

Violation of Human Rights by the Police in Kerala- A Study

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An important function of the State in modern times is the protection of life, liberty and property of its citizens by maintaining law and order in the State and the police department is entrusted with this function. The police as protectors of society play a vital role in the administration of criminal justice by maintaining law and order, and by preventing and detecting crimes. While ensuring safety and security of the people police must also ensure that no member of the society is put in peril and no person's human rights and dignity are curtailed. However, the behaviour of Indian police has been colonial and dreadful towards common man. Police investigation, interrogation, arrest and detention have always been controversial for the non-compliance of the procedural requirement which put the accused and other persons in difficulty, violating their human rights and dignity. Attempts have always been made to make the investigations, interrogation, arrest and detentions fair and free from coercion and "third degree" influences so that the minimum protection could be guaranteed. Nonetheless, police commit large number of human rights violations irrespective of all the measures taken to protect the human rights of the people. Rule of law comes to the end when the police who are bestowed with the authority to protect the common man turn out to be the violators of their human rights. There is no exaggeration in submitting that the police quite often violate the human rights of people in India and, in particular, in the State of Kerala. The magnitude and dimension of violation of human rights by the police in Kerala are so painstaking that a common man or woman, whether as victim or witness would seldom approach the police for the redressal of their grievance without the aid of a politician or a lawyer or a bureaucrat. Consequently, the Indian police are known for their human rights violations than for their protection. The Author conducted an empirical study in one of the Indian State, the Kerala, to find out the extent of violation of human rights by the police in respect of custodial death, torture, unlawful arrest, illegal detention, false implication and failure in taking action.

Several police excesses are reported in Kerala within the past three to four decades and some of which are horrendous and gruesome. There have been instances of custodial death, torture, unlawful arrest, illegal detention, harassment, ill treatment and failure or negligence in taking action. The information was gathered through empirical study from the victims of police excesses, investigating police officials, human rights activists, Members of the Kerala State Human Rights Commission, top ranking police officers, professionals, human rights experts and witnesses.

Interview method was adopted for the purpose of collecting data. Interviewees were divided into two categories. The first category consisting of victims of police arrests, investigating police officials (they

generally include Circle Inspectors, Sub-inspectors and Assistant Sub-Inspectors) who generally make arrest, and human rights activists. The second category consisted of the members of the Kerala State Human Rights Commission, top level police officers, human rights experts, professionals and witnesses. For interviewing the first category, different sets of questionnaires were prepared for each sub category, viz., the victims, investigating police officers, and human rights activists as these sub categories stood in different segments. Data were gathered from persons thorough one- to- one personal visit to each person. Information is gathered from victims of police arrests who are either arrestees in lock up or now under-trial prisoners, or convicts or persons set free by the Courts. For interviewing the investigating police officers, selected police stations both urban and rural were visited and questionnaire got answered from Circle Inspectors, Sub-Inspectors and Assistant Sub-Inspectors. For interviewing human rights activists, activists relevant to the study were identified and personally visited each of them. Each question in the questionnaire contained a statement which bases a three point scale, namely, “Yes”, “No”, and “No Opinion”. Besides questionnaire, personal interviews were also conducted for gathering information from those who are victims, investigating police officers, and human rights activists.

For the second category, personal interviews were conducted to gather information from the Members of the Kerala State Human Rights Commission, top level police officers, human rights experts, professionals and witnesses. The personal interviews were one-to-one, and generally lasted one hour. For both categories of interviewees, first it was made known that the interview is conducted for the purpose of academic research and then, an assurance was given to each person to maintain the confidentiality of the information passed on as part of the interview.

Overall six hundred and ninety seven people were interviewed. Two hundred and seventy two victims, one hundred and thirty seven Circle Inspectors, Sub-Inspectors and Assistant Sub-Inspectors, and one hundred and fourteen human rights activists participated in the questionnaire. Besides, sixty nine victims of crime and complainants were also interviewed. Informal interviews were conducted on sixty eight experts including members of the Human Rights Commission, top level Police officials, human rights Lawyers and Professionals. Thirty seven relatives and/or witnesses were also informally interviewed.

The data gathered by the above methods are analysed to obtain a finding. The incidents of human rights violation by the police in specific cases, extent of violation of human rights by the police, the adequacies of the law to safeguard the human rights and human dignity of people, the problem in the implementation of the law related with human rights from being violated by the police, and the suggestions of the experts to improve the law and the system in this aspect are analysed to test the feasibility of the hypothesis. The findings of the empirical study are discussed below.

1. Findings of the Study

The results of the empirical study reveal that the Police commit violation of human rights very frequently. The common method of violation of human rights that are perpetrated by the police in Kerala are torture, unlawful arrest, illegal detention, false implication, ill treatment, failure in taking action, *etc.* The finding of the empirical study is detailed below.

1.1. *Violation of Human Rights by Torture*

Among the violations of human rights by police, torture is the most barbarous and heinous act. Torture is a very common method of Kerala Police, and it has different magnitude from simple beating to causing death by torture. Torture also leads to disappearances and deaths in 'fake encounters'. Besides, it also causes fatal injuries, permanent disabilities, mental derailment, loss of faculties and psychological trauma.

1.1.1. Methods of Torture

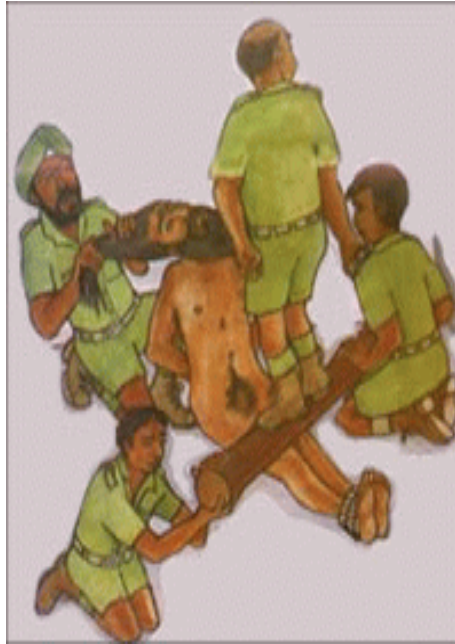
Police employ different methods of torture on persons in custody. During the course of informal interview, some of the police officials and the victims of police torture informed the Author about the different methods of torture that are perpetrated by the police in Kerala. The methods of torture that are followed by the police are as follows:

i. *Uruttal Method (Roller Method)*

In the case of *Uruttal* method (Roller method) as shown in Picture 1.1 below, the victim is made to lie on the floor or on a bench and then a heavy wooden log or iron rod in the shape of a roller is placed over both the thighs of the victim. One or two police men sit/stand on the log/rod and they roll it up and down which gives severe pain for the victim as the thigh muscles are crushed and separated from the bone due to the rolling. This is a brutal and barbarous kind of torture, but is still practiced in Kerala. This has come to the lime light after the infamous Regional Engineering College student *Rajan*'s case¹ of custodial death during

¹ *T.V. Eachara Varier v. Secretary to the Ministry of Home Affairs, Government of Kerala*, 1977 K. L. T. 335; *K. Karunakaran v. T V Eachara Warriar*, 1978 AIR 290; 1978 SCR (2) 209; 1978 SCC (1) 18; See also T.V. Eachara Varier, *Memories of a Father* (2004), p.47.

emergency and the last known of its series is the *Udayakumar's* case² of custodial death in the Fort police station, Thiruvananthapuram.



Picture 1.1: Showing the rolling method of torture (Source: *frontline Punjabi youth*)³

Mr.Rajan was subjected to *uruttal* method and was brutally tortured and killed in the camp. He was first beaten up severely by eight police men in the camp, and then tied to a wooden bench with his hands and legs down. A heavy wooden roller was rolled over his thighs with a police man standing on the roller. He was not able to withstand the pain due to the crushing of thigh muscles and hence, he cried aloud. In order to prevent crying out, the police pushed a piece of cloth into his mouths. Later, he was brought into another room where the then Deputy Inspector General of Police was sitting with sharpened pencil. As part of questioning, Deputy Inspector General of Police pierced the pencil edge into the already crushed thigh muscles which gave unbearable pain to Rajan and he cried aloud. At that time, a Sub Inspector of Police standing nearby started kicking him on his stomach with his heavy police boots. Then Rajan fell down, became unconscious and died.

