SUO MOTO ACTION BY PSHRC IN CASES OF CUSTODIAL TORTURES: AN APPRAISAL

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ABSTRACT

Human rights are basic standards without which people cannot live with dignity. The Human Rights needs to be protected in general and that too from the human beings in particular. In a democratic society like India, it is the responsibility of the State to protect and promote human rights. All State institutions whether they are the police department, the army, the judiciary or civil administration have a duty to respect human rights, prevent human rights violations, and take active steps for the promotion of human rights. The very respect for human rights lies at the heart of good governance. The role of the police is especially significant in this respect. The police is charged with the responsibility of maintaining order and enforcing laws. Thus, the onus of bringing those who break the law including laws which protect peoples human rights before the criminal justice system lies on the police. This paper is an attempt to examine whether Police acts as Protector of Human Rights or acts against human beings in manner which is inhumane.

INTRODUCTION

Human rights are the rights related to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the international covenants and enforceable by the courts. The very belief, that the concept of Human Rights is western, is grounded in the historical fact that the first expression of the term was found in the Magna Carta of the year 1215 which was followed by the Petition of Rights of 1628 and the Bill of Rights of 1688, The American Bill of Rights of 1791 and the French Declaration of the Right of Man of 1789, which became the milestones. Since almost all the western countries have adopted democratic form of governments coupled with the fact that these countries are miles ahead on the scale of
development, the advocacy and protection of Human Rights is deeply rooted in political, administrative and social fabric of these nations which is very well supported by relief mechanism. On the other hand, Indian thinkers were of the view that it is not justified limiting the origin of concept of Human Rights to the Western world only. They claimed that what the west has discovered today in the field of Human Rights has been an accepted principle of the Indian society and rulers which has been reflected through rich legacy of historical traditions and culture since time immemorial.

The role of police is well defined to ensure that rights of human beings are well protected against the violation of any kind by anybody yet many a times, while discharging this duty, actions of the police conflict with human rights. However, the police as protectors of the law have both a legal duty and a moral obligation to uphold human rights standards and act strictly in accordance with the law and the spirit of our Constitution.ii

Keeping the very purpose of the Constitution to safe guard the Human Rights of the both seekers and the providers largely was initiated after independence, when the Government of India introduced the Human Rights Commission Bill in the Lok Sabha on 14th May, 1992. On 28th September 1993 President of India promulgated an Ordinance namely “Protection of Human Rights Ordinance”. This ordinance was replaced by the Protection of Human Rights Act 1993. The National Human Rights Commission (NHRC) was constituted under this Act on 12th October, 1993. After the establishment of the NHRC it was mandatory for the State Governments to constitute the State Human Rights Commission.

PUNJAB STATE HUMAN RIGHTS COMMISSION

On the basis of the guidelines laid down by NHRC the decision to establish the Punjab State Human Rights Commission was taken under the notification by the State Government on 17th March 1997 under The Protection of Human Rights Act 1993. The Commission started functioning on 16th July 1997. The section 21(2) of the Act makes provision for constitution of State Human Rights Commission consisting of:iii

1. A Chairperson who has been a Chief Justice of a High Court;
2. One Member who is, or has been the Judge of the High Court;
3. One member who is, or has been a District Judge in the State;
4. Two members to be appointed from amongst person having knowledge of, or practical experience in matters relating to Human Rights.

OBJECTIVES OF THE STUDY

- To analyze the cases of custodial torture and suo-moto action taken on those by PSHRC.
HYPOTHESES OF THE STUDY

- The PSHRC promptly takes up suo moto cognizance of the Human Rights violation in regard to Custodial torture in the state.

The PSHRC has played a leading role as far as taking Suo Moto cognizance in cases of violation of Human Rights in the State. In all 447 such cases were initiated by the Commission out of which 39 cases were such due to Police atrocities the suo-moto cognizance was taken by the PSHRC. From the total number of cases there were 14 cases of torture and 11 cases of death. For the present study out of the 14 cases of Custodial torture 6 cases will be taken up for the present study.

