

The Many Lives of Custodial Violence

Madras Presidency, c. 1860-1960

Police torture was the subject of intermittent discussion – among government officials and policemen, in judicial records and newspapers – in colonial and postcolonial Madras Presidency, in southern India.¹ Each of these documentary archives, however, suggests a somewhat different narrative of torture. Government records chronicle a series of measures implemented to free the native constable from traditional systems of investigation that entailed coercion; newspaper reports are peppered with anecdotes of police oppression; victim testimonies bespeak police brutality; while court judgments indicate that an overwhelming number of torture allegations were simply incorrect.

This chapter attempts to make sense of these divergent accounts of what took place within police custody i.e. the 24 hours that a criminal suspect spent inside a police station. Although these events were secret from the public eye, they escaped the walls of the police lock-up to enter rumour mills, newspaper reports, court testimonies, and government reports. Not surprisingly, the account of custody got bent in this passage, to spawn different stories of custodial violence. Colonial officials viewed the moment of custody through the lens of native backwardness, which they tried to amend towards ending police torture. Subaltern victims saw custody as an expression of state violence, of which policemen were an integral part. Newspapers in the nineteenth century expressed nationalist outrage against a colonial government, while those in the postcolonial period raged against the incumbent Congress and ADMK governments.²

In contrast to governmental actors, newspapers, and the people, who recognized police torture, albeit in varying forms, judicial courts simply could not ‘see’ custodial violence. This was the result of evidentiary protocol which became firmly established by the early twentieth century and remained unquestioned until the 1970s. Specifically, this chapter demonstrates how courts increasingly relied on

¹ After independence, Madras Presidency was known as Madras State, and later Tamil Nadu. For consistency, I simply use “Madras” in this paper.

² Ruling political parties in Tamil Nadu.

medical evidence, at the cost of witness testimony, in cases of torture. This resulted in the inevitable dismissal of charges against policemen that couldn't be proved scientifically. The space of custody was thus an 'invisible' one – literally and through the protocols of judicial procedure. Consequently, torture was a crime that was rarely punished. Despite being recognized as a problem by the government and by local communities, the issue of police torture was never effectively addressed. I argue that it was not native ineptitude, colonial indifference, or lack of political will from postcolonial governments, but rather invisibility to judicial process that explains the continuity of police torture in Madras from the 1860s to the 1960s. The violence of torture was embedded in the violence of law enforcement which first created a space of police custody, and then made this space invisible to judicial process.

The judicial process with which torture in Madras was entwined was, I argue, specifically a colonial one. Rules governing police custody were informed by assumptions on the backwardness of native society. Courts, likewise, privileged scientific evidence over witness testimony in a society perceived as prone to perjury. These practices survived into the postcolonial period as well.

My period of study is bookended by the Madras Torture Commission's inquiry of 1855 and the Indian Emergency of 1975-77. In 1855, there was severe outcry in the British Parliament about the practice of torture in Madras Presidency under the rule of the English East Indian Company (henceforth "Company"). The British government responded by appointing a Commission, which received hundreds of depositions from across the Presidency testifying to the prevalence of police torture. In an independent chain of events, the British Crown took over the administration of India from the Company two years later. With change in government, the terms of the debate on torture also shifted: torture began to be associated with the native constable rather than with the colonial government and its high revenue demand. In 1975, the ruling Indira Gandhi government declared national Emergency in independent India, entailing a suspension of several civil liberties. The 18 month-long Emergency period witnessed a spate of political detentions and police torture across the

country. In the wake of the Emergency, there was an upsurge in the human rights movement in India, which began to address the issue of police torture differently than in the previous century.

Company Rule and the Torture Commission of 1855

In the last two decades of the eighteenth century the English East India Company expanded southward from its base in Fort St. George, Madras, and by 1801, it had consolidated its rule in the Tamil speaking districts of Madurai, Tirunelveli, and Ramanathapuram, where this study is located.³ The Company ruled over these provinces until the Revolt of 1857, when power was transferred to the British Crown. Ranajit Guha, who argues that colonial authority was throughout marked by ‘dominance without hegemony,’ nevertheless maintains that the first half century of Company rule was more so one of brute force than the following century.⁴ In line with Guha’s periodization of colonial rule, the exercise of torture until the mid-nineteenth century was “universal, systematic, and habitual.”⁵ It was also quite public: victims were made to stand for hours in the sun, sometimes with a stone placed on their back, or flogged in public.⁶

Subordinate officers of the government used torture for two purposes in the first half of the nineteenth century: to extract an inordinately high land revenue from peasant cultivators, and to extort confessions from suspects in police cases. However, the Company resolutely disavowed allegations that torture occurred under its rule.⁷ Finally, in 1855, following harsh criticism in English newspapers and in the British Parliament, the government instituted a commission to investigate cases of torture in the Madras Presidency.⁸ The findings of the Commission, published as a report, more than amply validated the allegations that had been made. Torture was systematically practiced in Madras

³ Ramnad would be carved out as a separate district from Madurai only in 1910.