In *Varkala Vijayan's* case,⁴ one Vijayan from *Varkala* disappeared during internal emergency in 1975 after the police arrest. There were witnesses that Vijayan died in the police custody due to the *Uruttal*

² WP(C) No. 24258 of 2007(K), High Court of Kerala; See *also* Case No. S.C. 1542/06, Addl. Sessions Court (Fast Track - III), Thiruvananthapuram

³ Available at: <http://frontlinepunjabiyouth.blogspot.com> (Visited on March 7, 2011).

⁴ J. Reghu, *Custodial Death of the Author of Play Called "Liberation"* (2006) available at:<http://www.zcommunications.org/the-custodial-death-of-the-author-of-the-play-called-liberation-by-j-reghu>(Visited on July 23,2011).

method employed on him. He was first beaten up severely by six policemen and then, they made him to lie on his back on the floor. Two policemen caught hold of his legs and two policemen his hands. Then a wooden rod was placed on his thigh and one policeman sat on the rod and made it to role up and down causing sever pain. In order to avoid loud cry, policemen pushed cloths into his mouth. Due to the unbearable pain, he fell unconscious and died.

Udaya Kumar, who died in police custody on the night of 27-9-2005, was taken into custody along with his companion Mani from Thiruvananthapuram and brutally manhandled, tortured and killed while in police custody at Fort Police Station, Thiruvananthapuram. The torture method employed on Udaya Kumar was also *uruttal* method. After beating him heavily by three policemen, Udaya Kumar was asked to lie on his back on a bench and repeatedly beaten on the soles of his feet with a cane. Thereafter, a heavy iron pipe was forcefully rolled down and up over his thighs resulting in the crushing and separation of his thigh muscles and flesh from the bone. When he was crying aloud, a piece of cloth was pushed into his mouth. At 10.20 p.m. when he was removed to the Medical College Hospital from the Fort Police Station he was pronounced dead.

Thus, the Police in Kerala resort to *uruttal* method of torture as a technique to inflict severe pain to the accused person in custody.

ii. Rocket Method

In this method, the police make the victim hang on a piece of wire or a rope with his head downwards and legs upwards position, i.e., in reverse direction. He will be placed hours together in this position and, from time to time, made to swing like a pendulum. Then he may be tortured with bats, rods or whips. It gives severe pain and suffocation due to prolonged keeping, and it seriously affect the internal organs and stress. In *Sampath's* case⁵ this method was employed to torture Sampath⁶ who died in the police custody on the night of 29-3-2009. Sampath was hung with his head down on a rope and tortured by using rubber rod, *lathi*, building block enclosed in cloth. He was kicked by boots and beaten with baton.⁷ Many bones in his body were fractured due to the torture and he had 63 *ante mortem* injuries.⁸ The other two suspects in the same case, Kanakaraj and Manikandan, were also tortured by hanging upside down and then, torturing by using rubber rod, *lathi*, building block enclosed in cloth.

⁵ *Central Bureau of Investigation v. Murukeshan*, Special Leave to Appeal (Crl) No(s).774/2011(From the judgment and order dated 22/12/2010 in I.A. No.16944of 2010 in WP No.13426/2010, High Court of Kerala).

⁶ The prime suspect in a murder case notoriously known as "*Puthur Sheela murder case*".

⁷ A kind of rod used by I.P.S. officers.

⁸ Injuries a body has received before his death.

iii. **Aeroplane Method**

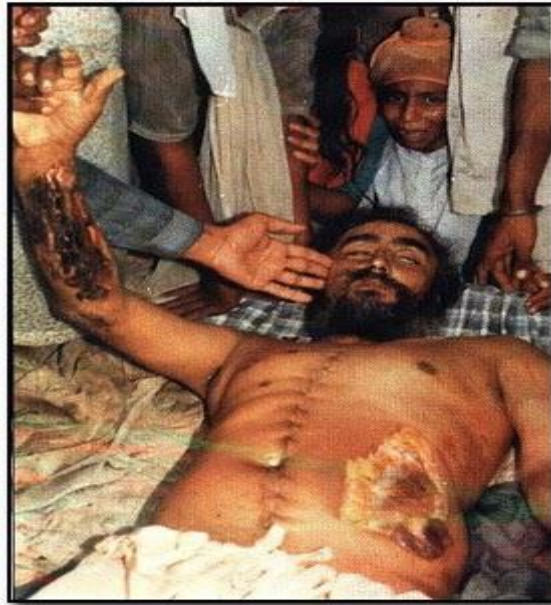
In this kind of torture victims are forced to bend over while holding their legs straight. The person's head is bent down until it cannot go down any further, while the hands are pulled up and held up to the highest point. The hips have to point up. The body in this position looks like the shape of an airplane, which is how this torture derived its name. When it is prolonged it gives severe pain to the victim. This is generally employed for theft suspects and the like, and is used quite often in many police stations in Kerala.

iv. **Heavy Electric Shocks**

Electric shock is another severe painful method of torture. There are different techniques in the electric shock method. One technique is that a person may be asked to urinate into the live electric wire. Due to the urination, the victim gets continuous electric shock through his private part. Second technique is that a person may be asked to sit on a chair with his hands tied up and, then, electric current is passed to him through live wires. Third one is the technique of giving electric shock to the genitals or nipples directly. Electric shock method is a highly painful technique of torture. This method was widely practiced in Kerala during 1970s by the police for the Naxalite hunt.

v. **Burning with Hot Iron Box**

This is a method whereby the police make the iron box (used for pressing clothes) very hot and then, place it on the body parts of the victim. It may, sometimes, be placed on the abdomen or at the buttocks or on the back of the body or even on the private parts. This gives severe pain due to the heat and burn. The below given picture 3 shows the burnt iron box marks on the abdomen of a victim of torture. In *Sampath's* case, Sampath was tortured by burning his buttocks using hot iron box, besides torturing by rocket method.



Picture 1. 2: Showing burnt iron box marks on the abdomen (Source: *frontline Punjabi youth*)⁹

vi. Leg Roller Method

The victim may be made to lie facing the floor. His legs are then bent up and a wooden log/iron rod is kept in between his bent legs and thighs. Then the bent legs are pushed towards his buttocks very forcefully by one or two police men while one policeman



Picture 1. 3: Showing how the torture is employed (Source: *frontline Punjabi youth*)¹⁰

⁹ Available at: <http://frontlinepunjabiyouth.blogspot.com>(Visited on March7, 2011).

¹⁰ Available at: <http://frontlinepunjabiyouth.blogspot.com>(Visited on March7, 2011).

may sit on his shoulder and two others stand on each of the spread hands crushing his fore hands. Due to the crushing of leg muscles and thigh muscles, it may be very painful for the victim. This method is less severe than *uruttal* method as there is no complete crushing of thigh muscles. This method is sparingly used in Kerala.

vii. Making Victims Lie on Ice Blocks

In this method, the victim will be forced to lie on the ice blocks continuously for longer period and three or four police men will be forcing him to lie over the ice blocks. Sometimes, his body will be tied up with the ice blocks. It will create severe pain and irritation on the body because of the stoppage of blood flow due to freezing. As this does not leave any marks on the body of the victim, police frequently use this kind of method to gather information from the accused or witnesses.

viii. Dipping in Water Continuously

In this method of torture, the victim is tied upside down with the help of a rope i.e., with his head down wards and feet upwards, and then dipped his head continuously for a number of times into the below kept big container of water. Due to the continuous and speedy dip in the water with the head down, water may get in to the nose and lungs. It can create severe breathing problems and damage lungs tissues. This method of torture also does not leave any marks on the body of the victim as in the case of ice block torture. This method is sparingly used by the Kerala police. When the case becomes sensational news and media is at the back of the case, torturing may not possible to extract the information. At that juncture this method is used by the Kerala Police so that injuries are not inflicted on the body of the accused.

ix. Cutting off Eyelashes

This method is employed with a view to prevent the sleep of the victim. When the eyelashes are cut off, the victim's sleep is deprived off due the growth of new eyelashes which gives pain for eyelids that makes him unable to sleep. Sleep deprivation may be seen as a less painful method, but when the victim is unable to sleep for days together, it would be torturous and may lead to breakdown of the nervous system and other serious physical and psychological damages. This is used to extract the secrets from hardened and habitual offenders of robbery, theft, *etc.*

x. Pulling Mustache or Beard Hair

Pulling mustache or beard forcefully, or plucking it off is another method of torture employed by the police. Pulling or plucking off the hair from mustache or beard is intended to inflict pain to the victim. If it

is plucked off in group, it can cause bleeding also. Since the mustache or beard is found in soft portions of the body, it gives sever pain for the victim. This is used to extract the secrets from hardened and habitual offenders of robbery, theft, *etc.*

xi. Agony Light

In this method, the victim is kept under the heavy powered light so that he may not be able to open his eyes. This is considered to be a low level torturing method. When excessive or high power lightings are made, it can affect a person's mental condition. This is considered to be a bloodless torture method. This is practiced in modern times by police who does not want to physically torture the suspect or the suspect is a dignitary.

