, (v) there should be daily review of the absolute need for fetters, and (vi) if the fetters are to continue beyond 24 hours, it shall be illegal unless the district magistrate or sessions judge orders its continuance (Bhatnagar, 1990).

In *Prem Shankar v. Delhi Administration* (A.I.R. 1980 S.C. 1525) case, the Supreme Court examined the issue of using handcuffs on an inmate while he was being transported from the jail to the court. The Court held that an inmate should be handcuffed only when there was a clear proof that the inmate would escape. If it was essential to handcuff an inmate, the police must record the reasons. These reasons must be presented to the judge before whom the inmate is produced, so as to get the approval of the judge. According to the Court ruling, the clear and present danger of escape, breaking out of police control is the determinant factor. And, for this, there must be clear material, no glib assumption, record of reasons, and judicial oversight and summary hearing and direction by the court where the inmate is produced. The fact is, the Court considered the point that prevention of escape of an inmate is a public interest and reasonable, fair and just, and at the same time felt that insurance against escape does not compulsorily require handcuffing. In short, the Court maintained that unless there is no other reasonable avenue of preventing escape, handcuffing of an inmate is a violation of the inmate's rights accorded by the Articles 14 and 21 of the Constitution.

Where a punishment is to be imposed on an inmate like confining him in a solitary cell or to hard labor or denying him the necessary amenities for misconduct while in custody, it could only be done by observing certain procedural safeguards, according to the Supreme Court ruling in *Sunil Batra v. Delhi Administration* case (A.I.R. 1980 S.C. 1579). In India, solitary confinement is to be accorded to an inmate either as a punishment for misconduct in jail or when he has been given the death sentence by the court (Mehraj-Ud-Din, 1985). As regards the first one, the same safeguards (e.g. solitary confinement is absolutely necessary, reasons must be recorded, the basic conditions of dangerousness must be well-grounded, a review by a superior and early judicial consideration, etc.) are to be observed as in the case of any other punishment imposed by the jail authorities as laid down in the first *Sunil Batra* case. As for solitary confinement of an inmate condemned to death, the Court did not consider it as unconstitutional under Article 21, but the Court lessened the rigors of solitary confinement by laying down certain conditions. First, a condemned inmate is to be placed in solitary confinement from dusk to dawn only. Second, such inmates are to be subjected to twenty-four hour

watch by guards. Except these two restrictions, the inmates are not to be denied any of the community amenities like games, newspapers, books, moving around (except from dusk to dawn), and meeting visitors, subject to reasonable regulations of jail/prison management (Mehraj-Ud-Din, 1985).

Furthermore, convicted imprisoned inmates are physically tortured by the personnel working in detention facilities, whenever those personnel perceive inmates' behavior as "misbehavior" (Venugopal Rao, 1991). Neither any article of the Indian Constitution nor any statute empowers the personnel to inflict torture on these inmates. Rather, the Constitution and statutes as well, provide freedom from torture to these convicted imprisoned people. This right of prisoners is frequently violated in detention facilities often resulting in disability or even death, apart from other human rights violations (The Economic Times, August 12, 1997).

In sum, the administration of prison facilities handling Class "C" prisoners is strikingly unpleasant. To begin with, physical conditions of prison facilities are poor. Also, these facilities lack proper health care, recreational opportunities, vocational and educational training. Most of all, these Class "C" prisoners receive treatment in violation of their constitutional and statutory safeguards at the hands of prison officials (U.S. Department of State, 1996). Those safeguards provide the convicted imprisoned offenders the right against cruel, inhuman, and degrading treatment or punishment. Nevertheless, prisoners' rights are violated by prison administrations.