SUO MOTO ACTION BY PSHRC IN CASES OF CUSTODIAL TORTURES

CASE NUMBER: The said case was registered under the file number 3194/2/2008

PLACE AND DATE OF INCIDENT: The incident took place at Bathinda and the date of incident was unknown.

SUMMARY OF THE CASE: “Bathinda Police Nein Ik Hor Chand Chahria - Apna Langri Hee Tashadad Karke Nakara Keeta”. The news itself was self-explanatory. The date for commencement of the case was fixed for 8th April 2008. The facts of the case were that one person was working as a class IV employee (Cook) in the Police Department at the residences of different police officers in Bathinda for the past 20 years. Before the incident in question, he was working as such at the residence of one IPS under-training officer and the wife of the officer alleged that victim had stolen her jewellery about one and a half months back. The cook was ordered to give back the jewellery and on 5th April 2008 he was sent to the CIA Staff, Bathinda, where he was subjected to third degree torture methods due to which he became disabled. The wife of victim even solicited before the police officers but in vain. She took her husband to the Civil Hospital, Bathinda, for treatment but even there the Doctors did not attended them. The Commission took suo motu cognizance of the matter and called for the report of the State Government in the Home Department through SSP Bathinda positively within two weeks. The case was adjourned to 28th April 2008 and a copy of the order along with a copy of the news cutting was sent to PSH, ADGP (IVC)-cum-Human Rights and SSP Bathinda for information and strict compliance. The documents were sent by fax also to SSP Bathinda.

FINAL ORDERS BY THE COMMISSION: Final order of the case was delivered on 6th June 2008 and Shri S.S. Chahal, S.P. (D), Bathinda produced the victim. The statement made by victim was read to him and he stated before the commission that he did not made any such statement and that too without any pressure or coercion. Therefore, since in the statement revealed nothing against the police officials the Commission considered it appropriate to close the further proceedings in the matter. The file was consigned to the record room and a copy of the order was sent to Principal Secretary Home, ADGP (IVC)-cum-Human Rights and SSP Bathinda.
CASE NUMBER: The said case was registered under the file number 5251/6/2007.

PLACE AND DATE OF INCIDENT: The incident took place on 27th May, 2007 at Gurdaspur.

SUMMARY OF THE CASE: Man, son-in-law tortured in illegal detention was appeared in THE TRIBUNE, dated 28th May 2007. The date for commencement of the case was fixed for 28th May 2007. The Commission read the contents of the news-item, took cognizance of the matter under the protection of Human Rights Act, 1993 and called for a report of the State Government in the Home Department and from SSP, Batala, before the next date of hearing. A copy of the order and that of complaint was sent to PSH, ADGP (IVC)-cum-Human Rights and SSP, Batala, for information and compliance and the case was adjourned to 29th June 2007.

FINAL ORDERS BY THE COMMISSION: Final order of the case was delivered on 31st July 2007. In the presence of the respectable chair the said victim realized his mistake and admitted that he owed Rs.15,000/- to Sarpanch. He compromised that in lieu thereof he would work as a Siri with Sarpanch @ Rs.1500/- per month. On their compromise, the victim and his father-in-law affixed their signatures willingly and without any pressure from any quarter. So the allegations of illegal detention or torture were refuted and the victim left the police post along with Sarpanch and other respectable of the area. Subsequently, the aforesaid victim, at the instigation of someone, gave some false news in the press. Thus, it was concluded that there was no truth in the news-item. After going through the contents of the said police report carefully, the Commission did not want to proceed further in the case and thus closed the proceedings. A copy of the order was sent to PSH, ADGP/IVC-cum-Human Rights and SSP Batala, for information.

CASE NUMBER: The said case was registered under the file number 11699/0/2007

PLACE AND DATE OF INCIDENT: The incident took place on 29th September 2007 at Chandigarh.

SUMMARY OF THE CASE: “Maa ka arop Punjab police karmio ne peeta beta” in Punjab Kesari dated 28th September 2007. After considering the news-item, the Commission found it to be a fit case for proceeding under section 12 of the Protection of Human Rights Act, 1993. The hearing of the case was fixed for 1st October 2007. In such a connection, a report under section 17 (i) of the Act was called for from the ADGP (IVC)-cum-Human Rights, Punjab, well before 22nd November 2007. On given date the complaint was to be considered by the Commission for further intellecction at 10.00 a.m. A copy of the order together with a copy of the clipping/news-item was sent to Principal Secretary to Government, Punjab, Department of Home Affairs and Justice and A.D.G.P. IVC-cum-Human Rights, Punjab for information and immediate action.