⁴ Ranajit Guha, *Dominance without Hegemony : History and Power in Colonial India*, Convergences (Cambridge, MA: Harvard University Press, 1997).

⁵ Malcolm Lewin, "Is the Practice of Torture in Madras with the Sanction of the Authorities of Leadenhall Street?," (Westminster 1856).p. 4

⁶ *Report of the Commissioners for the Investigation of Alleged Cases of Torture in the Madras Presidency*, (Madras, 1855).

⁷ "Is the Practice of Torture in Madras with the Sanction of the Authorities of Leadenhall Street?."

⁸ For a detailed discussion of the commission’s findings, see Douglas Peers, "Torture, the Police, and the Colonial State in the Madras Presidency, 1816-55," in *Criminal Justice History - an International Annual*, ed. Louis A. Knafla (Connecticut, London. : Greenwood Press, 1993).

Presidency, with the connivance of European officials. The Commission concluded that police torture occurred less frequently than did torture for revenue extraction, but that it prevailed “in a much more aggravated degree... the modes resorted to in the former appear to be more acute and cruel.”⁹

In a partial defense of the Company, the Commission asserted that torture was a native practice, “knowing as [they did], the historical fact, that under the Governments immediately preceding our own, torture was a recognised method of obtaining both revenue and confessions.”¹⁰ The Company’s onus, consequently, was simply to show how successful they had been in eliminating this practice – the notion that barbaric violence would inevitably decline under enlightened British rule suffused the report. The Company and the Commission shifted the blame for practicing torture on to native subordinates, whom, it was alleged, did so despite the fact that their European superiors did not countenance it.¹¹ The principal grievance raised by the Commission was, in fact, the extraordinary lack of judicial redress that followed complaints of torture.

Critics of the Company, however, asserted that the prevalence of torture was neither an aberration nor an unfortunate residue of past governance, but could be attributed directly to its rule. Malcolm Lewin, erstwhile judge at the Madras Foujdari Adalut, and the Earl of Abermarle, of the House of Lords, were two of these.¹² They claimed that torture “if not positively encouraged by the authorities in Leadenhall Street, [had] been culpably connived by them.”¹³ The principal critique they raised was that land was over-assessed under Company rule: “when rent could only be obtained by means of torture, it might safely be assumed that the land was rented too high.”¹⁴ They also argued that

⁹ *Report of the Commissioners for the Investigation of Alleged Cases of Torture in the Madras Presidency*. p. 63

¹⁰ *Ibid.* p. 14

¹¹ *Ibid.* p. 70. “We are very far from seeking to cast any unfounded imputation upon either the Government or its European officers. We think that the service is entitled to the fullest credit for its disclaimer of all countenance of the cruel practices which prevail in the Revenue as well as in the Police department. We see no reason to doubt that the Native officials from the highest to the lowest are well aware of the disposition of their European superiors...”

¹² Foujdari Adalut was the Supreme Court of Madras. Lewin, "Is the Practice of Torture in Madras with the Sanction of the Authorities of Leadenhall Street?." Earl of Albemarle William Coufts Keppel, "Speech of the Earl of Albemarle on Torture in the Madras Presidency, Delivered in the House of Lords, 14th April 1856," (London 1856).

¹³ Lewin, "Is the Practice of Torture in Madras with the Sanction of the Authorities of Leadenhall Street?." p. 4. Leadenhall Street was where the office of the East India Company was located.

