

BRUTALITY IN POLICE CUSTODY IN INDIA

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ABSTRACT

Physical violence against detainees in police custody by the agents of law is prevalent in some form or other across the world. This paper presents a critical review of brutality committed by police personnel against detainees in police custody (i.e. police lock-ups at police stations) in India. Such brutality in India takes the forms of torture (third degree), rape, as well as custodial death resulting from physical violence.

Key Terms: India, Police Brutality

INTRODUCTION

Questioning and treating suspects or undertrials or detainees under pressure (in police custody), both psychological and physical, by the agents of law is a practice prevalent 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 civil organizations. Despite all these facts, brutality in police custody by the agents of law is widespread throughout the country. What is the extent of this brutality in police custody in India? The following excerpts from Amnesty International's Annual Reports provide some conception about the extent of such brutality. "Various forms of torture, including rape, continued to be used by the police" (Amnesty International, 2000, p. 4). "Torture, including rape and ill-treatment continued to be endemic throughout the country... Hundreds of people were reported to have died in police custody" (Amnesty International, 1999, p. 3). "Torture and ill-treatment...[led] to at least 300 deaths in [police] custody" (Amnesty International, 1998, p. 1). "Torture of detainees in police custody remains endemic, often in an effort to extract confessions or information...Reports of rape indicate that it is used as a method of torture by state agents...In 1995, at least 100 people died in the custody of the police throughout India, as a result of torture and medical neglect" (Amnesty International, 1996, p. 6).

Given this context, the purpose of this paper is to critically review physical violence against the detainees in police custody (i.e. police lock-ups at police stations) in India. In the first section, the term "torture" (commonly referred as *third degree*) as used in police custody is delineated. The second section presents the Indian standards for the code of conduct for the police. The third section presents the realities of the extent of brutality in police custody throughout India. Finally, a conclusion is drawn based on the facts presented in previous sections.

TORTURE ("THIRD DEGREE")

Charles Franklin (1970) in his famous exposition on the subject maintained that the term *third degree* originated in the United States. However, "similar complaints against the police are by no means rare in other countries" (Krishnamurthy, 1996, p. 64). The Torture Commission of India, 1884, attempted to define *torture* or *third degree*. According to the Commission's definition, *torture* or *third degree* included every type of physical violence; it also included cases of psychological and other forms of harassment or perversion imposed on the person in custody (Misra, 1986).

A total of 79 complaints against the police were found to be true by the Commission in 1885. The methods of torture or third degree were described by the Commission. Among the principal methods in vogue in police cases, the Commission

found the following — twisting a rope tightly around the entire arm or leg to impede circulation; suspending by arms while tied behind the back; searing with hot iron; placing scratching insects like carpenter beetle on the naval, scrotum, and other sensitive parts; dipping in wells till the person is half suffocated; squeezing the testicles; merciless beating with canes; prevention of sleep; nipping the flesh with pincers; putting pepper or red chillies in eyes or in private parts of men and women; these cruelties were sometimes preserved until death sooner or later ensued (Torture Commission Report, Parliamentary Papers 420 1885).

The present day methods of torture (inflicted during the 1990s) does not indicate any remarkable refinement over the methods described in the Torture Commission Report, 1885. During the 1990s, the following methods of torture were used in police custody — stamping on the bare body with heeled boots; merciless beating with canes; rolling a heavy stick on the shins with a policeman sitting on it; beating on the spine; slapping with cupped hands on both ears till the bled and lost consciousness; beating with rifle butt; inserting live electric wires into the body; forcibly laying the person in nude over ice slabs; burning with lighted cigarettes and candle flames; suspending the person by his wrists; denying food, water, and sleep; and blinding the person (Krishnamurthy, 1996). In addition, the fact is — the varied types of torture led to deaths in police custody. The complaints against brutality in police custody “gains some credence from the number of deaths in police custody reported each year; enquiries initiated by the government have proved that many had indeed been the result of police violence” (Raghavan, 1999, p. 228).

At this point, let us turn our attention to the Indian standards for the code of conduct for the police.