xii. Garudan Thoorkam

In this method of torture, as shown in the Picture 1.4, the victim's arms are tied behind their back, a rope is then tied to the wrists and then, suspended in the air. Placing the victim in this position for prolonged period gives tremendous pain and sufferings. In addition to hanging in this position, sometimes tortured with rods and batons, and in some cases, electric shocks may also be added for extra pain. Suspending a person in



Picture 1. 4: Showing *Garudan thoorkam*. (Source: *gypsypalace*)¹¹

¹¹ Available at <http://www.gypsypalace.com>(Visited on March8, 2011).

this way and giving shocks can dislocate the shoulders of the victim. This is a method commonly employed by the police in many cases for proving cases of robbery, theft, assault, *etc.*

xiii. Stuffing Chilly Powder

In some cases where the detained person is a woman, the police stuff chilly powder into the private part of the woman causing unbearable burning sensation, severe pain and irritation. In a case before the Kerala State Human Rights Commission an *adivasi* woman, Kuppamma, was arrested and illegally detained in custody at *Agali* Police Station, beaten up severely and then chilly powder was stuffed into her private part.¹²

xiv. Finger Nail Torturing

Another painful method of torturing is finger nail pulling. There are different techniques in finger nail pulling. First, the finger nail may be plucked off by using forcing pliers or by a device meant for the purpose (as shown in the picture 4 below). This can cause severe pain and severe bleeding to the victim. The second technique is inserting pins underneath the nail along



Picture 1.5: With the help of a devise the finger nails are removed (Source: gypsypalace)¹³

¹² Case No. 208/11/97-98, National Human Rights Commission, Annual Report 2004-05 (2005), p.37.

¹³ Available at <http://www.gypsypalace.com>(Visited on March8, 2011).

the flesh. This also causes severe pain to the victim. To make it more painful, the police may make the instrument very hot before inserting. This is used to extract the secrets from hardened and habitual offenders of robbery, theft, etc.

xv. False Encounter

In this method, the suspect is caught and, then, shot dead by the police. Later, they make the record of encounter death. There are police who are specialist in false encounters. In some cases the police demand money from the suspect not to be shot dead in encounter. In *Naxalite Varghese's* case,¹⁴ Varghese was caught by police first and then he was taken to *Thirunelli* forests in North *Wayanad* and brutally shot dead on February 18, 1970. This was kept a secret for about three decades until the police constable who shot Varghese confessed about the reality of Varghese murder.

xvi. Other Methods of Torture

Besides the above methods, there are other methods of torture that are employed by the police. In some cases the police may insert iron wires into the male genital holes causing severe pain and bleeding. This method is employed by the police when the arrestee is a suspect in rape case or in a case of molestation of a woman. Another method is inserting pepper into the private part of females. In some cases the police may insert *lathi* into the private part of the female victims. During Communist and Naxalite movement in Kerala, police inserted *lathi* or rod into the private part of many female suspects. At times, male police may insert their private part into the mouth of the female suspect or witnesses. Simple torture by beating or injuring the body is employed frequently by the police. When female prostitutes were caught, the police used to cause burns on their private parts causing severe and unbearable pain to the victims. Custodial rape, gang rape, and molestation of woman victim are common form of torture employed by the police on women.

The above explained the methods are known for employing torture on the victims by the police. It reveals how cruel and barbarous methods are used by the police on the victims violating their human rights and human dignity. Irrespective of the prohibition by Supreme Court,¹⁵ police still continue to employ brutal torture on suspects and witnesses.

¹⁴ *Niyamavedi v. Central Bureau of Investigation*, 1999(1) KLT 56; See also S.Muralidhar, *Public Interest Litigation*, International Environmental Law research Center(1999), p. 487.

¹⁵ *Kishore Singh v State of Rajasthan*, A.I.R. 1981 S.C. 625 (hereinafter referred as "*Kishore Singh's Case*"); *Fancis Coralie Mullin v Union Territory of Delhi*, 1981 S.C.R. (2) 516; A.I.R. 1981 S.C. 746 (hereinafter referred as "*Fancis Carolie Mullin's case*").

1.1.2. Victims of Police Torture

Even though the Supreme Court prohibited any form of torture, the police continue to practice it. Torture and ‘third degree methods’ employed by the police are controversial everywhere in India. Kerala is also not an exception. There are a number of instances in Kerala where arrested persons are brutally tortured by the police and caused death in police custody. *Sampath’s case*,¹⁶ *Udaya Kumar’s case*,¹⁷ *Rajan’s case*,¹⁸ *Vijayan’s case*¹⁹ and *Varghese’s case*²⁰ are the best illustrations for the police torture resulting into the death in police custody in Kerala. The National Human Rights Commission has even taken cognizance in a case in Kerala where the death caused after his release from the police custody. In this case, the Police in *Wayanad* district of Kerala had taken Mr. Hussain on suspicion that he was a gambler, and had beaten him so brutally that his spinal cord broke. Later he was released, but died when he was under treatment in a hospital.²¹ On the complaint of a resident of the locality, the National Human Rights Commission recommended the State Government to pay a sum of Rupees Two lakhs to the next of kin of Hussain as immediate interim compensation. The Commission also directed the State Government to institute criminal action against the concerned police officials for the murder of Hussain, and also to expedite the departmental proceedings against them. The National Human Rights Commission stated that the Government was at liberty to deduct the amount of Rupees Two lakhs from the salary of the guilty police officials. The Kerala Government complied with National Human Rights Commission’s recommendation.

There are instances where victims are admitted to the hospital in Kerala after torture and the Kerala State Human Rights Commission has entertained petitions in this regard. In a case before the Kerala State Human Rights Commission, Mr. V.V. Prabhakaran, Sub Inspector of Police and other Police Constables, went to the petitioner’s house on 30-3-2001 at about 11.30 am, shouted with filthy words and was taken into a jeep.²² Since then, he was assaulted by the Sub Inspector and constables brutally on his back of chest and other parts of the body. Police used abusive language against the other members of the family also. Petitioner was, then, taken to the police station and released on bail on 31-3-2001. On release, he made complaints to Superintendent of Police and Deputy Inspector General of Police. He was, then, admitted to the Medical College, *Thrissur* and treated in the casualty.

¹⁶ *Supra* n.5.

¹⁷ *Supra* n.2.

¹⁸ *Supra* n.1.

¹⁹ *Supra* n.4.

²⁰ *Supra* n.14.

²¹ Case No. 64/11/1999-2000, National Human Rights Commission, Annual Report, 1999-2000 (2000), para.7 (B).

²² Case No. H.R.M.P.1100/2001, Kerala State Human Rights Commission.

No action was taken on his complaints to the Superintendent of Police and Deputy Inspector General of Police. Commission required the Superintendent of Police, *Thrissur* to file a report on the incident, and the report was found not satisfactory by the Commission. Then, the Chief Investigating Officer was asked by the Commission to investigate and Chief Investigating Officer filed report after enquiry stating that the allegations in the petition are true and correct. Hence, the Commission recommended that the Government shall: (i) give necessary direction to Director of General of Police to take disciplinary action against the Sub Inspector, Mr. V.V. Prabhakaran, and Police Constable Yohannan; and (ii) pay an amount of Rs.5000/- as interim relief to the petitioner and recover the same from the erring police personnel. Thus, the Kerala State Human Rights Commission is a support for the parties whose human rights are violated by the police.

It is because of the never ending controversies and the significance of violations of human rights attached with the torture by the police, the researcher endeavoured to conduct a survey to know the extent of torture by police in Kerala and how it affects victim’s health and employment capacity. Table 1.1 below shows the response of the victim of human rights violation by torture.

