

REALITY OF IMPUNITY, RHETORIC OF HUMAN RIGHTS

Relevant for: Developmental Issues | Topic: Rights Issues - Human Rights and NHRC

In May 2017, addressing representatives from countries at the UN's Human Rights Council, the then Attorney General of India said, "The concept of torture is completely alien to our culture and it has no place in the governance of the nation."

Last week in Sitamarhi district, Bihar, two families received the bodies of their two sons from the police. The two men were questioned at the Dumra police station for a case of theft and murder in the area. Instead, they came back dead. The ritual bathing revealed torture — tell-tale marks of nails hammered into their thighs and wrists.

Between the rhetoric of Geneva and the reality at Dumra lies the all too frequent story, in India, of police torture. We are rightly cautioned to call it 'alleged murder' until proven in court. But the story we come across is too common for us to suspend belief.

More than a week has passed. The motions of taking action have begun but there are clear signs of routine impunity. Top police officials in Bihar have recognised that the custodial deaths were "unacceptable". There were some transfers and the policemen who were implicated were suspended and had a criminal case filed against them. A First Information Report has been registered. But in the first instance, the policemen who were implicated were not named. They were arrested and taken into custody but escaped, allegedly with the help of local police. They remain untraceable.

The National Human Rights Commission (NHRC) is content giving the Bihar Police six weeks to explain its conduct. A plea from several concerned civil society representatives urging the immediate despatch of an NHRC team to Sitamarhi has been turned down. For now, it's wait and watch.

That torture is 'endemic' across police stations in India is well known. Official statistics show that last year there were 144 deaths in police custody. About 40% of complaints received every year by the NHRC are against the police — mainly for custodial violence.

Though forbidden by law, the system perpetuates and incentivises torture. Top police officials tolerate it, turn a blind eye to it, citing it as a 'practical tool', or go easy on the perpetrators; Bihar will be a space to watch. Those in the lower judiciary, which is the first point of check against custodial violence, are frequently not vigilant in checking if arrested persons are secure in custody, have a lawyer assigned, or have the means to speak out.

Often, pliant doctors further weaken protections to those in custody by willingly minimising or not disclosing the nature of the harm or injuries they have sustained. Oversight bodies like police complaints authorities and human rights commissions are comfortable with the slow pace of accountability from state actors and do not doggedly pursue outcomes.

The brazenness is strengthened when legal precedents towards torture prevention are not paid heed to. South Asia is among the last regions where the political executive must grant permission before public servants can be prosecuted for acts done in the course of their work. Courts have repeatedly said that torture is no part of policing and so there is no question of waiting for permission for prosecution. Yet, the executive is still asked, decisions are delayed, and trials cannot proceed.

According to judicial precedent, recovery of evidence made as a result of torture cannot be used in court, but without proactive lawyers and magistrates, these important details are overlooked in the early stages of the legal process. For victims of torture, this means a harder fight in courts.

Besides being illegal and immoral, torture is not even a useful tool to stop crime. Eliciting unreliable confessions — the bedrock of the use of torture — destroys the process of deciding through evidence-based means whether the accused is the real perpetrator or not. Moreover, whenever it goes unpunished, torture actually supports more crime by creating a class of criminals within law enforcement. You cannot have a cohort of torturers masquerading as officers of the law while they destroy it.

There have been attempts to restrain the use of torture. The Kerala Police Act puts the onus on all police officers to report any physical torture they know of. Prisons in Telangana refuse to admit people brought into judicial custody if they appear injured; such persons are sent back to hospitals, forcing their injuries to be properly recorded.

But isolated innovations are not enough to stop this horror that has embedded itself in the subculture of policing. A comprehensive solution would be to ensure that disincentives are put in place and that there is proper accountability. But there is a lack of political will.

India signed the UN Convention against Torture in 1997, but despite repeated domestic and international recommendations to ratify it, there has been no attempt to create a specific and comprehensive torture prevention law. This is in sharp contrast with Bangladesh, which passed a strong law in 2013. Until we have such a law, Indians must accept that the active tolerance of torture puts punishment before the crime and judgment in the hands of the wrong agency. This violates the rule of law in every way.

For those who now plead on behalf of the police personnel of Sitamahri and say “let the law take its course”, this is absolutely right. Let the effort to establish guilt or innocence be thorough and speedy. Sadly, for Mohammad Gufran, 30, and Mohammad Taslim, 35, their guilt or innocence will never be known after their death that day in Dumra police station. It is all so very far from the resplendent halls of the UN in Geneva and the averments of India’s highest law officer.

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