¹⁴ William Coufts Keppel, "Speech of the Earl of Albemarle on Torture in the Madras Presidency, Delivered in the House of Lords, 14th April 1856." p. 12

native policemen were paid very low wages but pressured to apprehend offenders. This made their task difficult and they resorted to the use of force to make convictions.¹⁵

Although the Company could shift part of the blame for the widespread prevalence of torture onto the shoulders of its native subordinates, the charge of over-assessment of rent lay squarely at its door. To that extent, torture in the first half of the nineteenth century was incontestably associated with the state. When the British Crown took over the administration of India in 1858, it brought with it changes in policy that facilitated the decoupling of torture from the state. Over the next half century, complaints of the over-taxed agriculturist, the poverty of the peasant, the scourge of famine, the drain of wealth, and the rapacity of the private creditor were staples in the nationalist critique of colonial rule. Yet, torture was not part of this critique; it had gotten disassociated from tax collection. Instead, it now became solely the problem of the native policeman and his methods of investigation, not that of the colonial state or its law.

Police Interrogation

A detailed manual published by the Madras government in 1885 on its administrative machinery describes step-by-step the investigatory procedure followed by the police as of this time.¹⁶ Upon receiving intimation of a crime, the policeman had to send a report of this preliminary information to the nearest magistrate. In cases of cognizable offences, he had to register the case in the station reports and commence his investigation. In the course of his investigation, he could arrest a suspect, “on sufficient grounds” without procuring a magisterial warrant. In the station-house, he was allowed 24 hours to interrogate the suspect and determine whether he could be charged with the offence. If yes, the policeman had to send the suspect to the magisterial office for remand, and if not, he had to release the suspect. Government officers and judges encouraged the policeman not to procure

¹⁵ Lewin, "Is the Practice of Torture in Madras with the Sanction of the Authorities of Leadenhall Street?."

¹⁶ Madras (India : Presidency) and C. D. Maclean, *Manual of the Administration of the Madras Presidency*, 3 vols. (Madras: Printed by E. Keys, 1885). V.1 pp. 192-3. Policing procedures were also clarified in the Criminal Procedure Code, 1898, and in several circular orders from the government to the police department, including G.O. 1600, Judicial, 31st July 1888, TNA and 11/judicial/ 1913, 22/4/1913, DRCM.

a confession of guilt from the suspect during his investigation; if he did, such a confession would not be accepted by the courts as evidence.¹⁷ The policeman could, however, interrogate the suspect towards gleaning any other information about the case from him. For instance, in cases of theft, the policeman could extract from the suspect information on where the stolen property had been secreted.

Several elements of this procedure, including the 24 hour limit on custody and the proscription of police confessions, were uniquely colonial and differed from contemporary English criminal procedure. In his study of law and policing in England and Australia, David Dixon directs our attention to the lacuna in English common law between ‘arrest’ and ‘charge’ i.e. the period of police custody.¹⁸ Dixon contends that the investigating role of the English police increased in the mid-nineteenth century from earlier, when its duty was merely to apprehend a suspect and take him to the magistrate. Legal regulation however did not keep up with this shift, resulting in considerable ambiguity in the rules of police interrogation well into the twentieth century. In particular, judges’ opinions differed from case to case on (a) whether the police were allowed to detain a suspect at the station-house for questioning, (b) what the time limit was for such custody, and (c) whether a police confession was acceptable as evidence. In Australia, in contrast, there was a widespread debate on “police verbals” i.e. the fabrication of police confessions in custody, resulting in clearly defined rules limiting custodial interrogation.¹⁹

In colonial India, likewise, police investigative powers were clearly spelt out, and stemmed from colonial assumptions about native society.²⁰ Here, the police *were* allowed to interrogate suspects in the station-house. As the Inspector-General of Police asserted in 1885, this was necessitated by “the utter want of any public spirit which, as in England, induces private individuals to assist in furthering

¹⁷ Madras (Presidency) Faujdārī ‘Adālat and Alexander John Arbuthnot, *Select Reports of Criminal Cases, Determined in the Court of Foujdaree Udalt of Madras* (Madras.; Printed by R. Twigg, 1851). pp. xxvii. This differs from Anupama Rao’s account of the process in Bombay Presidency at the time, in Anupama Rao, "Problems of Violence, States of Terror: Torture in Colonial India," *Economic and Political Weekly* 36, no. 43 (2001).

¹⁸ David Dixon, *Law in Policing : Legal Regulation and Police Practices*, Clarendon Studies in Criminology (Oxford, New York: Clarendon Press ; Oxford University Press, 1997). Chap 4.