FINAL ORDERS BY THE COMMISSION: Final order of the case was given on 7th January 2008 and the report submitted by S.P. (D), Bathinda, was duly considered. According to the report, complainant had already expressed satisfaction and she further submitted that she had moved an application to the S.S.P. Chandigarh against the police officials of district Bathinda under some misconception. She also said that no action to be taken on her complaint. In such circumstances, the Commission closed the further proceedings in the case and dispatched the
copies of the order to the Principal Secretary (Home) and the ADGP (IVC)-cum-Human Rights, Punjab and the file was consigned to the record room.

CASE NUMBER: The present case was registered under the file number 1351/17/2007

PLACE AND DATE OF INCIDENT: The incident took place on 15\textsuperscript{th} February 2007 at Mohali.

SUMMARY OF THE CASE: On the said date it was observed that the order was based on two news items dated 18\textsuperscript{th} February 2007 which was published in the Times of India under the caption “In love, boy alleges torture by police - SHO refutes charges” and dated 20\textsuperscript{th} February 2007 again published in the Times of India under the caption “Torture case: Three policemen suspended - SHO, Phase VIII, Transferred to Police Lines” and the victim referred to GMCH-32. The date of hearing was fixed for 20\textsuperscript{th} February 2007. According to the averments which appeared in the news item, dated 18\textsuperscript{th} February 2007 the victim was a young boy of 20 years and had some inclination towards a girl who incidentally was the daughter of a Head Constable in PS, Mohali. It was alleged by the victim that men in Khaki picked him up from the barrier and he was bundled into a car. He was brought to the police station where he was made to strip and stand nude for hours and was beaten remorselessly with a cane. He pleaded for mercy but it was all in vain and instead, he was given electric shocks on his private parts. He was forced to consume excessive liquor following which he felt unconscious and when he regained the consciousness, he found himself at a roadside near village Daun in Kharar. He informed his parents about the incident and his father had been running from pillar to post to get the case registered against the offenders but the police was trying to shield accused and his companions by stated that there was no truth in the allegations made by the victim and that no such incident had ever happened.

FINAL ORDERS BY THE COMMISSION: Final order of the case was delivered on 11\textsuperscript{th} April 2007 as proposed by the Commission in its order dated 20\textsuperscript{th} February 2007, the State Government vide its communication dated 22\textsuperscript{nd} March 2007 had sanctioned a sum of Rs.25,000/- to be paid to the victim in the case as immediate interim relief. The State Government vide its communication dated 19\textsuperscript{th} March 2007 had also ordered for immediate payment of the said amount to the victim. The counsel submitted that the motor cycle of the victim was not returned so far so the compensation recommended by the Commission had already been ordered to be paid to the victim, the Commission would not like to proceed further in the case. Thus, the proceedings were closed with the observation that it would always be open to the complainant/victim to avail any remedy available to him under the law, for the redressal of his other grievances, if any. A copy of the order was sent to PSH, ADGP IVC-cum-Human Rights, SSP SAS Nagar and the counsel for the complainant for information.

CASE NUMBER: The given case was registered under the file number 14092/12/2007.

PLACE AND DATE OF INCIDENT: The incident took place at Moga and the date of incident was 20\textsuperscript{th} November 2007.
SUMMARY OF THE CASE: “Moga police now face torture charges”. Keeping in view the gravity of the averments made in the news-item, the Commission took cognizance of the matter and called for the report of the State Government in the Home Department and from SSP Moga. The date for commencement of the case was fixed for 26th November 2007. A copy of the order and a copy of the news item was sent to the PSH and SSP, Moga for submitting the report on or before the next date of hearing. The case was to come up for hearing on 14th January 2008 and a copy of the order was sent to the Press.

