

Prevalent use of third-degree torture as an interrogation method by the police

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ABSTRACT

Third-degree torture is seen as a mainstream mechanism within the rights of the police, in order to get a confession during an interrogation or an investigation. However, such use of third-degree torture does not fall within the rights of the police and is instead a gross violation of human rights. The paper delves into the various causes that have led to a prevalent use of third-degree torture by the police. Following which, the paper is going to deal with how such violation of human rights has been dealt with and perceived as, by the bureaucracy and the general public, including the normalization of such excess of power.

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INTRODUCTION

“The third degree brutalizes the police, harden the prisoner against society, and lowers the esteem in which the administration of justice is held by the public.”

- *National Commission on Law Observance and Enforcement,*
George Wickersham, Chairman, 1931

Third-degree is “a term used to describe unlawful methods of coercing an individual to confess to a criminal offence by overcoming his or her free will through the use of psychological or physical violence”.¹ Third-degree is commonly called custodial torture. The term is believed to be coined by Thomas Byrnes, a New York police detective in the nineteenth-century.

India has seen prevalent use of third-degree torture by the police as an interrogation method in the past and such methods continue to persist. The paper is going to examine why there is a prevalent use of Third-degree methods by the police. Following this, the perceptions of the government and the masses are highlighted, and the steps taken to combat this violation of human rights are explored.

The National Crime Records Bureau has recorded 591 cases of death of individuals in police/judicial custody between 2010 and 2015.² Wherein the reasons for death were commonly cited as suicide, death during hospitalization, or natural death by illness. Between 2016 and 2018, in the reports by NCRB, 265 deaths were recorded with zero convictions by the state.³ These numbers show how prevalent the use of third-degree torture by policemen in India is, all the while reflecting on how this issue is being neglected by the bureaucracy of the country.

LEGAL MECHANISMS PERTAINING TO USE OF THIRD-DEGREE

Third Degree or Custodial Torture is a legal offence under the Criminal Procedure Code (CrPC); the Indian Penal Code (IPC), 1860; and the Code of Conduct of the Police.

IPC lays down that the third-degree treatment which causes hurt to any person while in custody is an offence punishable with 10 years of imprisonment.⁴ Furthermore, under Section 302, 304, 304A, and 306, the crime of custodial violence or torture against prisoners can be brought, which attracts a maximum punishment of the death penalty.⁵ Section 29 of The Police Act, 1861⁶ states that if any police officer who without any warrantable reason, uses personal violence against the person in his custody, will be liable to punishment under the act.⁷

Section 54 of the CrPc, 1973, grants that a person has the right to get themselves medically examined before or after he is presented to Magistrate, to provide evidence that during his custody, an offence against his body was committed.⁸ Furthermore, under Section 164 of the CrPC, it has been laid down that confessing is a voluntary action, which takes place

¹ West's Encyclopaedia of American Law, The Gale Group, edition 2, Inc. 2008. Third Degree

² National Crime Records Bureau, 1986, <https://ncrb.gov.in/hi>

³ National Crime Records Bureau, 1986, <https://ncrb.gov.in/hi>

⁴ The Indian Penal Code, 1860, No. 45 Acts of Parliament, 1860 (India).

⁵ The Indian Penal Code, 1860, No. 45 Acts of Parliament, 1860 (India).

⁶ The Police Act, 1861, No. 05, Acts of Parliament, 1861 (India).

⁷ R.B. Sethi, *The Police Acts, Central and States*, Law Book Company, 1983.

⁸ The Criminal Procedure Code, 1973, No.02 Acts of Parliament 1973 (India).

in the presence of a magistrate, and if a person is not willing to confess, he cannot be taken into police custody for such refusal neither can he be forced to confess by using police force.⁹

EXPLANATIONS BEHIND THE USE OF THIRD-DEGREE

Despite the legal provisions provided under the IPC, the Police Act, and the CrPC, there is still prevalent use of third-degree torture by the police for extorting evidence. It is thus, pertinent to understand why such methods are still being used by the police, for which they face a minimal amount of repercussions.

CAUSES RAISED BY THE POLICE TO JUSTIFY USE OF THIRD-DEGREE

According to the police, one of the major reasons to turn to third-degree interrogation is the duration of the custody that they are allowed to interrogate a potential offender for.¹⁰ Under the CrPC, the Indian police are obliged to bring the accused before a magistrate within twenty-four hours of the arrest.