CONCLUSION

In pre-independence India, the British enacted the Indian Evidence Act in 1872, and the Indian Code of Criminal Procedure in 1898. The first one is still in vogue, while the second one has been amended by the Indian government in 1973. As a member of the United Nations, India has incorporated the important features contained in the Universal Declaration of Human Rights, 1948, and the International Covenant on Civil and Political Rights, 1966, into the amended Code of Criminal Procedure in 1973. Also, the Indian Constitution provides significant safeguards to the accused as well as the convicted (e.g. the right to life or personal liberty, freedom from physical torture, freedom from cruel, inhuman or degrading treatment/punishment etc.) through several articles. Even, in 1978, the Indian Supreme Court introduced Due Process (for the accused and the convicted as well) into Article 21 of the Constitution. The Indian Evidence Act, 1872, prohibits torture and spells out that confessions extracted by physical torture are inadmissible in the court of law for prosecuting the accused. Additionally, torture of

the accused is prohibited under sections 330 and 331 of the Indian Penal Code. Apparently, all these enactments give an impression to the outside observer that the rights of the accused and the convicted are well-ingrained in the administration of criminal justice in India.

The purpose of this paper was to take a critical look at physical violence inflicted on the accused detained in police custody, and the situation of the convicted prisoners' rights. The facts presented in this paper demonstrate that the rights of the accused and the convicted, enshrined in the Indian Constitution and statutes as well, are violated by the police and the detention personnel/authorities. The situation is unpleasantly poor for common criminals.

The police system as well as the prison system in India have been plagued with problems for more than a century. The legacy of the British Rule — physical torture of the accused (detained in police custody) and the convicted imprisoned offenders — is still prevalent among law enforcement agencies and detention facilities. At one level, the problem is traceable to the police and detaining authorities being often reduced to a handmaiden of the political establishment which brazenly uses those authorities/agencies to serve its own partisan ends. Add to it the pervasive political-criminal nexus, the role of those authorities inevitably acquired a brutal sheen. This is totally antithetical to what is expected in a democratic polity. The commitment of those criminal justice authorities to the cardinal principles of rule of law should be unequivocal and uncompromising. The tasks of the personnel working in those two arenas should be insulated from interference by the political establishment. Of considerable significance here is the recommendations made by the National Police Commission some twenty years ago for the creation of a statutory mechanism of control and supervision, and State Security Commissions, that would ensure functional transparency within the framework of law.

At a different level, the issue is one of eradicating violence in police custody and in detention facilities with education and training. The "culture" (of the police and the detaining authorities) of cynicism and brutality may be viewed as a manifestation of a sense of helplessness and failure to carry out their tasks without any interference from the political establishment. Given that outrageous violations of the rights of the accused by the police, and the rights of the convicted by detention personnel are no more than the pent up frustration of an apparently defective criminal justice system, it is logical that systemic correctives should be introduced. The "culture" needs a total transformation through behavioral modifications and corrective strategies so that the police and the detention personnel develop a healthy respect for human dignity

and basic rights that are consistent with the democratic concept and the rule of law.

The fact is, much of what the National Human Rights Commission has recommended during the 1990s is by way of reiteration of what bodies like the National Police Commission had indicated years ago. The National Human Rights Commission, in a bid to check custodial violence and violations of prisoners' rights has decided to organize visits by its investigation personnel to police lock-ups and prison facilities all over the country (The Economic Times, August 12, 1997). Section 12c of the Protection of Human Rights Act empowers the Commission to visit, under intimation to state governments, any institution where the accused as well as the convicted are detained or lodged for purposes of treatment and/or reformation, with a view to study the situations of inmates. The point is, the NHRC can visit those facilities, and upon visitation make the government aware of the conditions of inmates and urge reforms of those facilities. But it is up to the Central cabinet to bring about any change/reform. The Central cabinet had approved several amendments to the Indian Penal Code and the Indian Code of Criminal Procedure to check violations of the rights of the accused and the convicted in 1995. Those amendments have not yet gone beyond the approval stage, and nothing has been done on the lines of the recommendations made by the National Human Rights Commission (The Telegraph, August 6, 1997). The Central government under Article 253 of the Constitution, can in theory sign bills to terminate violations of the rights of the accused and the convicted. However, such policymaking requires a Central government with both a will and a way. This seems unlikely to happen in near future given the political scenario in India. Rights have little or no meaning unless there are agencies to enforce them and provide remedies for violations. In the words of Dr. Ambedkar, one of the founding fathers of the Indian Constitution, "It is the remedy that makes the rights real. If there is no remedy, there is no right at all" (cited in Venugopal Rao, 1991, p. 91).

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