FINAL ORDERS BY THE COMMISSION: Final order of the case was delivered on 22nd October 2008. SSP Moga sent his report dated 27th February 2008 and matter was got inquired into by SP (D), Moga. The news item related to victim, Christian by caste, resident of Talwandi Nepean, district Ferozepur joined in the inquiry and his statement was inked in his statement he displayed total ignorance about the news-item and did not published it. He admitted that he was working as an informer with SI, Incharge, CIA Staff, Moga and further stated that as he was physically unfit, he got himself admitted in the Hospital. The said victim had also given in writing to the effect. Thus, in the report it was concluded that there was no truth in the allegations contained in the news-item referred.

CASE NUMBER: The said case was registered under the file number 2895/15/2007.

PLACE AND DATE OF INCIDENT: The incident took place on 5th April, 2007 at Patiala.

SUMMARY OF THE CASE: “Home Guard Jawan tortured at police station”. After heaving read the contents of the same the Commission came to the conclusion that it was a fit case for scrutiny and examination and took suo-motu cognizance of the matter. The date for commencement of the case was fixed for 9th April 2007. The Commission also called for the report of the State Government from the Principal Secretary to Government, Punjab, Department of Home Affairs and Justice and A.D.G.P-(IVC)-cum-Human Rights and S.S.P. Patiala. A copy of the order and copy of the news-item was sent to the P.S.H., ADGP (IVC)-cum-Human Rights through special messenger and to the S.S.P. Patiala through post. A copy of the order was sent to the Editor of The Tribune for information and the case was to come up before the Commission on 17th May 2007.

FINAL ORDERS BY THE COMMISSION: Final order of the case was delivered on 24th September 2007. Report dated 19th September 2007 from SSP Patiala was received and the SP of Patiala conducted the inquiry. It was reported that the accused and her family members were indulged in the illegal trade of intoxicants. The police got the information that Home Guards had some sort of rapport with the said family and resultantly, SP City, Patiala recommended the removal of the Home Guards. Thus, a recommendation to such effect was made on 30th August 2007 to the authorities concerned. Further, the allegations against the police were refuted and found false. In view of the above referred police report, the Commission did not proceed further in the case and consequently, the complaint was finally disposed of as such. A copy of the order was sent to PSH, ADGP (IVC)-cum-Human Rights and SSP Patiala, for information.
CASE NUMBER: The given case was registered under the file number 8236/17/2006.

PLACE AND DATE OF INCIDENT: The incident took place on 13th July, 2006 at Mohali.

SUMMARY OF THE CASE: “Man accuses cops of the torture, inhuman treatment, assault” and had decided to take cognizance into the matter keeping in view the nature of the allegations contained in the news-item under section 17(2) of the Protection of Human Rights Act. The date for commencement of the case was fixed for 19th July 2006. Investigation pertaining to the enquiry was marked to the I.G.P. of the Commission who was supposed to submit the report within three months from the receipt of the orders of the Commission. All were directed to co-operate with the Enquiry Officer and a copy of the orders along with the file was sent to I.G.P. of the Commission. The case was adjourned to 24th October 2006.

FINAL ORDERS BY THE COMMISSION: Final order of the case was delivered on 2nd August 2007. The Commission had considered reply to Show Cause Notice received from ASI through ADGP (IVC)-cum Human Rights, Punjab. The notice narrated the sequence of events justifying why immediate medical check up of victim could not be done. It was also maintained that for the same cause of action, SP (D) Fatehgarh Sahib who found him innocent had inquired into the matter. During the course of personal hearing, ASI further submitted that he had retired. After looking into all aspects of the matter and keeping in view the nature of allegations, farming part of the Show Cause Notice, the Commission was of the view that the matter need not to be dealt further because the Commission was satisfied with the explanation of ASI. Accordingly, the instant proceedings were hereby closed. Special messenger sent a copy of the order forthwith to ADGP/IVC-cum Human Rights, Punjab and a copy of the order was sent UPC to ASI for information.

CASE NUMBER: The present case was registered under the file number 2540/16/2004

PLACE AND DATE OF INCIDENT: The incident took place at Ropar and the date of incident was 13th March 2004.