The second major reason cited by them is the doubts they have about the work done by them. This can be directly correlated to the fact, that while the CrPC allows for “the police to investigate and arrest even the president of the country,” but a statement made before a police officer has no evidentiary value before the court of law.¹¹

This is a direct reflection of a system that was designed for the perpetuation of colonial power over the citizens of the country, where Indian officers were only appointed for purposes of providing representation. The work of Indian police officers was not considered to be of importance, and they were made to be enemies of other Indians. This is evident in the laws of a country, wherein even if the accused provides a statement to the police officer, provisions such as CrPC like Section 162 state that “no statement of a witness or any person recorded by a police officer can be used for any purpose other than to contradict his statement before the court”.¹²

These provisions raise several questions, that why should the police conduct interrogations in the first place if the statement collected in custody cannot be used in the court of law as evidence? The answer lies in the fact that there are certain provisions like section 27 of the Indian Evidence Act, which allows any material discovered as a result of a confession, along with the part of the confession that led to its discovery, to be admissible in the court.¹³ Additionally, the judge can also call upon statements given to police in the course of the investigation, during a court proceeding.¹⁴ Such reasons are thus very easily admissible, so it is important to search for other reasons that have led to such excesses of power.

⁹ The Criminal Procedure Code, 1973, No.02, Acts of Parliament, 1973 (India).

¹⁰ Jinee Lokanteeta, ‘Why Police in India Use “Third Degree” Torture Methods for Interrogation’, The Wire (23 July 2020), <https://thewire.in/books/police-torture-interrogation-jinee-lokanteeta-excerpt>.

¹¹ *Supra* note 9.

¹² The Criminal Procedure Code, 1973, No.02, Acts of Parliament, 1973 (India).

¹³ The Indian Evidence Act, 1872, No.01, Acts of Parliament, 1872 (India).

¹⁴ The Indian Evidence Act, 1872, No.01, Acts of Parliament, 1872 (India).

RATIONALE BEHIND THE USE OF THIRD-DEGREE

Unfortunately, there exist several other reasons why third-degree torture is still prevalent in India. Firstly, the police still suffers from a negative regressive role of police in colonial India, which perceived that "Every Indian is an enemy of the state".¹⁵

Secondly, there is constant pressure on the police from the government and public, to show instant results. This is seen especially in cases where high-level bureaucrats are involved in the misconduct that has taken place, or if a particular case has received popular media attention. Furthermore, there also exists a lack of awareness in the domain of human rights in India, wherein the lack of adequate facilities and personnel for investigation, adds to the already existing pressures faced by the police.¹⁶

Amongst these reasons, the key factor supplementing the use of third-degree mechanisms is the impunity that is enjoyed by the law enforcers or public servants. The legal framework encompassing liability on the impunity of public servants is lacking; along with the inherent corruption of the system. With non-speedy judicial trials, tortured victims wait for delayed time frames with a hope of achieving justice; while the perpetrator is on the loose. This directly reflects the undermining of justice in our society, where while the perpetrator continues to be in power over the citizens, the victims are forced to comply with them.

COURT ORDERS AGAINST USE OF THIRD-DEGREE

On a brighter note, the Supreme Court has in various landmark judgements held the police liable for custodial tortures, demanding a ban on several methods of interrogation. In *Niranjan Singh*, the Supreme Court stated that "the police instead of being the protector of law has become the engineer of terror and has panicked the people into fear".¹⁷ Following which, in the *Raghubir Singh* case,¹⁸ where the Supreme Court was very deeply disturbed by the police torture, and rightly observed that :

"The lives and liberty of the common citizens are under a new peril when the guardians of the law ignore human rights to death. The vulnerability of human rights becomes even worse when the violence is perpetrated by the police, whose function is to protect the citizens...".¹⁹

Furthermore, in *Francis Coralie*, the Supreme Court held that "Life, under Article 21 cannot be restricted to a mere animal existence. It is much more than just physical survival. The right to life in the opinion also means the right to live with human dignity and all that goes with it, including, necessities of life such as adequate nutrition, clothing, shelter, and facilities for reading, writing and expressing oneself, etc".²⁰ The court has also delivered, that prisoners are entitled to all fundamental rights consistent with their incarceration, and the legal regime of prison is subject to constraints of legality and constitutionality.²¹

¹⁵ K. Ravindran, "Custodial Violence and measures to Curb," *The PRP Journal of Human Rights*, 7-8, Jan-March 2002.

¹⁶ Upendra Baxi, *Crisis of Indian Legal System*, (Vikas Publishing House Pvt. Ltd., Gaziabad): p.130-135, 1982.

¹⁷ *Niranjan Singh v. Prabhakar Rajaram*, (1980) 2 SCC 559 : AIR 1980 SC 785.

¹⁸ *Raghubir Singh v. State of Haryana*, (1980) 3 SCC 70: AIR 1980 SC 1087.

¹⁹ *Ibid.*

²⁰ *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*, (1981) 1 SCC 608: AIR 1981 SC 746.

²¹ *Sunil Batra II v. Delhi Administration II*, (1980) 3 SCC 488 : AIR 1980 SC 1579.

