

Torture Occurrence in Police Custody: Critical Legal study on Sri Lankan Context

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Abstract— A Police force is established in a country with the prime objective of enhancing the internal security of a state. Thus, the safety and security of the individuals is expected to be upheld by the Police and from the initial commencement of complaining procedure, the whole legal investigation procedure is performed by the Police. However, in some incidents when individuals seek assistance from the Police it was evident that the Police have violated their fundamental rights mainly under Article 11 of the Sri Lankan Constitution and the Act against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment No 22 of 1994. On the other hand, this strong legal coverage has considerably prevented Police officers from torturing individuals in Police custody. It is also evident that this has affected the amount of cases solved by the Police. Therefore, this study aims to critically reveal the bitter story of torture occurrence in Police custody and to find other possible solutions in order to enhance the amount of case solving. The research problem of this study thus aims to evaluate the efficiency of other possible methods in case solving without violating the fundamental rights of the Police custodians through torture. Thus, the research objective is to enhance the protection of both Police officers and Police custodians during solving cases and to ensure further civil trust towards the Police. This study will be based on both quantitative and qualitative research methods which critically analyze applicable legal standards, statistical data, and practical experiences of the police officials and views of the experts in order to understand the problem and to find possible answers. These reforms are to be introduced to international arena, in order to inculcate professionalism of Police officers for national development and to overcome many challenges in the future.

Keywords Torture, Police custody, Case Solving

I. INTRODUCTION

Police force performs a tremendous responsibility in upholding peace and security, especially in a country like Sri Lanka being a developing state in which many latest

incidents arise day by day in the civil society which cannot be predicted. Thus, Police Department being the sole government authority responsible to sustain internal peace of the state face the major obstacle of case solving while striving to balance both interests of executing Police powers and fundamental rights of the custodians.

Therefore, this paper aim to address one of such burning issues namely torture occurrence in Police custody which directly affect the professionalism of the Police officials.

II. CONCEPTUAL FRAMEWORK

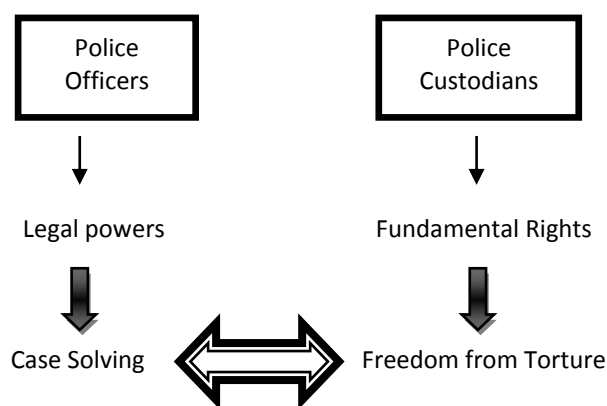


Figure 1.1: Conceptual Framework
Source: Author's Original construction

This emphasizes the conceptual framework and the scope of the study. Accordingly, the two main paradigms of this research are the Police department and the Police custodians.

A. Police Department

During the era of British rulers, Police Department of Sri Lanka was established by the Police Ordinance in 1865. Basically, the Department was initiated to foster and maintain peace and order in the country. In order to achieve this initial purpose Police officers have been empowered through several legal enactments. Since the

main focus of Police Department envisages in this study is the execution of Police powers in case solving, this research will be limited only to the aforesaid particular scope.

Sri Lankan Police Department is the sole state institution who is legally empowered to solve criminal cases. The Code of Criminal Procedure No 15 of 1979, Chapter XI under 'information to Police officers and Inquirers and their powers to investigate', Section 108 mentions that "the Minister may appoint any person by name or office to be an inquirer for any area....." Accordingly, unlike in Europe and USA, in Sri Lanka since there exist no such private appointments for case solving, the sole responsibility to solve criminal cases is granted to the Police Department.