SUMMARY OF THE CASE: The date for commencement of the case was fixed for 15th March 2004. On the said date, report was sought from SSP district Ropar. The next date of hearing was fixed for 17th August 2004 and on that date detailed report dated 21st June 2004 of SSP district Ropar was received through IGP Litigation, in which the contents of the news item was refuted. Moreover it was stated that the parties have compromised and the injured had already been paid Rs. 40,000/- by accused for the alleged theft. Since the allegations contained in the news item had not been controverted by the police of district Ropar, therefore a copy of the order along with a copy of the aforesaid report and also a copy of the statement of victim was sent to victim for filing the rejoinder by the next date of hearing. The next date of hearing was fixed for 20th December 2004.

FINAL ORDERS BY THE COMMISSION: Final order of the case was delivered on 20th December 2004 and the case was disposed of due to lack of response from the complainants side. As complainant was given a chance to file a rejoinder to the report or to give his statement in the
light of the report made by the SSP did not respond. In such circumstances, the commission had no other option but to file these proceedings.

FINDINGS OF THE STUDY

THE NUMBER OF SUO MOTO CASES

Suo Moto cognizance of Human Rights violations in the state by PSHRC was a very significant provision contained in PSHRC Act. Every year 35 to 40 cases were taken suo moto by the Commission in the State. Till date a total of 447 cases have been taken up suo moto. Hence, PSHRC had been prompt in taking Suo Moto cognizance of the Human Rights violation in the state.

KIND OF ISSUES SUO MOTO CASES DEALT WITH

The cases, which had been taken under Suo Moto cognizance in the state by PSHRC so far, included a variety of issues such as children, jail, minorities, police, women, etc. This highlighted the proactive and prompt attitude of PSHRC in pursuing the cases of Human Rights violation on its own. Thus, PSHRC had been prompt in taking Suo Moto cognizance of the Human Rights violation in the State.

TIME TAKEN TO TAKE SUO MOTO COGNIZANCE AFTER THE EVENT HAS TAKEN PLACE

The perusal of the cases taken Suo Moto cognizance in the state by PSHRC reveals that the Commission had reacted immediately after the incident took place. Many cases were taken upon by PSHRC of its own as soon as they were reported in the media. Therefore, PSHRC had been prompt in taking Suo Moto cognizance of the Human Rights violations in the State.

INSUFFICIENT COMPENSATION PROVIDED TO THE VICTIMS

Compensation was an important component of justice, more so in the case of justice provided in violation of Human Rights cases. Perusal of the cases of Human Rights violation brought before PSHRC revealed that compensation provided to victims were not only insufficient but also in rare cases. The compensation was awarded by not taking into consideration important factors like age of victim, his potential contribution to the society and the family.

SUPPRESSION OF JUSTICE

The Principle of Natural Justice demands that the cases be investigated and acted upon in an impartial manner. During the study it was found that in majority cases the investigations against concerned department were marked to the officers of the same departments. Such provision were unhealthy for cause of justice as it resulted in bias, favourtism, corruption and tendency to protect a fellow colleague.
LESS NUMBER OF INVESTIGATING OFFICERS

Over the years the cases of Human Rights violations has increased by leaps and bounds as a result that Commission is finding it a challenge to dispense justice on account of inadequate investigating staff. The Commission has only Five Investigating officers.

WASTAGE OF TIME OF COMMISSION

During the course of study it was found that in some cases the complainants did not file a rejoinder within a stipulated period of time despite reminders. This led to wastage of time of, Commission as it kept on writing to the complainants and the case could not be filed for the same reason. In addition several frivolous and vexatious cases were filed which increased the work load of the Commission.

SUGGESTIONS

1) The compensation must commensurate with loss to the party, family and society. To be more precise the Commission must lay some standards/benchmarks for providing the compensation.

2) In order to avoid bias, it becomes utmost important on the part of the Commission to cross check the reports.

3) The numbers of existing Investigating Officers no way can cope with the pressure of flowing cases which has increased considerably. The Commission shall make provisions to appoint more investigating officers.

4) The Commission shall impose fine against frivolous and vexatious complaints to check the superfluous load caused by such complaints.

REFERENCES