INDIAN STANDARDS FOR THE CODE OF CONDUCT FOR THE POLICE

The British ruled India for almost two centuries (1757 through 1947). 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 India. The second half of the 1800s witnessed a spurt of an inordinate number of enactments and legislations.

Prior to 1882, there was no uniform law of criminal procedure operative throughout India (Krishnamurthy, 1996). There were separate laws for the Presidency towns (e.g. Madras Presidency, Bombay Presidency, etc.) and suburban areas, not to speak of the local systems in other principalities of other protected kingdoms (Krishnamurthy, 1996).

The procedure applicable to the Presidency towns was first consolidated by the Criminal Procedure Supreme Courts Act (XVI of 1852) which was subsequently replaced by the High Court Criminal Procedure Act (XIII of 1865). The laws prescribing the procedure to be applicable to the provinces were codified and enacted by the Criminal Procedure Act (Act XXV of 1861); it was amended close to its heel by the Act X of 1872. Then, the Criminal Procedure Code of 1882 (Act X of 1882) gave the country a uniform law of criminal procedure for the first time. It was later supplanted by the new Code of Criminal Procedure in 1898; this Code forms the foundation for the procedure as exists now. After independence, several modifications have been made in the Code. The amended version is known as the Code of Criminal Procedure, 1973 (Dutta, 1990).

Every person working in law enforcement is a part of the criminal justice system, which aims to prevent/control crime and protect the public. The conduct of the functionary has an impact on the whole system. So, law enforcement personnel need to have ethical standards through a well conceived and defined code of conduct that would help these personnel practice self-discipline. In India, guidelines are prescribed by the Code of Criminal Procedure, 1973, and the Police Acts as well as the Police Manuals of various states as to how the police should behave. The Indian Police Commission, 1901, revived one of the constraints of the Police Act of 1861 by amending the Indian Evidence Act wherein confessions made to a police officer were inadmissible as evidence in the court of law (Krishnamurthy, 1996). In addition, the Indian Penal Code introduced sections 330 and 331 in 1982 prescribing punishment for the offense of torture by the law enforcement personnel (Vadackumchery, 1997).

The Third National Police Commission, 1980, in its Fourth Report discussed issues relating to the abuse of police power in the accursed third degree methods in police custody and also made several recommendations to curb this rank misuse of authority besides dubbing it as an open violation of the *rule of law* (Subramanian, 1997). In India, a Code of Conduct for Police was adopted and issued by the Government of India in 1985 (Vadackumchery, 1997). This was based on the recommendations of a Conference of Chiefs of Police in India in 1983. This Code also delineated the ethical standards of behavior of police personnel in custody; it states, “law enforcement personnel, in carrying out their duty, shall as far as possible, apply non-violent means before resorting to the use of force and firearms” (Subramanian, 1997, p. 266).

The fact is, “law has prohibited use of custodial violence in unmistakable terms” (Vadackumchery, 1997, p. 19). The Indian Penal Code makes

it an offense to voluntarily cause physical harm to extort confession (Subramanian, 1996). Furthermore, torture (any type of physical violence, even leading to deaths) of detainees is prohibited under Indian law, under sections 330 and 331 of the Indian Penal Code (Dhagamwar, 1993). The Constitution of India provides several fundamental rights to all citizens through Articles 20, 21, 22, 39(A), etc.; these Articles provide the right to life or personal liberty, and most importantly, freedom from physical torture (inflicted by criminal justice personnel) to all citizens [see Roy, 1997]. The Indian Evidence Act prohibits use of confession made before a police officer and the one obtained through inducement, threat, or violence, in criminal trials. The Indian Police Act under which the entire law enforcement in India derives its legitimacy and policeman his powers to function, prohibits unwaranted personal violence by police personnel against the detainees in police custody (Subramanian, 1997).

One type of physical violence used against detainees in police custody is rape. "Rape continues to be a disturbing aspect of custodial violence in India" (Amnesty International, 1998, p. 1). Rape is defined in Section 375 of the Indian Penal Code as sexual intercourse with a woman in specific circumstances, the most significant issues being "against her will" and "without her consent". Normally, a minimum term of seven years of imprisonment may be imposed on a convicted rapist [Indian Penal Code, Section 376(1)]. In 1979, the Indian Government referred revision of the law on rape to the Law Commission of India. The Commission's 84th Report recommended changes to the law relating to rape; some of these recommendations were incorporated into the Criminal Law (Amendment) Act of 1983. This Act introduced a new category of offense — "custodial rape" (Amnesty International, 1994a).