B. Police Custodians

According to the Collins English Dictionary a 'Police Custodian' means "any person who is in Police custody, kept in secure under the supervision of Police officers". In the theoretical aspects this definition implies the most suitable description. Thus, in the practical scenario of Sri Lanka this situation is more developed through New Law Reports (NLR). Accordingly, Police summon individuals to question or individuals come to Police to lodge complaints. In both these circumstances Police keep them in the Police station for a certain time until the turn comes. During this period if such person's freedom is being limited then under fundamental rights (FR) it is considered as a FR violation. As for an example, an individual's freedom could be limited in Police station when he is not allowed to meet his relatives or a lawyer. Therefore, the moment which a person's freedom is felt limited in the Police Station then at that point he is considered as a 'Police Custodian.' However, it is the researchers' point of view that this is a very sensitive issue.

III. CONFLICT INTEREST BETWEEN POLICE OFFICERS AND POLICE CUSTODIANS

From the beginning of 1980's the conflict interest between Police officers and Police custodians embarked due to various reasons.

Major reason was the development of the communication media in which such torture occurrence incidents in Police custody become famous. Another one of the most tempting reasons was the globalization backed by the World Wide Web (WWW). This enhances the dissemination process of the legal regimes compared with other nations worldwide and Sri Lankans become

aware about the remedies in order to counter during a torture occurrence.

Moreover, early Police Department of Sri Lanka was widespread as a monopoly, in which when individuals have been tortured or violated FR, there was no other place to seek a remedy. But with the establishment of Human Rights Commission of Sri Lanka by Act No 21 of 1996 civil society become more vigilant about the Human Rights as well as the remedial procedures.

IV. TORTURE

As per Merriam- Webster Dictionary torture means an act of causing severe physical pain as a form of punishment or as a way to force someone to do or say something or something that causes mental or physical suffering which is a very painful or unpleasant experience. Also torture is two folded namely, physical torture and mental torture.

In the practical arena, it has been victimized that Police custodians have been tortured by Police Officials during the period of custody in order to case solving. This is highly criticized and severely affecting the professionalism of the police force of the state.

A. Legal Obligations

The main legal obligation is emphasized in Article 11 of the 1978 Constitution of Sri Lanka that no person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. This is the general application applicable to all incidents of torture. The most important facet of Article 11 is that under Chapter III, 'freedom from torture' has been recognized as a Fundamental Right.

Moreover, in the Act against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment No 22 of 1994 has specifically addressed the subject of torture.

B. Case Laws

In the early precedents, interpretation of torture has been only limited to physical torture.

In the cases of Amal Sudath Silva Vs Kodithuwakku (1987) 2 SLR 119 and Rathnapala Vs Hector Dharmasiri, HQI Rathnapura (1993) 1 SLR 224 it was proved that severe physical torture has been occurred in Police custody and it was decided that even though the suspect is a ruthless criminal, Police has no power torture suspects.

On the other hand, the case of Sudarsha Kumarasena Vs SI Shriyantha, OIC, Dikwella SCA 257/93 it was reported a verbal torture occurred to a Police custodian. Here, CJ Mark Fernando held that even only a verbal torture is a violation of Article 11 of the Constitution of 1978.

Also, in *Subasinghe Vs PC Sandun* (1999) 2 SLR 23 a suspect has been hand capped and demonstrated in public as a criminal by Police. Court held that this is a Degrading treatments and Police Constable has been prosecuted in violation of Article 11.

Furthermore, in the case of *Mohomad Nilam Vs Udugampola SCA 68/2002*, suspects have been kept as police custody in an inhuman manner. In this case court adopted the famous Greek Judicial precedent which illustrated that suspects should not kept in custody at a less ventilation or lack of toilet facility or lack of sleeping facility or a place in which many custodians kept; if do so it is considered as an degrading treatment.

One of the most important decision to Police department was held in *Vijayasiriwardana Vs IP Kandy* (1989) 2 SLR 312 that execution of Police powers in order to arrest a suspect does not amount to violate Article 11 of the Constitution. This has been further emphasized in the case of *Jeral perera Vs Sena Suraweera, OIC, Wattala* (2003) 1 SLR 317.

Considering all the aforesaid case laws it is evident that Police officers have been influenced to torture custodians in various ways.

