

Contributory torture

Dr. Munawwar Husain, MBBS, MD, DNB, MNAMS*

Sir,

Contributory torture is a novel concept surviving in the domain of unshakeable reality. Its reference is not found in the literature despite extensive search.

The word 'contributory' denotes: "of the nature of or forming a contribution: entering, giving, occurring or acting as a contribution, share, or aid toward effecting an end or result".¹

Taking a cue from the established "contributory negligence" which is defined as:

1. "Contributory negligence applies solely to the conduct of the claimant alone. If the claimant is guilty of an act or omission, which has materially contributed the matter comes within the concept of contributory negligence and courts are enjoined to apportion the loss between the parties as the facts and circumstances justify".²
2. Lord Denning points out that "a person is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonably prudent man, he might hurt himself; and in his

reckonings he must take into account the possibility of others being careless".³

Hence, contributory torture may be defined thus: "the interrogator's outward display of defiant behavior/attitude that instigate provocation in the interrogator's mind-set at that point of time rendering at risk the interrogee to enhanced physical or mental torture thereby apportioning his share in the entire process and making him responsible for the outcome of the event".

A short survey was conducted with a fixed agenda to find out certain aspects about torture. Six police officers of the rank of inspectors and in charge of police stations in the district were questioned separately and on different occasions about the controversial role of the suspect during interrogation. Almost all the police officers agreed unanimously that the suspect's behavior motivates their desire to inflict or not to inflict pain. All interrogations begin with a primer; a desire to obtain confession – a true confession. The course of investigation is determined by probable factors, most importantly the suspect's cooperation during the interrogation sessions. No doubt the environment itself is coercive for the suspect. However, it is up to the suspect to mitigate the threateningly pervasive environment within the room. These police officers are entrusted the unpleasant task of investigation with

*) Department of Forensic Medicine
JN Medical College
Aligarh Muslim University
India.
husain_uia@yahoo.co.in

practically no leverage because they are obsessed to produce confession within a very restricted time frame. Some people may condone the investigation officers' behavior by demarcating emergency-induced "good torture" from that of leisurely practiced "bad torture",⁴ the former being the offspring of unpopular "situational ethics".

However, all investigating officers linked excess torture to provocation. They analogized it to incidences like mob destruction, arson and unruliness. The more out-of-control the mob gets the more it incites equal provocation among the police controlling it. Citing the above situation they opined that initially there is modest reaction from the police – chasing, use of baton, high pressure water treatment, tear gas, rubber bullets and ultimately firing of bullets. According to them if there is resistance from the interrogee – whether ephemeral or persistent – much would depend on his personality and training. The level of resistance put forth by the interrogee cannot be predicted neither it can be quantified. Some break down under intense pressure, others do not – the so-called hardened type. The police are under pressure to elicit information – fast, reliable, and collaborative. This single factor itself coupled with steadfast stubbornness by the suspect provokes the police to resort to out-of-the-book methods. The investigation officers further elaborated that conventionally the police try to remain within humane limits because initially they try to separate chaff from the grain – the innocent from the guilty. The police patience runs thin very fast. They have the time-tested method under which the police conduct raids at the residence of the suspect in the wee hours and thrash the person indiscriminately but in a controlled way. Reason behind this treatment is to break the resistance and the spirit at the very beginning not only of the suspect but also of the people

cordoning him so that later process becomes unhindered. A similar but modified treatment is meted out to the suspect in confinement. In certain cases the courts have carefully examined the use of treachery and deceit in the interrogation of suspects, and drew a very clear distinction between verbally misrepresenting evidence and creating a fictitious piece of evidence.⁵ Nevertheless electronic recording of police interrogation would be a welcome move.⁶ It thus transpires that provocation is an entity that cannot be wished away by the fanciful magic wand no matter how much we talk of protecting human rights. There is need to devise ways and means to reduce anger and retaliation against naked provocation. The interrogators must realize that they are the law and that the suspect represents the Wild West Outlaw – demeaning and disrespectful towards the law.

The same knowledgeable investigation officers opined that the provocation can be minimized if not altogether eliminated.

They suggested that:

1. The police must be trained for anger control by regular in-service training programmes.
2. Simulation exercises must be done to bring out the unruly from the police force itself.
3. Counseling by psychologists must be the regular feature, especially to those who are involved in the interrogation process.
4. Psychiatric/sadistic cases must be identified from within the police force itself and they must be sidelined from the interrogators task group.
5. Laws against torture must be specific, stringent and practical without too many legal frills attached. The torture cases must be tried as per the torture laws (to be framed if not already in place) and not against general criminal provisions.

This short communication is presented as a sounding board to the community of researchers from diverse disciplines to realize that if torture cannot be eliminated it can be brought to a minimal level. Despite international treaties, conventions, and covenants, and so-called “watch bodies”, torture has come to stay and indications are that it is spreading rampantly. No civilization whether advanced or emerging from the cocoon of ‘primitiveness’ can boast of doing away with torture totally. Therefore, instead of fictionalizing the rock-solid reality it would be better if it is met with head-on resistance. Single counter-activity would not be able to control torture because too many improbabilities are involved.

At the end it is postulated that the genie of contributory torture exist. Our collective denial wouldn’t change the position. Further studies in different perspectives on this aspect would be profitable to the entire world. This short communication is an attempt on my part to kindle the flagging effort against torture from sinking into an unroused dormancy. Correspondence on this aspect is welcome.

Notes and references

1. Webster’s third new international dictionary (unabridged). Vol I. Merriam-Webster Inc., 1981.
2. Andhra Marine Exports (P) Ltd. v P. Radhakrishnan AIR 1984 Mad 358; (1984) 2MadLJ12; 1984 ACJ335; (1984) 2 TAC 114.
3. Jones v Quarries Ltd. [1952] 2QB608; [1952] 1TLR1377; 96 Sol Jo 344.
4. Jesberger F. Good torture, bad torture? Journal of International Criminal Justice 2005;3:1059-73.
5. State v Patton 826 A. 2d 783, N.J. Super. AD., 2003.
6. Report on the electronic recording of police interrogations submitted jointly by The American Bar Association Criminal Justice Section and The New York County Lawyers’ Association. Research Series. London Home Office Police Department, 2002. Available from: www.reid.com/pdfs/NYlegalarticleonvideotaping.pdf (28 September, 2011).