As a result of this enactment, since 1983, Section 376(2) of the Indian Penal Code prescribes a more harsh punishment for police officers who commit rape against women in their custody — ten years of imprisonment is the mandatory sentence; however, life imprisonment along with a monetary fine may also be imposed. The harsher sentence is also applicable to some other incidents of rape including where a man is found guilty of raping a pregnant woman, a girl under twelve years of age, and gang rape. Another significant change brought about by the Criminal Law (Amendment) Act of 1983 was that the "burden of proof" regarding consent was transferred to the accused in cases where rape takes place in police custody. The accused policeman or other official must therefore prove that the woman did consent, rather than the woman having to prove that she did it.

Another significant issue regarding custodial violence is custodial deaths (should be better phrased as "custodial killings") of detainees. The Third National Police Commission in 1980 made several recommendations for dealing with custodial death cases (Raghavan, 1999). Consequently, the Government of India issued an important circular in 1985 concerning deaths of detainees (resulting from police excesses) in police custody. According to the circular, a judicial inquiry is mandatory in all cases of custodial deaths; the final report of the judicial inquiry must be published in the official Gazettes by the respective State Governments soon after the receipt of the report. If it is felt that judicial inquiry into custodial deaths may not be feasible, an alternative must be undertaken by extending the Coroner's Act to all urban areas so that all such deaths are examined under Section 174 of the Code of Criminal Procedure, 1973, by a coroner. Also, all custodial deaths must be treated as "heinous" cases and they must be initially investigated by an officer of the rank not less than that of a Superintendent of Police. The Law Commission had recommended the shifting of burden of proof in cases of custodial deaths; accordingly, the Section 111 of the Indian Evidence Act was amended. Even the Supreme Court ruled in favor of the amendment in *State of Uttar Pradesh v. Ram Sagar Yadav* case in 1985 (Vadackumchery, 1997). Also, the Section 302 of the Indian Penal Code has been amended to treat all custodial killings severely.

The Supreme Court of India and various State High Courts have condemned custodial violence and spoken strongly against atrocities committed by police personnel against detainees in police custody. They have recommended stringent sanctions for custodial violence. The Supreme Court has observed — "The police, with their wide powers are apt to overstep their zeal to detect crimes and are tempted to use the strong arm against those who happen to fall under their secluded jurisdiction. That tendency and temptation must in the larger interest of justice, be nipped in the bud" (cited in Subramanian, 1997, p. 238).

Hence, ideally, it is clear that custodial violence (in terms of torture, rape, and custodial death/killing) committed by law enforcement personnel is illegal and those personnel (who are supposed to uphold the law) cannot indulge themselves in unlawful behavior. It undermines human dignity; brutalizes the police system; forfeits the trust of the people and the judiciary, and also affects the image of law enforcement as a whole. Furthermore, theoretically it exposes the police officer to the risk of criminal liability and consequent sanction. Despite all these ideal/theoretical safeguards, what are the realities of police brutality against the detainees in police custody? The next section depicts those realities in India.

BRUTALITY IN POLICE CUSTODY — THE REALITIES

Physical torture of the detainees in police custody has been quite pervasive for several decades in India. The detainees in police custody in India includes undertrials (individuals who have been accused of committing crimes) as well as political prisoners. The fact of the matter is, neither of these two types of detainees are spared from physical torture inflicted by the police in their own custody. A cursory review of brutality in police custody in India indicates that various forms of physical tortures are carried out by the police, including rape. Most of all, physical torture in police custody results in custodial deaths of hundreds of detainees. The nationwide phenomenon of custodial deaths continues to surface with disturbing frequency. For instance, the growing incidence of custodial violence in the state of West Bengal has become a sensitive political issue much to the embarrassment of the ruling Left Front government. The custodial death toll in that state since the Left Front coalition came to power in 1977 (to July, 1995) is accounted to 220 (The Hindu, August 11, 1995). At a press conference on December 10, 1999, the Chairman of the West Bengal Human Rights Commission Mr Justice M. K. Mukherjee stated that "there has been almost one custodial death every week across the state of West Bengal" (The Statesman, December 11, 1999, p. 4). Amnesty International in their report, entitled *Amnesty International and India* (March, 1996) stated, "The NHRC [National Human Rights Commission] in India documented 130 deaths in police custody across the country during a ten-month period in 1995. Those tortured to death were both criminal suspects and political detainees" (p. 6).