Table 1.1: Showing the response on human rights violation by torture

Response from victim					Law which is violated
Sl. No	Nature of arrest	Yes (%)	No (%)	No Opinion (%)	
1	The Police tortured me for extracting information	17.24	75.37	7.39	violative of Article 21of the Constitution of India ²³
2	The police tortured me for admitting the guilt	5.88	82.36	11.76	<i>Ditto</i>
3	The police tortured me in retaliation as I stood against abuse of power by police	5.51	87.86	6.63	<i>Ditto</i>
4	The police tortured me due to political influence by the opposite party	8.81	84.2	6.99	<i>Ditto</i>

²³ *Ibid.*

5.	The police tortured me due to bribery by the opposite party	8.09	80.15	11.76	Ditto
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The data in Table 1.1 above shows that police continue torture irrespective of its prohibition by the Supreme Court in *Kishore Singh v. State of Rajasthan*²⁴ in which case the Supreme Court held that torture in any form is violative of Article 21.²⁵ The study reveals that 17.24 percent torture was employed for extracting information. The torture employed by the police due to the political influence of opposite party constituted 8.81 percent, and this occupies only half of the responses of the torture employed for extracting information. In 8.09 cases the torture was employed by reason of the bribes paid by the opposite party to the police and it is more or less equal with response for political influence for torturing i.e. 8.81 percent. In 5.88 percent cases the police tortured for admitting guilt and in 5.51 cases the

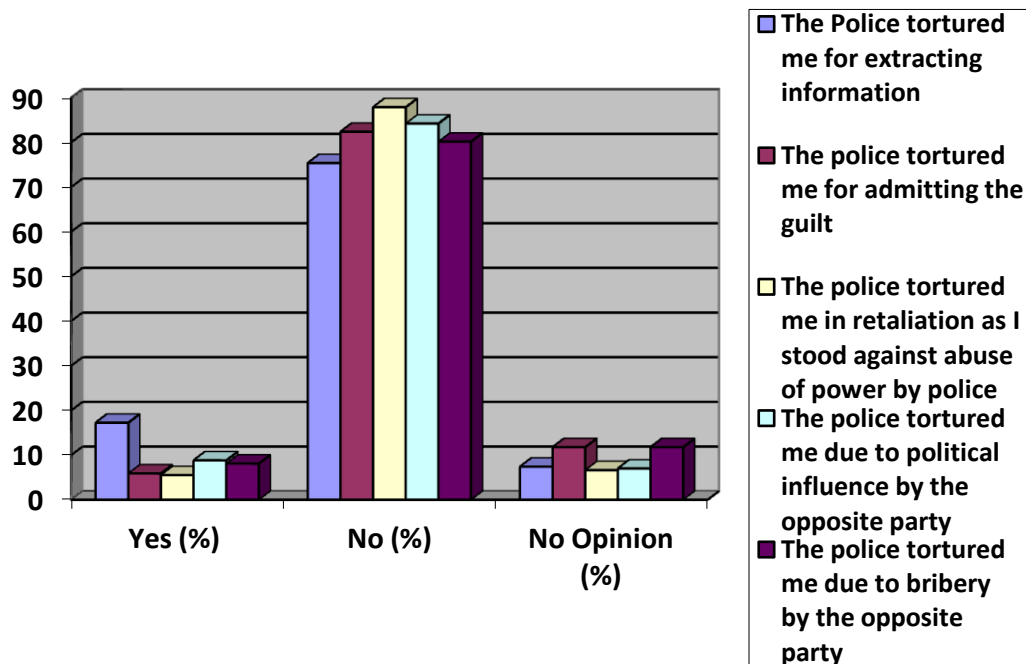


Chart 1.1: Showing the response on human rights violation by torture

police tortured in retaliation for standing against abuse of power by police. Thus, the study reveals that torture by the police takes place very frequently for different reasons in Kerala and it comes around 45.53 percent. This demonstrates that the police torture people in custody quite often irrespective of its prohibition by the Supreme Court as it violates Article 21 of the Indian Constitution.

²⁴ 1981 SCR (2) 516.

²⁵ Id., p. 518.

1.1.3. Impact of Torture on Victim

From time to time, the torture by the police affects the health of the victim. There can be physical and mental injuries due to severe police torture. The impacts generally are fractures, burn injuries, impairment of hearing, loss or reduction of eye sight, psychic trauma, *etc.* The torture may also affect adversely the earning capacity. Due to the significance of the impact of torture on victims, the researcher conducted a survey on it and the details are as shown in Table 1.2.below.

Table 1.2: Showing the response on the impact of torture from torture victims

Response from torture victim					Injury caused by torture
Sl. No	Nature of unlawful arrest	Yes (%)	No (%)	No Opinion (%)	
1	The torture by police has/had bad impact on health	43.12	50.73	6.15	Back pain, impairment of eye sight and hearing, difficulties in walking, <i>etc.</i>
2	The torture affected negatively on earning capacity	12.83	82.76	4.41	Easily exhausted while on work, incapacity, partially incapacitated, <i>etc.</i>

Table 1.2. shows that out of the total number of tortured people (45.53 %: Table9.1), 43.12 percent has/had bad impact on the health due to torture. This include back pain, impairment of eye sight and hearing, fracture of born, difficulties in walking, *etc.* Out of this 43.12

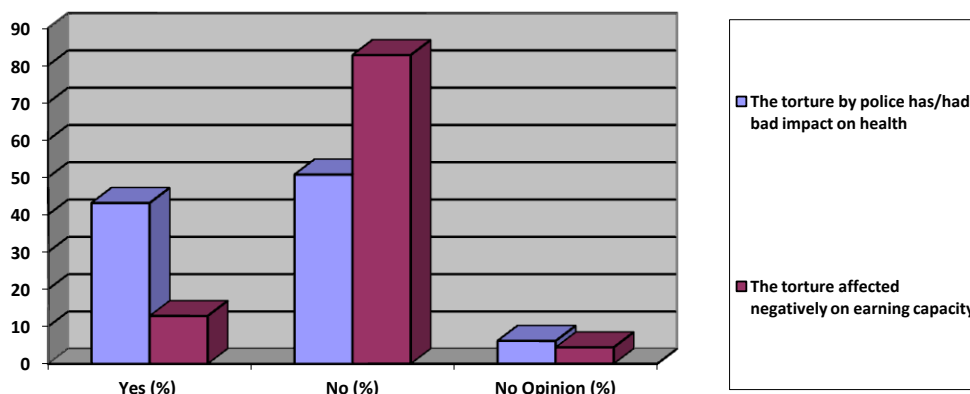


Chart 1.2: Showing the response on the impact of torture from torture victims

percent, 12.83 percent had serious health problem affecting the earning capacity such as easily exhausted while on work, incapacitated or partially incapacitated due to fracture, *etc.* This depicts that the police brutally torture to the extent of affecting badly on the health of the arrestee and also, in some cases, incapacitating them from their daily earnings.

1.1.4. Police Officer’s Opinion on Torture

Though the responses of the victims are as above, the researcher conducted a survey to gather the information on the opinion of the investigating police officers for the research study. The opinions of the police officials are as shown in Table 9.3 below.

Table 1.3: Showing the response on the opinion of police officers about torture

Response from police officers					Reasons for supporting torture
Sl. No	Opinion about torture	Yes (%)	No (%)	No Opinion (%)	
1	Third degree method is necessary to deal with hardened criminals	68.18	20.06	11.76	It is difficult to prove complex cases within 24 hours without employing third degree method
2	Torture is necessary where a person commits a cruel and heinous crime	48.13	36.06	15.81	The criminals may escape from the court by taking advantages of benefit of doubt and torture by the police is the minimum punishment in such cases.

