

## **Human rights violations of women inmates in police custody: A study of Ferozpur central jail**

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### **Abstract**

Human rights are the basic rights of every individual against the state or any other public authority as a member of the human family irrespective of any other consideration. Thus every individual of the society has the inherent right to be treated with dignity in all situations including arrest and keeping in custody by the police. Rights of an individual in police custody are protected basically by the Indian constitution and by various other laws like code of criminal procedure, evidence act, Indian Penal Code and protection of human rights act. These rights are also recognized by various international documents like Universal Declaration of Human Rights, Inhuman or Degrading Treatment or Punishment and Body of principles for the protection of All Person under Any Form of Detention or Imprisonment. In spite of these international and national legal standards for the protection of rights of persons in police custody, human rights violations in police custody are endemic in India and are tarnishing the image of India abroad. Since the police play a vital role in a democracy not only with respect to maintenance of law and order but also in dealing with the rapid increase of crime rates in the criminal justice system, police of police must strive to attain objectives like fairness, consistency, tolerance of minority views and other values which are inherent in a society. Being the visible symbol of state authority, police should see that their actions are not affecting the liberty and freedom of individuals and not infringing the basic human rights values of the suspects in custody, while fulfilling the avowed objectives of prevention and investigation of crimes. There are frequent instances where the police who are entrusted with the duty to enforce law and order, are violating the human rights. It is an admitted fact that when the police interrogate suspects in a crime, they employ third-degree methods. Liberty in the guise of a prolonged interrogation. Experience shows that during the course of investigation, worst violations of human rights take place? police is no doubt under a legal duty and has legitimate power to arrest a criminal, to interrogate him during the investigation of an offence but it must be remembered that the law does not permit use of third degree methods and torture of accused in custody during interrogation and investigation of the crime.

### **Conceptualization of term police and custody**

The term 'police' are defined as the civil force of a state, responsible for maintaining public order. The term 'police officer' would include any member of the police force appointed or deemed to be appointed under the state Police Act. The term should not be construed in so wide a sense as to include persons on whom only some of the powers exercised by the police are conferred.

The term 'custody' is defined neither in procedural nor in substantive laws. The word custody means protective care. The expression 'police custody' as used in sec. 27 of

Evidence Act does not necessarily mean formal arrest. It also includes some form of police surveillance and restriction on the movements of person concerned by the police. Thus a man may be in custody without having been formally arrested. Custody includes a state of affairs in which the accused can be said to have come into the hands of the police or have been under some form of police surveillance or restriction on the movements by the police.

Courts have extended the meaning of the term 'custody' in its strict sense to include a situation where the detenu may have been called to the police station for the purpose of interrogation and from the time that a person is placed under arrest. In other words, custody commences from the moment the person affecting the custody exercises some legally physical control over another. The accused even after his remand to judicial custody can, subject to his right to silence, be questioned by the police with the permission of the Magistrate in any place and manner which do not amount to custody in the Police. Police custody commences when a Police Officer arrests a person by actually touching or confining his body or when the accused submits to the custody by word or action or offers to give information leading to discovery. Custody means more than possession, it means care. When a judge grants 'custody' over an offender to the correctional authority, he is at once declaring that the correctional authority has power over the offender and that this must be used to promote the health of the offender.

The term arrest is highly comprehensive which consists of arrest made by an authority competent to do it and that made under the order of the criminal or civil court. Custody commences, when the police use its power to detain an accused or suspect in which the element of arrest may not be present's Police very often use the term 'apprehension instead of arrest', whenever they investigate the cases. But the field study shows that person taken in to custody do not feel any difference between arrest and detention.

### **Objectives of the Study**

The study is intended to investigate human rights violations of women prisoners in police custody and abuse of their authority by using third degree and inhuman methods in their custody. Further it concentrates on the ways by which the police personnel can be made duty-bound and thereby make them withdraw themselves from committing custodial torture and make them aware of the need for protecting the human rights values.

### **Human rights violation of women inmates in Police Custody: A Study of Ferozpur Central Jail**

Indian police is infamous for bad behaviour not only towards the accused but also towards poor citizens. They are also infamous for all sorts of corruption. Bribes, rapes, torture, threats have become associated with Indian police. Police custody is not free from fear and anxiety. Offenders remain in constant fear of possible torture and abuse. At the time of study there were 81 women of whom 31 were convicts and 50 were undertrials living in ferozpur central jail. Only 51 undertrials women prisoners have been included in this study.