Given the extent of physical torture, rape, as well as deaths (resulting from torture) in police custody across India, what follows next is a presentation of some recent illustrative cases of varieties of physical torture, rape, and custodial deaths.

Physical Torture:

- Rajiv Rattan was confined at Kharar police station (in the state of Punjab) for two weeks. While in custody, he was tortured and sustained grave injuries that culminated in the fracture of the neck of his femur bone, making him permanently disabled (Times of India, December 5, 1999).
- Milan Sengupta was picked up by the police on December 4, 1999, and was detained at Sadar police station in Patna (in the state of Bihar). In custody, the police beat him up mercilessly resulting to a bone fracture on his left leg (Times of India, December 11, 1999).
- Tasleem and his friend Manish were badly beaten up by a head constable and a constable in police custody in New Delhi to extract information about a theft at Tasleem's neighbor's house, in November, 1999 (Times of India, December 18, 1999).
- In July, 1999, the West Bengal Human Rights Commission reported that across the state of West Bengal the police have used excessive forces on undertrials as well as political detainees in several cases resulting in fracture of bones and permanent disability as well (The Statesman, July 7, 1999).
- Abdul Sattar was taken to Bassi police station (in the state of Rajasthan) in August, 1998, and was stripped naked and beaten. For five days he was tortured including electric shocks to his hands, feet, and genitals. Also, Sita Ram and Satya Narayan were beaten up by the police in the same police station during the same time. All three were forced to confess to serious crimes (Amnesty International, 1999).
- In February, 1997, seven detainees in Rajkot (in the state of Gujarat) police custody were blinded by police personnel; a concoction of a medicinal balm and chilli powder had been rubbed into their eyes by police officials to extract confession to various crimes (Amnesty International, 1998).
- Prakash Singh and his wife were taken into custody by the Punjab Police in April, 1996, on suspicion of possessing drugs. They were both stripped and beaten with sticks. Also, wooden rollers were rolled over the muscles of their thighs. Later on, they were released on bail, and filed a complaint of torture with the Punjab and Haryana High Court (Amnesty International, 1997a).
- During 1979 and 1980, thirty men and boys were blinded in police custody in Bhagalpur (in the state of Bihar) (Amnesty International, 1997a).

Rape:

- On the night of July 13, 1996, several police officials picked up 18-year-old Nisha Devi and detained her in police custody in Nangal Kahadar village, Etawah district, in the state of Uttar Pradesh. The same night, while in custody, she was raped by more than one police officer to disclose the whereabouts of her brother-in-law whom the police suspected of a robbery that took place two days ago (Amnesty International, 1997c).
- On May 5, 1995, Devika Rani, a 45-year-old female resident of Ludhiana, in the state of Punjab, was taken from the Civil Hospital by

the police; she was visiting her husband who was undergoing treatment at the hospital. Her 18-year-old son, Rajesh Kumar had earlier been arrested and was in police custody at the Atam Park police post. Mrs. Rani was taken to the same police station. In custody, she was tortured and molested by an Assistant Sub-Inspector, the Head Constable, and two other men in the presence of her son; this was done to coerce her confession about her son's involvement in a criminal case. She was kept in wrongful confinement for six days, and was finally released from the police post on May 11 at 9:00 pm (Amnesty International, 1997c).