The police officers expressed the view that third degree methods is necessary to deal with hardened and habitual criminals. This view has been affirmed by 68.18 percent of the respondents. They express different reasons for employing torture on criminals. Firstly, it is because of the reason that within 24 hours the accused is required to be produced before the

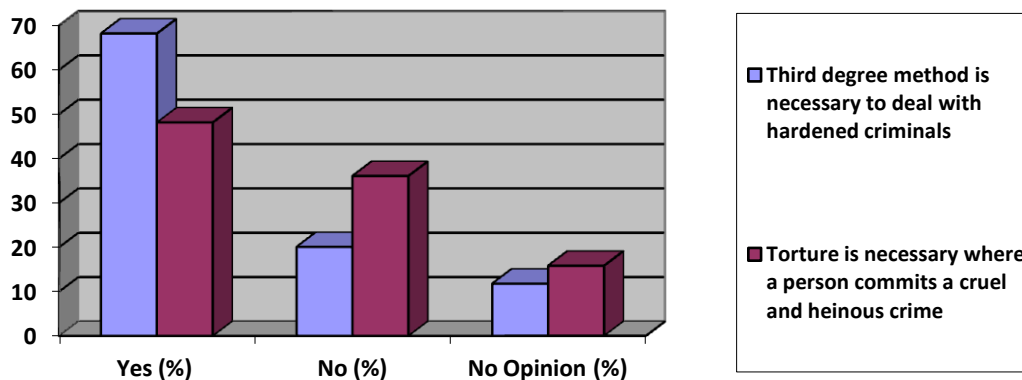


Chart 1.3: Showing the response on the opinion of police officers about torture

Magistrate. This 24 hours custody time²⁶ is too short for eliciting facts and information from habitual and hardened criminals, particularly in complex crimes or crimes which have links in more than one districts or States. Within the short span of 24 hours, police have to investigate the crime, collect evidences from different places, interrogate different witnesses, make recovery of the weapons used to commit crime, prepare statements and records, *etc.* Like this, many crimes may occur in a day. Hence, it would be difficult for completing all the procedures within 24 hours. So the third degree methods are employed or accused may be kept in illegal custody without recording arrest. Further, employing scientific method requires more time. So, illegal custody or torture is an alternative. Many police officials argue that the custodial time of 24 hours to produce the arrestee before the Magistrate should be increased to avoid these problems.

Response of 48.13 percent of the police officers affirmed that torture is necessary where a person commits a cruel and heinous crime. They consider that where a person commits a cruel and heinous crime, if torture is not inflicted on him, there is no meaning in using the police uniform. These categories of the police officers consider themselves that they are the one who give real punishment to cruel and inhuman criminals. They believe that in Court, the criminals may engage good criminal lawyers and may be set free due to the loopholes in law and benefit of doubt. Even if Court punishes, criminals do not suffer any pain and pain is inflicted only by torture. So they admit that torture is necessary in some cases to inflict on cruel and inhuman criminals. This shows that they are more of emotional than of legal.

²⁶ The Constitution and criminal procedure code provides that the arrestee shall be produced before the court within 24 hours.

1.1.5. Expert's Opinion on Torture

Former and current Members of the Kerala State Human Rights Commission opine that the attitude and behavior of the police generally is harsh and are still in the hangover of colonial brutality. They confirm that the basic defect lies with the training that is given to the police. Some Judicial officers also expressed the same view, but added that the work load and working conditions of police further aggravates the situation. Some human rights experts expressed that police brutality is a political trick because politician in either side need a police who is loyal to them and brutal to the public, so that people will feel that politician have power. So the government is not interested in controlling the police. Some human rights activist expressed that even the good people after getting the police training become cruel and inhuman. They added that the training programme is given in such a way that how they become cruel and torturous towards common man.

According to some top level Police officers, it is a false notion that police can detect crimes by using third degree methods only. They added that any corporal punishment is not going to correct a person. They believe that crime is a disease and it has to be cured. Torture is not going to help any person or the society, and police do not have any authority to inflict torture. According to them what is important is that police should follow what is right in accordance the law. Emotions do not help the police. The police must not act in accordance with moral wrong or right but they should act in accordance with what is right or wrong according to the law.

Senior Police Officers of Police Training College, Thiruvananthapuram asserted that in order to change the attitude and behaviour of the police, the Training College has made several human rights courses as part of the basic training programmes. Apart from this, several refresher courses on human rights have also been introduced to educate the lower ranking police officials with a view to reduce the human rights violation by the police. In addition to these, legal consequences of violation of the rights of the accused, the complainants, the victim, etc., are taught to the police to create awareness about these rights. He added that now, due to all these efforts there is change in the attitude of the police.

However, the study reveals that disregard to the prohibition, there takes place torture to a great extent. Majority of the investigating police officers support torture in certain cases such as in the case of hardened criminals and to punish a criminal who commit cruel and inhuman crimes. Nonetheless, top level police officials are of the opinion that the police investigating officers should act in accordance with the law and not with emotions. They categorically declare that police have no authority to punish a person and to be emotional with a particular circumstance. This shows that there exist a gap between the investigating police

officials and top level officers. Unless this gap is filled positively, investigating police officials will continue torturing arrestees.

1.2. *Violation of Human Rights by Unlawful Arrest*

The Third Report of the National Police Commission states that around 60 percent arrests made by the police are unnecessary and without justification.²⁷ The unlawful arrest is made by the police for different reasons. First, it is made with a view to falsely implicate a person in a crime; secondly, it is made in retaliation for complaints of police abuse; thirdly, due to bribery offered by the opposite party; fourthly, due to political influence; fifthly due to the influence of powerful local figures. The Police quite often fail to comply with the protective provisions of the Article 22 of the Constitution of India, requirements of the Criminal Procedure Code in matters of arrest and the directives of the Supreme Court in *D.K Basu v. State of West Bengal*²⁸. Unlawful arrest also derogates a person's dignity, social status and reputation. Considering its impact on the people, the researcher conducted an empirical study by questionnaire to know the extent of unlawful arrests by the police. Table 9.4 below shows the picture of unlawful arrest by the police. In more than 80 percent of the cases, the human rights of the victims were violated by the police since they were subjected to unlawful arrest due to the non-compliance of procedure prescribed for arrest by the law. In more than 80 percent of the cases the police failed to inform the grounds of the arrest to the victims or to give 'notice of appearance' to appear before the police officer or to inform the relatives or friends about the arrest. In 97.79 percent cases the police did not ask whether the matter of arrest should be informed to friends or relatives. In 79.77 percent cases when the arrestee asked for the reason for the arrest, the police abused using filthy language.

In more than 50 percent of the cases police did not show the arrest memo to the arrestee or to his family members or friends, or did not inform that the arrestee can obtain bail since the offence was bailable one, or the police arrested due to bribery by the opposite party. In around 50 percent cases the police made arrest due to political influence of the opposite party. This shows that in majority cases the police do not comply with the arresting procedures properly. In 11.03 percent cases the arrestee was hand cuffed even when the arrestee was obeying the police officer. As per the Supreme Court direction in *Prem Shankar v. Delhi Administration*²⁹ there is a prohibition for hand cuffing unless there exist an exceptional circumstance of suspecting that the arrestee may escape from the custody. The study reveals that the police still use hand cuffing in unnecessary situations even when the arrestee is following the police officer. This is done with

²⁷ Government of India, Third Report: *National Police Commission* (Ministry of Home Affairs, 1980) Para 22, 23, pp. 30-31.

²⁸ A.I.R. 1997 S.C. 610; (*D.K. Basu's case*).

²⁹ A.I.R. 1980 S.C. 1535, (*Prem Shanker's case*).

intent to harass the arrestee by hand cuffing. The responses also show that in more than 40 percent cases, the arresting police official did not wear the name tag. This reveals that in all these cases the police officials violated the Section 41-B (a) of the Criminal Procedure Code which is inserted by the Code of Criminal Procedure (Amendment) Act, 2008 and the Supreme Court direction in *D.K. Basu’s* Case. The details of the study are tabulated in Table 9.4.

1.2.1. Arrest of woman

The arrest of woman was made by male police officer in 25 percent of the cases and in 18.1 percent cases, the arrest was made in the absence of a female police officer. The police officer arrested women accused after sunset and before sunrise in 20.95 percent cases and in 8.09 percent cases the male police officer touched the body of the women arrestee to make the arrest. Thus, the study reveals that there takes place violations rights of women in matters of arrest also. However, the violations of special provisions for women are comparatively less. But the significant of these violations lies in the fact that these violations are committed against the prohibition of the newly added proviso to Section 46 (1) of Criminal Procedure Code³⁰ and the Supreme Court directions in *Sheela Barse v. State of Maharashtra*.³¹The detail of the study is tabulated and given in Table.1.4 below.

Table 1.4: Showing the response on human rights violation due to unlawful arrest

Response from the Victim					Law which is violated in the response “yes”
Sl. No	Nature of Unlawful Arrest	Yes (%)	No (%)	No Opinion (%)	
1	I was not informed of the grounds of arrest at the time of arrest	83.46	13.97	2.57	Article 22 of the Indian Constitution, and Section 50 of the Criminal Procedure Code
2	Police did not give me notice to appear before the police officer before making an arrest	88.60	2.57	8.83	Section 41-A of the Criminal Procedure Code.