We also thought it necessary to find out the behaviour of police personnel towards the women that we are studying. We found that 17 women i.e. 34 percent women said that the behaviour of police personnel towards them was good at the time of arrest. While 16

women i.e. 32 percent women said that the behaviour of police personnel was bad at the time of arrest. 17 women i.e. 34 percent women said that the behaviour of police personnel towards them was okay at the time of arrest. Thus we can say that in our study almost a one - third of undertrials complained of the bad behaviour of police.

Police in india is often accused of using physical or verbal violence or molesting and sexual abusing accused women. Hence we thought it necessary to find out if the police had beaten or misbehaved with the convicted women after arrest. We found that 17 women i.e. 34 percent women said that the police had beaten or misbehaved with them; while 33 women i.e. 66 percent women said that the police had not beaten or misbehaved with them. Hence we can say that almost a third of undertrial women faced misbehaviour by the police.

It is often accused that police pressurizes the accused to accept that they had committed crime by threats or physical violence. We also thought it necessary to find out if the undertrial women had accepted their crime due to police pressure. In our study we found 27 women i.e. 54 percent women said that they had accepted their crime under the pressure of police while 23 women i.e. 46 percent women had not accepted their crime. Thus we can say that most undertrials had accepted their crime under the pressure of police.

The law says that so far as possible women should be arrested by women police to avoid their being ill-treated and exploitation by male police officers. 22 women i.e. 44 percent women were arrested by women police while 13 women i.e. 26 percent women were not arrested by women police. 15 women i.e. 30 percent women said that they had surrendered. Thus we can say that although most undertrials were arrested by women police. However still about 26 percent women undertrials were arrested by male police.

Till 2005, no provisions existed to protect the interest of the women accused. In 2005 a new sub section (4) was added to section 46 of Cr.P.C. This sub section prohibits the arrest of a woman after sunset and before the sunrise except in unavoidable circumstances. This sub section further provides that in exceptional circumstances the woman police officer shall, by making a written report, obtain the prior permission of the judicial magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is made

We also thought it necessary to find out if the undertrial women were arrested before sunset or after sunset. We found that 20 women i.e. 40 percent women said that they were arrested before sunset but 15 women i.e. 30 percent women said that were arrested after sunset. 15 women i.e. 30 percent women said that they had surrendered themselves. Thus we can say that in our study most undertrials were arrested before sunset. However a significant percent i.e. 30 % women were arrested after sunset which needs to change.

In India many women surrender before court and do not want to risk being arrested by police fearing , ill treatment at the hand of police. For some their conscience or other factors motivate them to surrender themselves before the court of law. We also thought it necessary to find out if the women convicts were arrested or did they surrender themselves In our study we found that 35 women i.e. 70 percent women said that they were arrested by police. While 15 women i.e. 30 percent women said that they had surrendered. Thus we can say that in our study most undertrials were arrested by police but a significant number had surrendered them.

The rules clearly state that women should not be kept with males in police lock up to avoid their exploitation. The court further held that interrogation of females should be carried out only in the presence of female police officers/constables. If for good and valid reasons, an arrested woman has to be detained in police custody, it should be ensured that she is kept in female lock-up at the police station and where a separate lock-up is not provided for females, she should be kept in a separate room and not in a male lock-up. We also thought it necessary to find out if the women undertrials were kept with males or females in the police station. 5 women i.e. 10 percent women said that they were kept with males in the police station. While 45 women i.e. 90 percent women said that they were kept with females people in the police station. However a significant percentage of undertrials were kept with males which is very serious matter.

A new section 50-A was inserted in Cr.p.c in 2005. This section imposes an obligation on a person making arrest that he has to inform about the arrest and the place where the arrested person is being taken to any one of his/her friends, relatives or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information. We also thought it necessary to find out if the undertrial women families were informed about their arrest. In our study we found that 41 women i.e. 82 percent women said that their families were informed about their arrest but 9 women i.e. 18 percent women said that their families were not informed about their arrest. Thus we can say that in our study most undertrials families were informed about their arrest but in a significant number of cases, families were not informed.