Despite these judgements and various provisions of law, third-degree torture is prevalent in the country. The most recent and widely talked case is of P Benicks and P Jayaraj, in Tamil Nadu, who were arrested on Monday, 19th June. The reason for their arrest was that Jayaraj and Benicks, father and son respectively, had kept their mobile phones at the repair shop open a bit after the curfew timings. Despite bleeding a lot, the police took turns beating them which was accompanied by various other torture mechanisms. Finally, both the father and son succumbed to their injuries between Monday night and Tuesday morning. It was only after the massive outrage that took place on social media, that the cops were held responsible and were arrested.

ROLE OF MEDIA IN DOWNPLAYING USE OF THIRD-DEGREE

When people become aware of such brutal police third-degree torture, the public setting gets disturbed. Sadly, the use of third-degree torture by the police has been made into a normalized concept by the portrayals of it in different shows and movies. The use of third-degree or torture being used by the police in shows and movies, re-instates two things, firstly, it normalizes this abuse of power by the police, and; secondly, it legitimizes the acts of extra-judicial torture.²² The movies validating third-degree torture leave a vast impact on young minds, encouraging them to believe that the use of torture serves as a means to reach justice. This has been best portrayed by the movie *Satyamev Jayate*, wherein the protagonist to defend his father's honour, and to achieve justice against corrupted cops, beats them and in an extreme case and burns them alive.

Furthermore, in many shows and movies that cater to the general public, the police tend to resort to torture as a method to get confessions, which results in normalizing this behaviour of the police. The Supreme Court too has had a culture of ignoring the prevalent use of torture. In the case of *Gurdeep Singh v State (Delhi Administration)*²³ the court allowed a confession which was recorded while the accused was in handcuffs and the police were holding the chains, standing near him, and there were armed guards outside the room.

Normalizing the use of third-degree torture gives the police a lot of discretion on how to operate, not bound by the systems of law. By creating a form of thinking that such behaviour of the police is a right that they have, no one tries to remedy the issue, and hardly any cases are registered in the court against it. It has eventually led to a form of thinking where torture is seen as a legitimate course of action to achieve justice.

CONCLUSION

The condition, however, is not all bleak, changes have taken place in the laws of the country to change the culture of over-looking the extra-judicial measures taken by the police. These changes have taken in form of different case precedents set by the courts of the country. Such a landmark case is that of *DK Basu v State of Bengal*,²⁴ where it was held that “*Custodial violence strikes a blow to the rule of law, and demands that the powers of the executive should not only be derived from law but also should be limited by law. Torture is aggravated by the*

²² Kiran Shaheen, *Portrayal of Police Torture in Hindi Films and Television Serials and its impact on children*, CEHAT & CVICT, 1999.

²³ *Gurdeep Singh v State (Delhi Administration)*, AIR [2001] 1 SCC 498.

²⁴ *DK Basu v. State of Bengal*, AIR (1991) 1 SCC 416.

fact that it is committed by people who are supposed to be the protectors of citizens, and is committed under the shield of uniform and authority in the four walls of a police station, while the victim is helpless. The protection of an individual from torture and abuse by the police and other law-enforcing officers of the country itself is a matter of deep concern in a free society."²⁵

There has been a change in the approach to the widespread use of third-degree torture by the police, but changes in practices of such interrogation methods have largely not been recorded.

Hence, despite various amounts of laws and legislations curbing the power of the police, there still exists a culture of torture in the country with very few mechanisms to hold them accountable for their actions. The pendency of the anti-torture bill and non-ratification of the UN Convention against Torture, which India signed in 1997, displays how the judiciary and legislature have not considered this to be a serious issue. Additionally, there has also been a lack of judicial and magisterial inquiries into the deaths caused in police custody. In 2018, 70 deaths were recorded by the NCRB, however, only 27 judicial inquiries took place. In 2019, almost 5 deaths were recorded daily, and a staggering total of 1,731 people died in police custody.²⁶

Custodial violence is one of the cruellest forms of human rights abuse, which has actively been normalized in the minds of the people. There are various mechanisms that forbid the use of custodial violence, including the Constitution of India, IPC, and CrPC. While, the Supreme Court, the National Human Rights Commission (NHRC), and the United Nations condemn third-degree torture, the police across the nation have constantly defied these institutions, while the media has played a key role in making such defiance very normalized among the masses. It is thus, the need of the hour to create a balance between human rights and societal interests. Awareness of human rights will make citizens more cognizant of their rights. Furthermore, mechanisms should also be set up, to make the bureaucracy more vigilant in following these numerous court orders, all the while making their system more transparent, to curb such neglect of cases of excesses by the police.

²⁵ DK Basu v. State of Bengal, AIR (1991) 1 SCC 416.

²⁶ NCAT, "India: Annual Report on Torture 2019" (Oct 26, 2020). <http://www.uncat.org/wp-content/uploads/2020/06/INDIATORTURE2019.pdf>.