³⁰ Inserted by the Code of Criminal Procedure (Amendment) Act, 2008.

³¹ (1983) 2 SCC 96 (*Sheela Barse’s* case).

3	The Police did not inform my relatives / friends about my arrest	80.88	10.29	8.83	Section 41-B of the Criminal Procedure Code, and Supreme Court direction in <i>D.K. Basu's</i> case.
4	The arrest memo was not shown to me or to my family members or friends	67.65	24.98	7.35	Section 41-B (a) of the Criminal Procedure Code, and Supreme Court direction in <i>D.K. Basu's</i> case
5	When I asked the reason for my arrest police abused me using filthy language	79.77	11.40	8.83	Article 22 of the Indian Constitution, and Section 50 of the Criminal Procedure Code.
6.	Even though the offence was bailable, the police officer did not inform me that I can obtain bail	56.61	23.90	19.49	Section 50 of the Criminal Procedure Code.
7	The police officer who arrested me did not wear the name tag with designation	34.92	47.43	17.65	Section 41-B (a) of the Criminal Procedure Code, and Supreme Court Direction in <i>D.K. Basu's</i> Case
8	The police did not ask me whether my arrest be informed to friends or relatives	97.79	2.21	0	Section 41-B (c) of the Criminal Procedure Code, and Supreme Court Direction in <i>D.K. Basu's</i> Case
9	I did not do any wrong, but the police arrested me on false grounds	43.01	18.02	38.97	Sections 192 and 340 of Indian Penal Code
10	Police hand cuffed me even when I was obeying the police officer	11.03	88.97	0	Supreme Court direction in <i>Prem Shankar's</i> case. ³²
11	Police arrested me due to political influence of the opposite party	49.26	40.81	9.93	Sections 192 and 340 of the Indian Penal Code
12	Police arrested me due to	57.73	33.45	8.82	Sections 192 and 340 of the

³² *Supran.29.*

	bribery by the opposite party				Indian Penal Code
13	Even though I am a woman, I was arrested by a male police officer	25.00	70.96	4.04	Section 46(1) of the Criminal Procedure Code, and Supreme Court direction in <i>Sheela Barse's</i> case ³³
14	When I was arrested, woman police was absent on the scene	18.01	79.78	2.21	Section 46(1) of the Criminal Procedure Code, and Supreme Court direction in <i>Sheela Barse's</i> case
15	Even though I am a woman, police arrested me after sunset and before sunrise	20.95	75.75	3.30	Section 46 (4) of the Criminal Procedure Code
16	Even though I am a woman, male police officer who arrested me touched my body to make the arrest	8.09	87.50	4.41	Section 46 (1) of the Criminal Procedure Code

Thus, in summary, the study reveals that the police continue to make unlawful arrest in a large number of cases either one way or the other. These violations are made by the police in clear disregard to the the safeguards of Article 22 of the Constitution of India, requirement of Criminal Procedure Code in matters of arrest, and the directions of the Supreme Court in *D.K. Basu's* Case,³⁴ *Sheela Barse's* Case³⁵ and *Prem Shankar's* Case³⁶. The finding of the study underpins the Third Report of the National Police Commission which stated that more than 60 percent of the arrests are unnecessary and unjustified.

There are many instances where complaints on the unlawful arrest have been filed before the Kerala Human Rights Commission. A best illustration is found in the *K. Surendran's* case.³⁷ In this case, the petitioner, K.Surendran, a sub-contractor, while supervising the cable work done by the labourers, G. Venu, the Sub Inspector of Police and other policemen alighted there in a private jeep, and without disclosing anything started beating him They kicked the petitioner indiscriminately and on sustaining the same he fell

³³ *Supra* n.31.

³⁴ *Supra* n.28.

³⁵ *Supra* n.31.

³⁶ *Supra* n.32.

³⁷ Case H.R.M.P. No.401/2002, Kerala State Human Rights Commission.

down. The Sub Inspector and the other policemen, then, took him into custody and put him on the platform of the jeep. On the way also he was brutally assaulted. After half-an- hour the policemen brought him back. He was admitted in the District hospital and treated for several days. The Kerala State Human Rights Commission obtained the report of Superintendent of Police, *Kottayam* and the report stated that the Sub Inspector only warned the petitioner and not taken him in the custody. On the side of the petitioner three witnesses were examined by the Commission. All of them categorically sworn before the Commission that the petitioner was assaulted by the Sub Inspector and his party without any provocation and took the petitioner in to the jeep and assaulted him. Documentary evidences also were produced by the petitioner. The Commission recommended the State Government to grant an interim relief of Rs.25, 000/- to the petitioner.

1.3. *Violation of Human Rights by Illegal Detention*

Illegal detentions are another controversial area whereby the police commit violations of human rights. As in the case of arrest, in illegal detentions also the police quite often fail to comply with the protective provisions of the Article 22 of the Constitution of India, provisions of Criminal Procedure Code in matters of detention and the directives of the Supreme Court in *D.K. Basu's Case*.³⁸ Illegal detention affects the personal liberty and the dignity of individuals. Considering its impact on the detainees, the researcher conducted a survey by questionnaire to know the extent of illegal detentions made by the police. Table 1.5 below shows the responses in relation to illegal detention.

Table 1.5 demonstrates the responses in relation to illegal detention. More than 60 percent of the respondents affirmed that they were not produced before the Magistrate within 24 hours. What is more astonishing is that in 97.06 percent cases, the police did not inform the arrestees about their right to consult a lawyer. As per the newly substituted Section 54 of the Criminal Procedure Code, the accused person shall be medically examined immediately after the arrest. However, in 56.61 percent cases the police did not make medical examination 'immediately' after the arrest.³⁹ Around 80 percent respondents (78.67 %) stated that the venue of the detention was not notified to the relatives or friends. Clear stipulations are provided under newly inserted Section 41-C (2) of the Criminal Procedure Code, and also in the direction of the Supreme Court in *D.K. Basu's case* to inform the venue of the detention to the relatives or friends, but police frequently violates it. The details of the study are tabulated in Table 1.5.

Table 1.5: Showing the response on human rights violation by Illegal Detention

³⁸ *Supra* n.28.

³⁹ In order to make it more specific what does 'immediately' means, six hours' time was specified in the questionnaire in parenthesis.

Response from the Victim					Law which is violated in the response “Yes”
Sl. No	Nature of Illegal Detention	Yes (%)	No (%)	No Opinion (%)	
1	I was not produced before the Magistrate within 24 hours	60.67	36.76	2.57	Article 22 of the Indian Constitution and Section 56 of the Criminal Procedure Code
2	I was not asked whether I wish to consult a lawyer	97.06	0	2.94	Article 22 of the Indian Constitution, Section 41-D of the Criminal Procedure Code ⁴⁰ , and Supreme Court direction in <i>D.K. Basu's Case</i>
3	I was not examined by a doctor immediately (within six hours) of my arrest	56.61	23.90	19.49	Section 54 of the Criminal Procedure Code, ⁴¹ and Supreme Court direction in <i>D.K. Basu's Case</i>
4	Venue of my custody was not notified to my relatives or friends.	78.67	11.76	9.56	Section 41-C (2) of the Criminal Procedure Code, ⁴² and Supreme Court direction in <i>D.K. Basu's Case</i>

⁴⁰ Inserted by the Code of Criminal Procedure (Amendment) Act, 2008.

⁴¹ *Ibid.*

⁴² Inserted by the Code of Criminal Procedure (Amendment) Act, 2010.