Indian police is very infamous for corruption. Inmates blame the police for corruption or for fabricating cases against them in collusion with influential persons. Lawrence Sherman describing police corruption has said that it is accepting money or money's worth for doing duty not to do or to exercise a legitimate discretion for improper reasons. But others say that fabrications of evidence, sleeping on duty, avoiding assigned responsibilities are all forms of police 'misconduct' but not corruption. Corruption is mainly "taking bribes". We also thought it necessary to find out if the police had asked for a bribe from the undertrial women. In our study we found that 18 women i.e. 36 percent women undertrials said that the police had demanded bribe. 32 women i.e. 64 percent women said that the police did not demand bribe. Thus we can say that in our study most undertrials said that the police never asked for a bribe.

#### **Human Rights Violations: Remedial Measures**

Since India is following a democratic system and the police play a vital role in the maintenance of law and order, it is high time to think of curing the existing discrepancies in the police department and thereby ensure the protection of the basic rights of the citizens. We cannot expect the police to change when the society itself is chained to a set of deep-rooted beliefs and prejudices. They will reflect the culture and attitudes of the society from which they emerged. If the society is violent, the police will also be violent, if the society is corrupt; the police will also be so. It is aptly remarked; the police reflect the state and the society. If the government becomes a lawmaker, it breeds contempt for the law; it invites every man to become law unto himself, it invites anarchy. In democratic societies the police are empowered to enforce the criminal laws and many regulatory laws which are designed to make society orderly and safe. To achieve these ends, the police have been vested with additional authority and powers. The police are provided with the legal and physical means to enforce the law, including the use of state

sanctioned force, if necessary. The power of the police is unrivaled in civil society. As a result the police get themselves prejudiced. Adequate training and discipline may suppress these prejudices. In all the investigational endeavours the co-operation and an impartial approach of the society may yield better results. Today it is an established fact that police function has expanded into much more than a mere law enforcement agency of the government. Moreover, role of the police is constantly changing with the change of time and as a result traditional police functions are not enough to cover all aspects of police performance. Today a police man is depicted as a patient mediator, a skilled family therapist, an effective admonisher and a daring crime fighter. In the opinion of many of the police officers, police is a misunderstood minority destined to undergo filthy and nasty work of the people for a meager pay. Since the police have numerous powers, the people have a fear and respect, over them which compel them to keep up that status. Instead of keeping this respect, they are forced to indulge in corrupt activities only because of their inadequate income. Hitherto payment of bonus was admissible only to industrial workers as an incentive for production. In recent years payment of bonus has been extended to the employees of railways, posts and telegraphs, banks, insurance corporations etc. There seems to be hardly any justification for non-payment of bonus to policemen.

**Some suggestions to reform the police system:**

1. Adequate accommodation facilities for the policemen are of much concern. Policemen of and below the rank of sub-inspectors and equivalent rank in the armed police and technical cadres are entitled to free house, if there are no houses available, a free rent allowance in lieu. There is acute shortage of family quarters all over the country. It is high time to provide some curative measures so as to uplift the police from their deplorable conditions of work. Hence it is suggested that revision of the level of emoluments of various police categories, adequate living conditions, better accommodation, proper medical care, normal workload, ample conveyance facility etc. should be provided.
2. A commission is to be appointed to enquire into the present working conditions, standard of living and domestic requirement of them. This would create an atmosphere of honesty among the police personnel.
3. In the hierarchical system of police it is necessary to examine the opportunities for promotion which would be an incentive for good conduct and efficiency. A screening is to be conducted amidst the police for finding out constables with good educational qualification and in depth interest in protecting human rights of the people and such constables should be provided with more promotion opportunities.
4. Moreover the duty hours of the policemen should be fixed as 8 hours per day. Over-time allowances may be given in case the workload exceeds.
5. Majority of the superior police officers are tempted to be corrupted. This trend should be avoided at any cost. Superior police officers should be trained to behave perfectly to avoid all sorts of criticism. Then only they can always keep their hands clean and bring the subordinates to their path. There are so many factors

compelling a police person to become corrupt. Many of the police stations do not have even stationery items like paper, carbon paper etc. and the police personnel are therefore compelled to ask the complainants to bring or pay for the same. To avoid all these, the Government should see that every police station has adequate financial backing from the State. So far the government has taken no measures for providing fee concession, reservation or other educational facilities for the children of the police while the same are provided to the military personnel. Permanent advance, provided to the police stations, for meeting the various contingencies like refreshment to the accused, moving of injured to hospital, conveying the dead body to the mortuary, is really inadequate.

