



Deaths of Taslim and Gufran

(This editorial is based on the article ['Deaths of Taslim and Gufran'](#) which appeared in 'The Indian Express' on 2nd April, 2019. The article talks about custodial tortures and killings and the need to bring reforms as any form of torture go against the principles of a just society.)

Recently two young men died in police custody in Dumra, Sitamarhi district of Bihar. Both the men were picked up in healthy state for investigation in a theft and murder case but died within less than an hour of reaching the hospital.

Giving the gruesome event a fake twist, the suspended police officials have not only escaped custody but till date are evading arrests. Their disappearance also highlights the disappearance of diary entries, warrants, and memos, list of pre-existing injuries, interrogation records, recoveries and CCTV footage, if any, highlighting the departmental resolve in putting the case under the carpet.

This is only one of such many cases signifying the gruesome abuse of power and position, warranting immediate action and policy formation to set the wheels of justice in motion.

The case in point

At least 90 people die in police custody every year, the largest number of them being people arrested and yet to be produced before a magistrate.

In 2016, government data recorded 92 deaths in police custody, of which 60 occurred before reaching the court. This makes a mockery of sections **55A and 57 of the Criminal Procedure Code (CrPC) which places the duties of care of the accused, and production before a magistrate within 24 hours, on the person having custody.**

Reports by both government entities and civil society organisations over the years have proved that custodial torture is endemic in India stressing on the overwhelming abuse of both power and duty.

Absence of strong legislation

India does not have an anti-torture legislation and are yet to criminalise custodial violence, while action against culpable officials remains illusory.

India has done little to enact a specific law against torture committed by people acting in official capacity. A weak Prevention of Torture Bill was introduced in 2010 but it lapsed with the dissolution of 15th Lok Sabha in 2014.

The Indian state either denies the existence of torture in the country or defends its resistance to enact a law by claiming there are sufficient provisions in the domestic legal framework to prohibit and penalise torture. These claims however remain superficial and without any such protections.

India also fails in bringing the much desired Prison Reforms and prisons continues to be affected by poor

conditions, overcrowding, acute manpower shortages and minimal safety against harm in prisons. All of these problems act as constraints on the Indian resolve of ratification of the Convention against Torture.

Institutional challenges

The entire prison system is inherently opaque giving less room to transparency, Multiple barriers are placed in position to prison access which are not given without prior permission such as depositing "Rs 1 lakh in the name of the superintendent of the concerned jail" before entry; excessive scrutiny of all recorded or documented material with the possibility of deletion of objectionable portion; confiscation of equipment and material from the visitor if the jailor does not like what he sees etc.

Closed institutions provide ample scope of avoiding impunity which is evident in the prevalence, and widespread acceptance, of custodial torture.

In the absence of consistent documentation of torture-related complaints most of the cases of torture go unnoticed. The National Crime Records Bureau (NCRB) which is mandated to record all the crimes taking place in the country too does not document cases of custodial torture.

The use of excessive force including torture is also sometimes used to target marginalised communities and control people participating in movements or propagating ideologies which the state perceives as opposed to its stature.

The torture which is both physical and mental leaves all those affected in a vulnerable position as mentally ill prisoners have risen in the past 15 years. There is only one psychologist for every 23,000 prisoners. It is small wonder that the suicide rate is one and a half times higher in jails than outside - **twice as many inmates die by suicide in our jails today than 15 years ago.**

Weak Global Image

India's commitment to preventing and abolishing torture as well as punishing its perpetrators is perceived as extremely weak in the international forum and gives a wrong light on its desire of becoming a global power.

Although India has signed the United Nations Convention against Torture in 1997 its ratification still remains. While Signing only indicates the country's intention to meet the obligations set out in the treaty, Ratification, on the other hand, entails bringing in laws and mechanisms to fulfil the commitments.

Due to poor prison conditions in India extradition of criminals from various countries accused of offences such as forgery, cheating, criminal conspiracy and sexual abuse of children remains almost impossible. Thus enacting a law against torture would be an affirmation of India's commitment to its democratic ideals and values.

Safeguards for Prisoners

Protection from torture is a fundamental right enshrined under Article 21 (Right of Life) of the Indian constitution where rights such as Right to free legal aid, Right against inhuman treatment, Right against custodial harassment, Right of prisoner to have necessities of life have been mentioned.

The right to a lawyer in custody is so crucial for life and liberty that it is enshrined as a fundamental right, but it remains one of the weakest links in the chain of criminal justice.

Section 41 of CrPC was amended in 2009 to include safeguards under 41A, 41B, 41C and 41D, so that arrests and detentions for interrogation have reasonable grounds and documented procedures, arrests are made transparent to family, friends and public, and there is protection through legal representation.

Specifically, section 41D of CrPC provides that "When any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, though not throughout interrogation."

This right to "meet" an advocate during interrogation ensures that the arrested person is not overpowered by the law, nor isolated in those critical hours before seeing a magistrate, or when in remand. This provision simultaneously takes care of the distinct responsibilities that the police have to obtain evidence, and the advocate in giving their counsel.

However, no police department in the country appears to have evolved the standard operating procedures to implement this safeguard with integrity. This means ensuring prerequisites, verification by relevant external agencies and consequences for violators of the law.

Steps Suggested

- **India should ratify the UN Convention Against Torture** as it will mandate a systematic review of colonial rules, methods, practices and arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment. It will also mean that exclusive mechanisms of redress and compensation will be set up for the victim besides institutions such as the Board of Visitors.
- Guidelines should also be formulated on educating and training officials involved in the cases involving deprivation of liberty because torture cannot be effectively prevented till the senior police wisely anticipate the gravity of such issues and clear reorientation is devised from present practices.
- Unrestricted and regular access to independent and qualified persons to places of detention for inspection should also be allowed.
- Closed-circuit television (CCTV) cameras should be installed in police stations including in the interrogation rooms, and surprise inspections by Non-Official Visitors (NOVs) should also be made mandatory which would act as a preventive measures against custodial torture which has also been suggested by Supreme Court In its landmark judgment in the DK Basu case in 2015.
- **Law Commission of India in its 273rd report recommends that those accused of committing custodial torture - be it policemen, military and paramilitary personnel - should be criminally prosecuted instead of facing mere administrative action establishing an effective deterrent.**

Way Forward

- Enacting a law prohibiting torture is both a moral necessity and a pragmatic imperative; equally important is to repair our centuries-old system of prisons.
- To ensure that prison conditions are in tune with human rights norms, there is a need to render conditions within prisons less harsh and more humane where inmates are accommodated with due regard to their basic human needs and are handled with dignity.
- To break the silence surrounding torture and to reform India's criminal justice system at large, there can be no further delay in taking such legislative measures.