- During early morning hours on August 1, 1996, 37-year-old Elangbam Ahanjaobi Devi was stripped and raped by two police officials in front of her son at a police station in Imphal in the state of Manipur. Ahanjaobi Devi and her husband finally reported the incident to the Manipur Human Rights Commission in February, 1997 (Amnesty International, 1997c).
- On January 2, 1994, a female resident of Ludhiana (in the state of Punjab) was raped by Jagjit Singh, an employee of the Punjab Police, while she was in police custody. The victim was raped to extract information about her husband's involvement in a criminal incident (Subramanian, 1997).

Custodial Death:

- On June 19, 2000, 25-year-old Lalan Chakraborti died in police custody at the Bolpur police station in Birbhum district of the state of West Bengal. Consequently, a judicial investigation has been ordered by the Calcutta High Court (Anandabazar Patrika, June 19, 2000).
- On April 16, 2000, 26-year-old Srichand was taken into custody at Modi Nagar police station in the state of Uttar Pradesh, concerning a robbery case. He was tortured to death by the Uttar Pradesh Police; the police brought his body back to his home on April 26, 2000 (The Hindusthan Times, April 27, 2000).
- Sikandar Singh, an undertrial was locked up at Lakhisarai police station (in the state of Bihar) from September 6, 1999. Continuous physical torture by police personnel led to his death in police custody on December 17, 1999. The Superintendent of Police in Bihar admitted that the undertrial died in police custody (Times of India, January 8, 2000).
- In September, 1999, 21-year-old Devinder Singh died in police custody in the state of Punjab, after being tortured by the police. A case of murder was subsequently filed against a police sub-inspector in connection with the death of Devinder Singh (Amnesty International, 2000).

- On January 19, 1994, 28-year-old Udayan was arrested and taken into custody at Mannarghat police station, Palakkad district (in the state of Kerala) allegedly for carrying counterfeit currency. Merciless beating by police personnel resulted in his death the following day (Amnesty International, 1994b).
- On July 30, 1993, Raju Bhujbal died in police custody in Tura (in the state of Meghalaya) as a result of torture (Amnesty International, 1994c). [See p. 4-8 of this Report for ten illustrative cases of custodial deaths resulting from torture]
- On December 29, 1993, Chandrasekharan died in police custody at the Pondicherry police station (in the state of Tamil Nadu) due to merciless torture inflicted on him by police personnel (Subramanian, 1997). [See p. 378-383 for six illustrative cases of custodial deaths resulting from torture]

Regarding custodial death, the fact is – every year hundreds of detainees die in police custody across the country due to physical torture. The numbers of such deaths have been reported by Amnesty International as follows: 517 between January 1, 1985 through December 31, 1993 (Amnesty International, 1994c); 200 people had died in 1996 (Amnesty International, 1997); and at least 300 deaths in 1997 (Amnesty International, 1998).

Beside these numbers, another interesting fact is – many Indian police officers believe in inflicting torture on detainees in police custody. In March 1997, a survey was conducted among Indian Police Service officers at the National Police Academy, Hyderabad. The findings from the survey were reported by the news bi-weekly *India Today*. The most unfortunate finding was — “17 per cent [of those IPS officers] agreed that detainees in police custody should be subjected to torture (third degree methods) to get to the truth” (Amnesty International, 1997b, p. 1).

The National Human Rights Commission (NHRC) and Prosecution of Police Personnel Responsible for Custodial Brutality

During the first half of 1992, Amnesty International called on the Government of India to implement a ten point program for the prevention of torture in India. During the second half of 1992, the Indian government announced plans to strengthen legal safeguards to protect individuals held in police custody from torture. In September 1993, a National Human Rights Commission was established by a Presidential Ordinance to address the brutality of police personnel (Kapoor, 2000). The NHRC found the police wanting in their response to instructions issued by the Law Commission of India. In order to inculcate in the police the habit of

acting in accordance with the laws of the land, the NHRC organized several workshops and seminars across the country. The NHRC has urged police personnel to cultivate humanity and discipline. Furthermore, the NHRC has emphasized the need for human rights to be taught as a separate subject in police training institutions. "Custodial deaths are among the worst of crimes attributed to the police. Despite the relentless efforts of the NHRC, instances of police brutality and custodial deaths are on the rise" (Kapoor, 2000, p. 6).