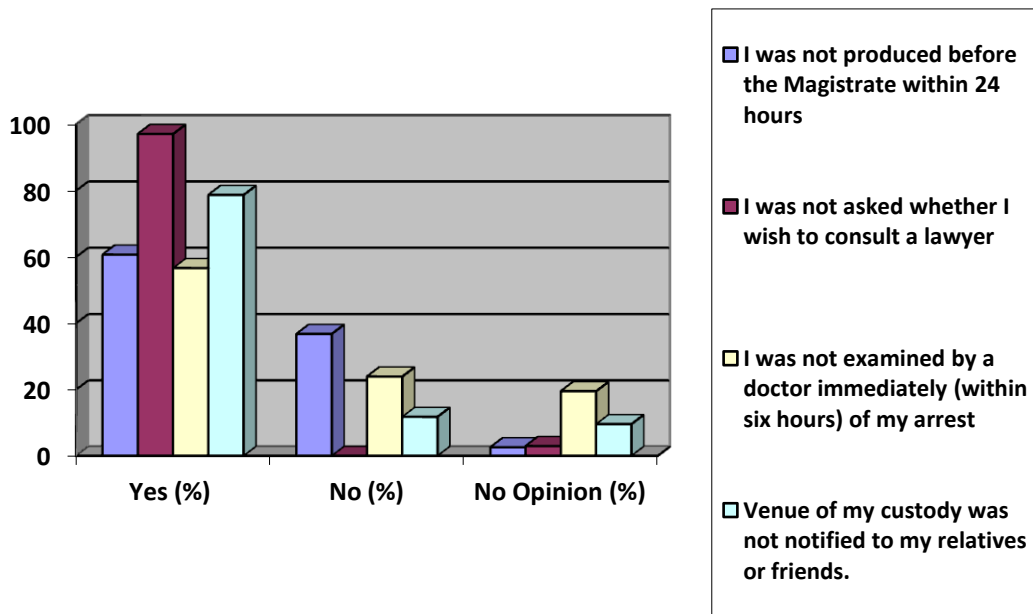


Chart 1.4: Showing the response on human rights violation by Illegal Detention

Thus, the study reveals that there take place illegal detentions very frequently in Kerala. They take place in clear violation of the Article 22 of the Indian Constitution, Section 41- D of the Criminal Procedure Code⁴³and Supreme Court direction in *D.K. Basu's Case*.

1.4. False Implication

In some cases, the police may falsely implicate an innocent person. This happens when police have retaliation against a person in some other crime. When a person accused in a crime takes anticipatory bail, the police may fabricate another case to arrest and detain that person. It may also happen due to political influence against rival groups. Due to the strength of bribes paid to the police, the police may falsely implicate a person. In order to hush up the abuse of power by the police, the police may falsely implicate the victim or the relatives of the victim or witnesses to persuade them to be on their side. In this way police violate the human rights of people.

Mani who was arrested along with Udaya Kumar who was tortured and killed in police custody in the Fort Police station,⁴⁴ narrated that they were sitting at *Sreekanteswaram* park in Thiruvananthapuram when two police constables appeared and asked whether they were drunk and then the police put their hand into Uday Kumar's and his pocket. Udaya Kumar had around three thousand rupees in his pocket for buying cloths for his mother for the then forthcoming *onam* festival. Immediately, they were taken to the Fort police

⁴³ *Ibid.*

⁴⁴ WP(C) No. 24258 of 2007(K), High Court of Kerala.

station and after taking money they were set free. But Udaya Kumar demanded the money back. The police got enraged and hence, tortured and killed Udaya Kumar there. After killing Udaya Kumar, the police registered a false case of theft against Mani and Udaya Kumar in order to reduce the aggravation of causing death of Udaya Kumar. This is only a single instance but there takes place a number of cases where the police falsely implicate innocent persons. Considering its significance, the researcher included the statement related with false implication in the questionnaire. The Table 9.3 above shows the data related with false implication. In 40.01 percent of the cases, the respondents affirmed that they were falsely implicated. False implication affects the rights and liberties of a person and also is a crime under Sections 192 and 340 of the Indian Penal Code. However, police continue to practice it.

The *Savithri*'s case before the Kerala State Human Rights Commission depicts a case of this kind.⁴⁵ In this case the petitioner, Savithri, alleged that her son, Biju, was falsely implicated as accused in a case of *Thrikkunnappuzha* Police Station by the Circle Inspector, *Harippad*. In connection with the said crime he was taken in to custody at 10.10 am on 25-6-95 along with four others. While under police custody, Biju was tortured by the police both mentally and physically. He was then produced before the Judicial First Class Magistrate Court, *Harippad*, and thereupon he was kept under judicial custody for 60 days. Thereafter, he was released on bail. Upon complaint, the case against Biju and others were reinvestigated by the Crime Branch of the State Police and found that Biju had not involved in the incident and he was innocent and removed from the list of accused on 25-7-1997. The petitioner specifically alleged that even after he was removed from the array of the accused by the Crime Branch, the Police personnel were threatening him that they will implicate Biju in false cases. They used to go to his residence and place of work and used to torture him. On account of the torture and erroneous action of police Biju had suffered mental anguish and physical deprivation and he committed suicide on 19-6-2000. The Commission observed that even though the loss of her son cannot be compensated in terms of money, yet it recommended Government: (1) to pay an amount of Rs.100, 000/- as an interim relief to the petitioner; and (2) to provide Government job to any of the dependents of deceased Biju.

In *Mohanan*'s case before the Kerala State Human Rights Commission, a petition was filed against fabrication of false crimes, harassment and torture committed by the Sub Inspector of Police.⁴⁶ In this case Mr. Vyasam Pillai, Sub Inspector of Police, accompanied by a group of police constables went to the house of the petitioner, Mr. Mohanan and searched his house, took away his vehicle R/C book, pass book, documents, *etc.* He proceeded to the police station along with his Advocate and got back the valuables taken

⁴⁵ Case No. H.R.M.P. 2259/2000, Kerala State Human Rights Commission.

⁴⁶ Case No. H.R.M.P. 255/2002, Kerala State Human Rights Commission.

from his house, but he was not permitted to go out from the police station. He was detained in the station till 3.30p.m.on the same day and implicated in Crime No.328/2001. As he was a patient of peptic ulcer and as he was remaining in the police station without any food or drink, he started vomiting. He was then hospitalized. On 31.8.2001 the Circle Inspector of Police, Mr. Shahul Hameed came to his house and taken him to *Harippad* Police station and detained there and falsely implicated as accused in an *Abkari* case along with two others. Another case, Crime No.329/2001 under *Abkari Act* also was registered against him, after planting a few litres of spirit in a plastic container at his residence in the same night. He was then produced before the Magistrate and remanded to judicial custody.

The Kerala State Human Rights Commission required the Chief Investigating Officer to inquire and file report on the matter. The Chief Investigating Officer filed report which set out that the petitioner was falsely implicated in Crime No.328/2001 of *Harippad* Police station, the seizure of illicit liquor from the house of the petitioner in the night of 31.8.2001 also is a false story and the FIR in Crime No.329/2001 also is a fabricated one. The Commission expressed its concern over the matter that the police Officers who are duty bound to protect the life, liberty and property of every citizen, but are fabricating false case against any citizen to wreak vengeance. The Commission recommended the Government that (i) disciplinary action may be taken against the Circle Inspector of Police, Mr. Shahul Hameed and Sub Inspector of Police Mr. Vyasam Pillai; (ii) a vigilance enquiry may be made regarding the allegation of demand of bribe; and (iii) an amount of Rs.25, 000/- each be recovered from the counter petitioners, Circle Inspector and Sub Inspector, and pay to the petitioner for the mental agony suffered by him.

The police falsely implicate even witnesses simply in a crime. Due to this reason, witnesses, in many cases, do not come forward to inform the police about the occurrence of crime. Thus, the police commit violation of human rights by falsely implicating persons in some crime which they have not committed.

1.5. Failure to take Action

The Police, in many cases, do not register cases nor conduct proper investigations on the complaints of the victim. Sometimes, the action taken may not be sufficient in the circumstances of the case. The Police inaction generally affects the victim of crime. *Satheesh Kumar's* case⁴⁷ decided by the Kerala State Human Rights Commission is a glaring illustration for depicting the extent of failure in taking action by the police. In this case, some culprits who were the illicit liquor sellers caused the death of one Satheesh Kumar on 1-11-1999 at *Harippad* in the presence of the police, but the police did nothing for its prevention. Edavattom G. Vasavan, an Advocate, complained to the Kerala State Human Rights Commission on watching the news items about the police inaction. The Commission called for the report of the Superintendent of Police,

⁴⁷ Case No H.R.M.P. 1192/1999, Kerala State Human Rights Commission.

Alappuzha. Since the Commission felt that the report of the Superintendent of Police is unsatisfactory, the Chief Investigation Officer of the Kerala State Human Rights Commission was asked to investigate the matter and file report. The report of the Chief Investigation Officer had shown that on sustaining injuries Mr. Satheesh Kumar fell unconscious and the accused obstructed in taking the injured to the hospital for about 20 minutes and that the incident occurred only 150 meters away from the police picketing. The Commission observed that there was gross negligence and inaction on the part of the police and, consequently there is vicarious liability on the State. Hence, the Commission recommended that the State is requested to grant an interim relief of Rs.200, 000/- to the father and mother of the deceased. The Government complied with the recommendation of the Commission and paid an amount of Rs.2, 00,000/- to the father and mother of the deceased Satheesh Kumar towards interim relief.