6. Unnecessary interference by the politicians in the enforcement of law is really an obstacle to the police to act impartially and treat all men equal under the law. The functioning of the police can be improved only through protecting them from undue political pressures.
  
7. Policemen, in recent years, have been frequently transferred from one place to another on political grounds. Frequent transfers dislocate their entire life, education of children and economy in a manner, which cannot easily be envisaged. In addition, rapid transfers are reducing police work to an unsystematic make-shift arrangement in which nothing concrete can be achieved. There is a view among the respondents that normally police officers should not be posted in a place for a prolonged period, as this would enable them to have frequent contacts with persons of disreputable practices and activities. At the same time it is to be kept in mind that unnecessary and frequent transfers without considering their sincerity and dedication lead them to frustration. One of the ways to free the police from political pressure is to take away the power of transfer from the ministers. Statutory provisions should be made to the effect that police personnel ranking from DIG to the constable should be appointed in a particular place for a fixed tenure, unless and until he becomes corrupted. This will help the policemen to work independently and impartially because now, the sword of transfer will not be hanging over their heads all the time. They must develop their moral courage to face any kind of situations instead of bowing before the politicians for getting some good postings. However many of the people and police personnel who responded in the survey are of the opinion that if a particular police officer who has proved himself to be sincere and honest, he should be allowed to continue in the same station itself. There has been growing demand for police accountability in the democratic countries of Britain and Japan. But unlike that of Britain and Japan, in India political interference in the process of law enforcement is rapidly increasing resulting in the misuse and abuse of police power. Due to the political inability of a citizen to approach court of law against such type of malpracticing, the Government has to provide independent machinery for redressing his grievances. It would be worth considerable whether it is possible to bring the representatives of police organizations into the picture when major legislation affecting the police and their work is under consideration.

**Some Suggestions to reforms in police custody:**

1. Establishment of separate women police stations, manned exclusively by women police staff.
2. Separate police lock –up for women, with women police staff may be establishment in all existing police stations. The lock-ups for women should ensure privacy. The entry of men in uniform should be restricted into the women enclosures of police stations.
3. Keeping in view the role of women in the family, the authorities may avoid detention of females involved in non-violent and minor offences.
4. Where arrest is warranted and no women police are available, women submission to custody shall be presumed and handed over to women police staff at the shortest time possible
5. No woman shall be arrested or remanded to custody without recording the special reason for the arrest and or custody. In the absence of any reasons or if the reasons are flimsy, the police officer should be taken to task.
6. Provision regarding bail should be liberalized and bail may be granted liberally to women even in non-bailable offences, unless special circumstances warrant a different course.
7. A lady doctor may be attached to the police station, on a visiting basis, for the referral and medical examination of the inmates.
8. Children should be allowed to stay with the mother in the lock-up in the absence of suitable care and custody for the children outside the police station.
9. To operate effectively, women police stations need to be fully equipped and independent in all operational aspects.
10. During the interrogation, the legal counsel & family members shall be allowed to stay within sight of the women in custody.
11. Facilities for legal assistance, consultancy, guidance and assistance should be given.
12. Arrested women must be told about her rights.

### **Conclusion:**

Since the cardinal principle behind the concept of human rights is the recognition of the rights of everyone to live with dignity and let others also live with such a dignity, this must become the philosophy of life for everyone. The police should also follow the same philosophy since they also form a part of the society. Circumstances make a man a criminal and he is not losing his dignity by the mere reason that he is destined to become a criminal. Police should not resort to torture, violence and deaths in police custody. We need; the police to be human, tolerant and dignified. The dignity of police is not something to be buried within the four walls of the police station. The police should bear in mind the fact that they also human beings and that either the notoriety or reputation they have earned in their service does not end with their retirement or death. Hence it is necessary for the police to reorient its style of functioning for playing a more effective role in controlling crime and winning the support and confidence of the people. Radical reform of the police set-up is the need of the time. According to the modern democratic

concept, police should always be a friend, guide and philosopher to all the citizens including the criminals in the society.

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