

Right to privacy is now also a right against torture

On November 1, a video surfaced online showing three half naked male suspects in a police station, clapping their hands and singing, in an apparent exercise in humiliation. It emerged that the video was shot at the Tanur police station, in Malappuram district in Kerala and the suspects were detained for creating a ruckus on the streets. A few days earlier, on October 27, a young boy of 16 years was beaten up a police officer in Kozhikode, near a women's hostel, allegedly for questioning him regarding his identity. The police officer, a Sub Inspector of the Medical College Hospital police station then attempted to drag the boy and take him in the police jeep, when the family members found out and protested. Amid calls for an investigation, the case has died a silent death.

On July 18, Vinayakan, a 19-year old Dalit boy committed suicide in Engandiyur, Thrissur after the police brutally tortured him. Waylaid by a plainclothes policeman while talking to his girlfriend, he was harassed and mocked for his haircut. The police attempted to frame him and his friend for incidents of chain snatching in the area, a crime he repeatedly denied. Their denial enraged the cop further, causing them to take Vinayakan into custody and along with other cops, they tortured him by stamping on their feet with their shoes, and breaking Vinayak's toes. They abused him using offensive language, pinched his nipples and made it bleed and beat him on his chest. Vinayak fell to the ground screaming in pain, and according to sources, it was only then that the police officers stopped torturing him.

In March 2016, theatre artist Martin Oorali, was picked by the Thrissur police, allegedly on the suspicion that he was travelling on a bike with a drug peddler. According to Oorali, however, the police didn't like his long hair. He was slapped, his hair and assaulted, both physically and verbally and threatened with being force-stripped.

Living and working in Kerala for the past few months, I have come to realise the vagaries of believing statistics, of imagining that the high literacy rate, the incessant newspaper reading, the political fervour, the 'forward' 'matriarchal' society are somehow linked to a liberated, less patriarchal, more equal existence. A product of the Malabar region's matrilineal practice of naming children, I share my mother's and her mother's last name. The sad reality is that in Kerala, all of these practices are not markers of a more evolved society, but simply of culture, of tradition and custom, handed down the years.

While these cases are examples from Kerala, they are reflective of a normalized structure of custodial violence and moral policing across the country. In Madhya Pradesh, police officers of the Tikagarh rural police station have been accused of stripping striking farmers and beating them. The police and state authorities reflect the existing cultural norms and biases and in two of the cases I illustrated, the victims were targeted for being 'different', for refusing to conform to the dominant narrative of how a person should look and behave.

In the other cases, nakedness and the shame of nudity, was used as a tool to be vengeful against accused persons. All these instances of police brutality and torture in custody are gross violations of the right to privacy.

In India, the shame associated with the naked human body, with exposed skin, makes it easy for police officers to use nudity and sexual abuse as a tool of punishment. This goes back to the theory of punishment our penal system ascribes to – retribution or reformation? Moral policing and enforced nudity in custody are gross violations of one's right to privacy, bodily integrity and human dignity.

On August 24, the Supreme Court of India passed a landmark judgment in the case Justice K.S. Puttusamy & Anr. v. UOI. & Ors – the right to privacy judgment. Interestingly, the judgment abrogated the majority view in the Kharak Singh judgment, which held that domiciliary visits by police was violative of Article 21. Ironically this judgment also held that right to privacy was not a fundamental right under the same Article, even though it referred to the landmark judgment of the US Supreme Court in Wolf vs. Colorado, which dealt with the arbitrary intrusion into one's privacy by the police.

Existing laws already declare that it is a crime to torture, that police officials cannot strip the accused in jail as punishment, that a young boy cannot simply be stopped on the road for talking to a girl and for having a funky haircut. It is common sense and it is also a crime but what the judgment does is to provide a lethal tool with which to advance this fight.

The judgment talks of the 'right to be left alone', the right to human dignity and refers to the Francis Coralie judgment which held that Article 21 includes the right to protection against torture. The Puttusamy judgment reiterates that every person has a right to human dignity and that means a right against bodily violation, one which the State cannot claim immunity against. While this judgment does not specifically rule that the right to privacy includes the right to torture, these are analogous, both of them are unenumerated fundamental rights and one that must not be ignored by activists and researchers while speaking out against torture and police violence. Training programs can now specifically include references to the judgment and focus on the right to privacy as an integral part of the right against torture, both of which flow from Article 21.

We have a right to be left alone. While dealing with criminals and persons accused of crimes, the police will do well to remember that two wrongs don't make a right.

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