On many occasions, the police do not conduct the investigation properly either because they are negligent or because they make themselves negligent due to bribery by the opposite party. One Mr. Eachen Antony alleged that the police did not properly and fairly investigate the death of his son, Tintu, and the police simply referred the case as drowning and his *bona fide* belief was that somebody murdered his son.⁴⁸ As per the direction of the Commission, the Chief Investigating officer investigated the matter and reported that the death cannot be presumed as accidental and proper investigation has not been conducted by the police officer. Hence, the Commission recommended the State Government to reinvestigate the death of Tintu either by the Crime Branch or Central Bureau of Investigation.

The inaction on the part of police violates the human rights of people as it may adversely affect their right to life, liberty and property of individuals. Due to its significance, the researcher conducted a survey on the victims/complainants to know the extent of police inaction. 42.86 percent responded that there was police inaction or the action taken was not satisfactory for the victims/complainants. There are various reasons for police inaction or failure to take action. First, the police officials are under pressure of workload. In order to reduce the work load the police may not register new cases. Second, there may be political influence not to register cases against some particular persons. Third, some crime victims who are poor cannot afford to pay bribes that the police ordinarily demand for registration of First Information Report. This way police violate the human rights of the victim of crime.

2. Conclusion

The Supreme Court has prohibited torture as violative of Article 21. However, the study reveals that torture by police is a common phenomenon in Kerala. The police employ a range of methods of torture such

⁴⁸ Case No. H.R.M.P. 2280/2000, Kerala State Human Rights Commission.

as *uruttal*, rocket, aeroplane, ice block method to simple beating. The study reveals that 17.24 percent tortures are employed for extracting information, 8.81 percent are employed due to the political influence of the opposite party, 8.09 percent by reason of the bribes paid by the opposite party, 5.88 percent for admitting guilt and 5.51 percent as retaliation for standing against abuse of power by the police. Torture also affects health and earning capacity. 43.12 percent of tortured victims had bad impact on health, and for 12.83 percent of them, the torture affected negatively on the earning capacity.

However, the opinion of the majority investigating police officers favours torture. 68.18 percent responded that torture is necessary to elicit facts from hardened and habitual offenders. It is submitted that they consider that the accused is the best source of information and by using third degree methods information about the crime can be elicited from the accused. This shows that they totally ignore the 'right to silence' guaranteed to the accused by the Constitution of India. They also consider torture as a short cut method. Majority police officers responded that the custody time of 24 hours for producing before the Magistrate is too short and within the short span of 24 hours, it is difficult for the police to complete the investigation, interrogation, collection of evidences, preparation of statements and records. For all these, more time is required and hence, the police employ short cut methods of torture rather than going for a detailed investigation. Further, 48.13 percent of the police officers affirmed that torture is necessary where a person commits a cruel and heinous crime. It is submitted that this category of police officers consider that they are the one who give real punishment to cruel and inhuman criminals. They consider that in the court, the criminals may engage good lawyers and be able to set free themselves due to the loop holes in law and the benefit of doubt. They believe that even if the court punishes, criminals do not suffer any pain, and the pain is really inflicted only by torture. So they admit that torture is necessary in some cases on hardened, cruel and inhuman criminals.

However, the top level police officials do not support this view. They opine that police have no authority to torture any person. They suggest that the police should act in accordance with law, not by emotions. They assert that the police are supposed to do what is legally right and not what is morally right. However, the investigating police officers resort to torture. It is submitted that there lies a wide gap between the top level police officers and investigating police officers and this gap is to be removed by educating the investigative police officers.

Some judicial officers opined that in some cases simple torture may be necessary and can be admitted if it is in a human way. This view is formed due to the growing crimes in the society and the prevalent socio-political situations in the State. It is submitted that in order to curb the growing crimes,

sometimes, simple beatings by the police can be justified; however, the fear is that if such permission is given to the police, the police may misuse it on innocent persons. Hence, the purpose would be defeated.

There are legal and procedural requirements for arrest. However, the study reveals that in majority cases police continue unlawful arrest. Around 80 percent cases the police commit violation of human rights such as not informing the grounds of arrest, not issuing the notice of appearance before making an arrest, not informing the relatives or friends about the arrest and not asking whether the arrest be informed to any friends or relatives. Besides, in around 50 percent cases the police commit violations of human rights such as not showing the arrest memo to the arrestee or his family members, not informing the arrestee that he can obtain bail even though the offence was bailable one or the police arrested due to bribery or political influence by the opposite party.

There is a prohibition for handcuffing unless there exists an exceptional circumstance of suspecting that the arrestee may escape,⁴⁹ but study reveals that police continue to hand cuff persons (11.03 percent of the arrestees) unnecessarily. The study also reveals that around 25 percent violation of special rights of women also takes place in Kerala. Considering all the above facts it is submitted that the extent of unlawful arrest in Kerala is very high and the situation is grave.

Illegal detention by the police is also very common in Kerala. The study reveals that in more than 60 percent cases arrestee were not produced before the Magistrate within 24 hours. What is more astonishing is that in 97.06 percent cases, the police did not inform the arrestees about their right to consult a lawyer. In majority cases, the police did not inform the venue of detention (78.67 percent) to the relatives or friends. These are clear violation of the Article 22 of the Indian Constitution, Section 41- D of the Criminal Procedure Code⁵⁰ and the Supreme Court directions in *D.K. Basu's Case*; but the police continue to practice it.

False implication of innocent persons in a crime by the police and Failure in taking action on complaints are also crucial in relation to human rights violations by the police. The study reveals that in a considerable number of cases the police falsely implicate (41.01 percent) people in the crimes or they either failed to take action on the complaint or the action taken by the police was insufficient (42.86 percent).

Thus, in summary, the study reveals that there takes place violation of human rights by the police in Kerala State in different ways such as unlawful arrest, illegal detention, torture, false implication, failure in taking action on complaints, *etc.* The extent of violation is very high in unlawful arrest and illegal detention.

⁴⁹ *Supra n.32.*

⁵⁰ Inserted by the Code of Criminal Procedure (Amendment) Act, 2010.

The police recurrently employ third degree methods, even though torture is prohibited. False implication and failure to take action on complaints are also not uncommon. These violations take place irrespective of Constitutional guarantees, criminal procedural requirements, and the direction of Supreme Court in different cases. Hence, it is submitted that the major problem lies not with the laws but with the implementation of laws.

Biography:



Dr. H. Abdul Azeez was born in Kerala, India in 1963. He has taken his Ph.D. in Law from Kerala University, India with University Grants Commissions' Junior Research Fellowship. He took his Second LL.M. with full fellowship in comparative constitutional law from Central European University, Hungary, Europe in 2008 and first LL.M from University of Kerala in Constitutional Law in 1991. He took his LL.B. and BSc. (Hons.) in Chemistry from Aligarh Muslim University, India in 1984 and 1988 respectively.

He is currently working as the Head of Department (Law) at Kerala Police Academy, Thrissur, India. Earlier, he worked as Judicial Magistrate, Advocate, and Assistant professor of Law (Government Law Colleges) in Kerala, India. He has experience as Associate Professor of Law in Africa, Research Assistant in Redress Trust, London and Legal Advisor in Children's Rights Alliance for England, London. He has attended summer training on "Teaching Law, Human Rights and Ethics" with full fellowship conducted by Columbia University, USA and Public Interest Law Institute, Budapest, Hungary. He is the author of 'Jurisprudence', Trivandrum, Kerala, India, Talent Publications, 2003. His book on 'Protection of Human Rights from the Police- the Legal Imperatives', Agra, Uttar Pradesh, India, Pioneer Publications, 2012, is in press. His Article 'Cloning, *Ijthihad* and Islamic Jurisprudence' is published in *Mindanao* Legal Briefcase, Philippines (2012).

Dr. Azeez is a life member of Human Rights Protection Council, Kerala and is also a life member of Crescent Educational Service Trust, Kerala. He has worked as Executive Member of Ethiopian Human Rights Council for five years. He was nominated for the Best Teacher Award of the Hawassa University, Awassa, Ethiopia in 2005. He has also worked as Consulting Editor of Kerala Criminal Cases Law Journal and Panel Writer of Kerala State Women's Commission, India.