IV. PUNISHMENT

This has been broadly discussed by the Section 2 (4) of the Act against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment No 22 of 1994 that a person guilty of an offence under this Act shall on conviction alter trial by the High Court be punishable with imprisonment of either description for a term not less than seven years and not exceeding ten years and a fine not less than ten thousand rupees and not exceeding fifty thousand rupees. Moreover, Section 2 (5) of the Act made this an offence as a cognizable offence and a non-bailable offence.

V. DISCUSSION

During the research it was identified that many reasons has caused to result torture occurrence in Police custody.

One of the main reasons is that the spontaneous mentality of the Police officers that as soon as a crime occurred, a suspect has to identified and produce to courts. This has simply manipulated Police officers to cause torture to suspects in custody. This mainly occur due to the superior command of the Police Department's hierarchy that when senior officers pressure junior

officers to solve the cases as soon as possible. This mentality and the culture should be evaded from the department because there is no any particular limited time frame to solve a case. Being hurry to solve cases will amount to suspect the wrong criminal.

Another reason is that the lack of technological assistance to solve cases. Unlike in Sri Lanka, in many developed countries Police personnel or inquirers or police stations are occupied with 'Liar Detector Machines', which enhance the scientific acknowledgement of the evidences. In addition, they use video clips of suspects' verbal evidences to compare with their body language while providing evidences. These technological supports highly enhance the capacity and amount of case solving in developed countries. Lack of such technological support has also caused the negative impact of torture occurrence in Police custody.

Also as per the medical and psychological researches the behind story to commit torture is also supported with the mental capacity, family background as well as the life experiences of the Police officials.

On the other hand, one may argue that lack of awareness Police officers may tempt to torture the custodians. Thus it cannot be accepted because Police officers who have been recruited to all ranks have been thoroughly educated during the training period regarding the legal notions of the State. Therefore, none of the Police officer can be opt out in the sake of lack of awareness.

During the study it was highly revealed that Police officers cannot violate FRs of the individuals, in the sake of executing Police powers in order to solve cases. If torture is committed by any police officer to the custodians it can be considered as a usage of excessive discretionary legal powers which is also infringement to Ultra Vires concept in Administrative law principles. Moreover, it is then also a violation of rule of law as well as Equity principles.

VI. RECOMMENDATIONS

The prime objective of this study is to discover new means and methods to solve cases by Police Department rather than torturing the suspects during custody.

The words of admittance by suspect after being tortured in the Police custody has no legal affect. Because as per Section 27 of the Evidence Ordinance, confession done by a custodian to Police officers has no legal validity. Only

the facts or evidences will be supportive to solve cases. Therefore, torturing to custodians has no positive effect in the present context because that would only result the interdiction of the Police officer with the present day strong legal enactments.

Accordingly, this study propose that Sri Lankan Police Department must develop the technological arena in order to enhance the amount of case solving as per discussed above.

Also, Police officers should not be sensitive and act in subjective manner when solving cases. If a Police officer sees the victim as his own family member then he is no longer playing an objective role. Then there after he will try to solve the case in a more sensitive manner which will definitely amount to cause torture to the suspects.

Most importantly, Amendment to Criminal Procedure Code 2013 Schedule emphasize that a suspect can be kept in Police custody for 48 hours. This will highly effective to reduce torture occurrence in Police custody because when more time is legally allowed for inquiries then Police officers will try to solve cases in a very legal manner. But one may also criticize this that when 48 hours have been allowed to keep suspects in Police custody then a reliable risk of being tortured could also be predicted. However, this 48 hours principle is seem to be more beneficial to Police officers than to custodians.

Moreover, Police Department must enriched and nourished with the dissemination of legal enactments, repercussions of torturing custodians in order to reduce the torture occurrence in Police custody and to enhance the professionalism of the Police officers.

VII. CONCLUSION

This study envisaged that no person is subjected to torture in Police custody, and if any Police officer performed such then he is amount to violation of Fundamental Rights of such individual and severe punishments will be inherited to the prosecutor. Thus, the usage of technological assistance in order to solve cases would amount to reduce the torture occurrence in Police custody and inculcate professionalism of the Police officers

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