The fact is, the powers of the National Human Rights Commission are limited due to several facts. First, the Commission is deficient in having its own independent investigative machinery. The Commission has to rely on investigative staff provided by the central or state government who operate under the supervision of the Director General of Police. Second, the Commission's mandate is limited to asking for a report from the Government of India on the reported incidents of torture, ill-treatment, and custodial deaths. The worst fact is – there is no obligation on the part of the government to proceed with any recommendation which the Commission may make (Raghavan, 1999).

One notable fact about the National Human Rights Commission is that the Commission has been trying to bring about "fairness of justice" (in terms of financial recompense) for the victims of torture in police custody. A couple of very recent cases are worth mentioning to exemplify their endeavors: (a) At the beginning of December, 1999, the NHRC directed the Punjab state government to pay interim compensation of Rs. 2,50,000 (approximately \$ 5,600) to a person who was falsely implicated in a theft case, illegally detained and physically tortured at Ropar police station causing grave physical injuries to him (Times of India, December 5, 1999); (b) On December 17, 1999, the NHRC directed the city Police Commissioner of New Delhi to immediately pay interim compensation of Rs. 50,000 (about \$ 1,200) to a detainee who was beaten up by two police constables in police custody in November, 1999 (Times of India, December 18, 1999). That fact is, these are two extremely rare cases where the NHRC was able to gather appropriate evidences to direct state and city governments to pay for police brutality in custody. However, despite the directives, one fact remains to be seen. That is, whether the torture victims receive any monetary reimbursement in reality. The simple fact is, this type of directives of the NHRC are challenged by the respective state and city governments leading to magistrate level inquiries, which in reality, takes very long time to be completed.

In India, there is a lack of prompt redress in cases where the right to life and the right against torture are violated by the police. On one side, the

policemen are rarely brought to justice for killing detainees in their custody. If it happens, it takes an extraordinarily long time. For instance, in November 1993, the Supreme Court sentenced two police constables in Kerala to five years rigorous imprisonment for beating to death a man in police custody in December 1980 (Amnesty International, 1994b). Also, in January 1994, a New Delhi court sentenced five police constables to five years hard labor imprisonment for torturing a detainee, Kamal Kumar, who later died in custody; this conviction came fifteen years after his death (Amnesty International, 1994c). Despite these instances, the fact remains that this type of conviction is extremely rare. On the other side, in most of the rare cases where convictions have eventually been obtained, the state frequently appeals against the sentence, and the police personnel get acquitted. A case in point comes from the southern state of Kerala. Two policemen were sentenced to life imprisonment on charges of murdering two detainees in their custody in 1986. The Kerala High Court acquitted them on appeal in 1993. The prosecution had difficulties in proving torture resulting to death to the satisfaction of the High Court (Amnesty International, 1994c). Consequently, the perpetrators of the crime remained unpunished.

Evidently, the police personnel are almost exclusively immuned from prosecution for their unlawful behavior. "It is well known that the lower rungs of the police usually abuse their power. Their unlawful acts are ignored by their superiors, even by the Director General of Police, since it is reasoned that punitive action could demoralize the ranks" (Kapoor, 2000, p. 6).

CONCLUSION

The purpose of this paper was to critically review phenomenon of physical violence committed by police personnel against the detainees in police custody in India. As mentioned earlier, detainees in police custody in India includes two types of individuals — those who have been accused of committing crimes and political prisoners. The facts presented in this paper demonstrate several issues. First, theoretically, the detainees in police custody have constitutional rights to be protected from police brutality in custody. Second, in addition to constitutional rights, several acts (laws) have been enacted to provide them those safeguards. Third, the Indian government has enacted several laws to bring to justice the police personnel who have been found responsible for inflicting physical torture (including rape) and causing deaths of detainees as a consequence of torture. However, the most unfortunate fact is that there is little or no enforcement of these laws. As a result, despite the presence of all these safeguards and legislations, torture, rape, and deaths in police custody have been extremely

widespread across India. As Raghavan (1999) puts it, "The history of police in post-independence India is replete with unsavory incidents of police brutality against detainees in police custody" (p. 229).

