

## The Genesis of Police Torture

Shahzad Aslam, Civil Judge Lahore

No profession has been so time invariant and change resistant as the sub-continent police. The ethos of police has long dialectic history. Human liberty and a need for security went hand in hand and the struggle ensued the application of torture.

During the period of Clive, the *zamindar* were authorized to maintain peace, law & order at their expense. The appointed *thanedars* oppressed and plundered people at will, while in league with dacoits. Then Hasting realized this and issued proclamation for the dismissal and punishment of such police officers. *Thanedars* then purchased their appointments at most exorbitant rates at public sales and were subjected to annual exactions for their continuance in their office. To indemnify themselves, they, in turn, realized large consideration from dacoits for screening them from justice. Even today we notice the same pattern of behavior. Cornwallis decided to take over the police directly into the government's own hands. He passed regulation for the purpose on Dec 7, 1792. In the preamble of the resolution mention was made about the collusion which subsisted between the robbers and the police functionaries, then for the purpose of multiplying robberies and other disorders for plundering properties.

It was also found out the *darogahas* used to furnish incorrect reports to magistrates. Manipulation of records, concoction of evidence, filing of incorrect statements, production of tutored witnesses, preparation of false documents are seen today and history shows that the malady has a long history in sub-continent administration. Torture by police on accused was also rampant and then on Sep 9, 1854, the Madras Government appointed the torture commission to conduct an inquiry, to the employment of torture by police. The Torture Commission submitted their report on April 16, 1855 and found that torture in police custody in India had a long history. Second Law Commission appointed on Nov 29, 1853 submitted his last report and observed that confessions are frequently extorted or fabricated. Lord Canning, then set up a Police Commission in India and Indian Police Act was promulgated in 1861. In 1860 the Indian Penal Code also came into existence. Certain penal clauses and safeguards were provided in the Act while having police excesses in mind. The production of accused before magistrate within 24 hours after arrest, inquiry against police and to book the wrong doers in police uniform were some of features of the act.

However u/s 41 CRPC in cognizable offence the police was invested with power to arrest anyone if they wanted so and so they manipulated the cases as they designed. A simple hurt could be made an attempt to murder, and wrongful confinement etc could be put in the FIR at the sweet discretion of the police authorities. In short they could made a non-cognizable offence to a cognizable one or vice versa under CRPC. To touch or confine the body of the person arrested was allowed only if the person does not submit himself to custody but even the mean and mild are maltreated at the time of arrest. If the provisions of the Police Act, Indian Penal Code and Criminal Procedure Code are viewed together, the conclusion is irresistible that the criminal administration was sought to be run with brute force and by instilling in the people a fear complex with regard to the police. Under law every person has a right to be informed of the ground of his arrest, but no one has the courage to ask the police. Although no inducement or threat is to be exercised on accused for making any disclosure, but the detective capacity of police functionaries was very weak. Hence they used force on people to make confession. The police were fairly successful in identifying, detecting and repressing ordinary crimes but were quiet unsuccessful in dealing with organized crimes or with cases of intricate nature.

The first War of Independence in 1857 forced the British to evolve and impose a modern but colonial system of policing. Hence the First Police Commission of 1860 and the Police Act 1861 created a semi- literate and brute force recruited from the native population but commanded by the imperial officers, discharging the Whiteman's burden. In 1920s, after the Amritsar massacre and growing financial constraints forced some reconsideration of the role of army in quelling civil disorder, that an armed police reserve was deployed and it was only during the Second World War that it was significantly expanded. Police were effectively able to jail or deport undesirable in normal times, and they were successful in maintaining the peace in periods of disorders. Thus whenever they wanted to clear the streets, for instance during the royal visits of 1911, the police simply jailed those whom they believed were hooligans or bad character.

Communal riots, political agitation, organizational weaknesses, the financial and political constraints, the strategic and operational short coming of the police prompted them to use means of repression with growing readiness.

If the army was to be used more sparingly, the obvious solution in the early 1920s, was to strengthen the police and, in particular, it's armed contingent. The prospect of expanding the armed police brought a whole range of problems in its wake. As a distinct police system was separated out from the army and

institutionalized, the role which was delineated for it ensured that it never fully escaped its military origin.

There was also selective policing in British India and colonial state was able to create criminal tribes and castes. The criminality of criminal tribes and castes was represented as an inheritance and a profession, inextricably connected to their lineage and genealogy. David Arnold in his book "Police Power and Colonial Rule" rightly observed that the police have been portrayed as the main force of a colonial state which was both hegemonic and vulnerable; characterized as coercive yet found to be ineffectual; motivated by racism yet restrained by an inherent metropolitan liberalism; allied closely with Indian propertied elites and yet the bludgeon of the ruling race.

Unfortunately in the name of continuity and stability, this vaunted administrative "Steel Frame" was retained by our rulers even after the independence and adopted to suit partisan needs.

### *Extra Judicial Killings*

Police torture on accused and citizens was flexed into extra judicial killings and institutionalized unwittingly that someday we all would be under the same umbrella of fear and insecurity.

Police torture and encounters have become so common that they have ceased to horrify us. What ought to horrify us is that the people are so accustomed to it.

The statistics show that crime rate was spiked in those areas where extra judicial killings were on horizons.

The police have to hew to the letter of law as the quality of governance can be measured by the prevailing standard of law enforcement.

Civil Liberty, Freedoms, Rule of Law are the most cherished dreams and we would be in a bad way if we won the war against crime but lost our civil liberties. It is better to lose than to win at the sacrifice of an ideal.

A fresh start has to be taken leading towards the goal. Abraham Lincoln once said "*I am slow walker but I never walk backward.*"