There is wide scope for abuse of power within the confines of police stations in India. Torture and other forms of cruel, inhuman, and degrading treatments of detainees in police custody are encouraged by several factors. These include — routine denial of access by police to lawyers and relatives/family members of the detainees, pressure on police to mete out instant punishment due to the inability of the criminal justice system to deliver justice promptly and effectively, lack of investigative machinery available to civic bodies like the NHRC, and most of all, corruption (Amnesty International, 1996; Kapoor, 2000). As for corruption specifically, Kapoor (2000) states,

There is no denying the fact that corruption is deeply rooted in the police force, not only in the lower echelons but also among officers. Rampant corruption can be attributed to lack of supervision and venality of the upper ranks which allows policemen to commit crime after crime with impunity, while remaining in uniform. Lengthy departmental procedures in dealing with corruption does not help (p. 6).

Most torture and other types of physical violence occur during the first stage of detention at police lock-ups, where access to outsiders is routinely denied. The issue here is one of eradication of brutality in police custody with education and training. The culture of the police needs a total transformation through corrective strategies to make them develop a healthy respect for human dignity and basic rights that are consistent with democratic concept as well as the rule of law. This could be done at different levels — government, law enforcement, and judicial.

The National Human Rights Commission, in a bid to check police brutality in custody has decided to organize visits by its investigation personnel to police lock-ups all over the country (The Economic Times, August 12, 1997). Section 12(c) of the *Protection of Human Rights Act* empowers the NHRC to visit, under intimation to state governments, with a view to study the situations at police lock-ups. The point is, the NHRC can visit those facilities, and upon visitation make the government aware of the conditions of the detainees and make recommendations to the government for reforms. But it is up to the Indian government to bring about any change or reform. The Indian government had approved several amendments to the Indian Penal Code and Indian Code of Criminal Procedure to check violations of the rights of the detainees in 1995. In fact, the Indian government under Article 253 of the Indian Constitution, can in theory sign bills to terminate any violation of those rights.

However, such policy-making requires a government with both a will and a way. The rights of the detainees in police custody 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).

Law enforcement and judicial levels need to work hand in hand to eradicate police brutality in custody. Senior police officers should ensure that no person or suspect is detained unlawfully and that he/she is not subjected to brutality in police custody. "They must educate the investigating officers about proper and scientific methods of interrogation. The policemen need to be reminded that in the event of custodial deaths, rape, and torture, they have to face prosecution" (Kapoor, 2000, p. 6). The Supreme Court directives on interrogation and custody of detainees in police lock-ups, issued to prevent human rights violations, must be followed meticulously. "The directive of the Calcutta High Court that there should be continuous judicial monitoring of conditions in lock-ups ... needs to be implemented in letter and spirit" (Kapoor, 2000, p. 6). A heavy responsibility lies with the court which remands the detainees in police custody as no person can be deprived of his life and personal liberty except according to the procedures established by law within the ambit of Article 21 of the Indian Constitution. Accountability should start from the supervisory levels. Each supervisor must be made accountable for physical violence inflicted on detainees by police personnel. Magisterial inquiries into police excesses followed by legal action when a prima facie case is made is necessary. Custodial torture, rape, and death must be investigated by impartial agencies like the state Criminal Investigation Departments and the Central Bureau of Investigation as well. The police cannot become a law unto themselves.

According to the present Attorney General of India Soli J. Sorabjee (1999), constitutional government is best promoted by the protection and promotion of fundamental human rights. Judges have a vital part to play in developing and maintaining a vibrant human rights environment. Evolution of effective remedies by the judiciary is imperative because rights without remedies have little or no value. In his words, "In times... when protection of fundamental human rights is needed the most but is accorded the least it is the court's paramount duty to act as the sentinel on the *qui vive* for the protection of fundamental rights of all people" (1999, p. 6).

The bottom line is, maintenance of public order is largely the responsibility of the police. Police personnel at all ranks, from Indian Police

Service officers to constables, must function within the framework of the law. The police are forbidden by law to inflict any form of physical harm on detainees in their custody; they have no legal authority to do so. Accountability and cooperation at all levels and effective supervision and training of police personnel are necessary to minimize, if not completely eliminate, unlawful brutal activities of India's police.

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