¹⁹ *Ibid.* Chap 5

²⁰ For a discussion of how colonial fears of native duplicity informed judicial procedure, see Bhavani Raman, *Document Raj : Writing and Scribes in Early Colonial South India* (Chicago, Ill.: University of Chicago Press, 2012).

the ends of justice.”²¹ Half a century later, P.N.Ramaswami, a magistrate who published a guide for policemen, echoed a similar sentiment. “The police in this country have to face indifference and unwillingness from the majority of the people,” he argued, causing them to adopt “the weapons of perjury and torture.”²²

Rules of custody in Madras Presidency were informed not just by colonial assumptions about an apathetic society but also by concerns about the native constable’s supposed proclivity to extort confessions. For instance, the Chief Secretary of Madras wrote in 1854 that

In the exercise of their functions, the native talook and village officers of police are known to have been in the habit of resorting to cruelties, for extorting confessions from prisoners. Strenuous endeavours have been used from very early times of the British rule to put down a system so utterly opposed to every principle of humanity and subversive to the ends of justice... So deep-rooted, however, has the evil been found, and so powerful the force of habit arising from the unrestrained license exercised in such acts of cruelty and oppression under the former Rules of the country, that it has not been practicable, notwithstanding the rigorous measures adopted, wholly to eradicate it, from the almost innate propensity of the generality of Native Officers in power to resort to such practices on the one hand, and the passive submission of the people on the other; and accordingly the abuse still prevails in the Police Department, though undoubtedly not to the same extent as formerly.²³

Contrary to continental European practice, the English judicial system had, almost always, debarred the use of torture to extract confessions.²⁴ Bringing law to India was a central claim that legitimised British colonialism and putting an end to what was seen as the native practice of police torture was integral to this claim. Therefore, although police custodial interrogation of suspects was allowed, government placed constraints on it to preclude use of force. First, the duration of custody

²¹ G.O. 1600, Judicial, 31st July 1888, TNA.

²² Palamaneri Narayanaswami Ramaswami, *Magisterial and Police Guide* (Mylapore, Madras,; Madras law journal office, 1931). pp. 130

²³ Extract from the Minutes of Consultation, dt. 19th Sep 1854, Chief Secretary. App A2 in *Report of the Commissioners for the Investigation of Alleged Cases of Torture in the Madras Presidency*.

²⁴ Elizabeth Hanson, "Torture and Truth in Renaissance England," *Representations* 34(1991).

was strictly limited to 24 hours,²⁵ and second, confessions made to the police were disallowed as evidence in court. Both these rules differed from current English practice: A.J. Arbuthnot of the Madras Foujdari Adalut argued that “the character of the people” made impracticable “a strict adherence to the rules of evidence according to English Law... For instance it is notorious that confessions are often obtained in this country from prisoners in charge of the Police by means of actual ill-treatment or threats of it.”²⁶

Colonial perception of native society thus informed the rules of police custody in colonial Madras. It also shaped the understanding of why torture occurred among urban, educated sections of society. For more than a hundred years, government reports, guidebooks to policemen, and newspapers conformed to a ‘catching-up’ narrative of liberal progress and framed torture as an error that occurred when constables, untrained in or averse to conducting investigations, persisted in extorting confessions from criminal suspects.²⁷ John Mayne, a barrister who published a pamphlet titled *Hints on Confessions and Approvers for the Use of the Police* in 1906 asserted that the police desired “to take a shortcut to the discovery of crime by extorting confessions. For this purpose it is too common to use every species of violence.”²⁸ Newspapers followed the same line of criticism. The *Vettikodiyon* of 16 July 1892 reported the case of a woman who had died after being beaten by constables in their attempt to extort a confession from her.²⁹ The *Swadesa Mitran* in October 1892 and in January 1903 complained that the police tended to extort confessions from innocent people by use of torture.³⁰ The

²⁵ This didn’t always happen in practice, as is evident from some of the cases discussed in this chapter, and from intermittent government complaints on the subject.

²⁶ Madras (Presidency) Faujdārī ‘Adālat and Arbuthnot, *Select Reports of Criminal Cases, Determined in the Court of Foujdaree Udalut of Madras*. pp. xxvii

²⁷ Sundaravaradan, *Kaval Turaiyum Vetricchiragugalum* (Chennai: Naramadai Publishers, 2004). Chap 2.

²⁸ John D. Mayne, *Hints on Confessions and Approvers, for the Use of the Police* (Madras: Printed for J. Higginbotham, 1861).

²⁹ *Native Newspaper Reports*, 1892, TNA.

³⁰ *Native Newspaper Reports*, 1892, TNA. British Library. and Adam Matthew Publications., *Indian Newspaper Reports, C1868-1942, from the British Library, London* (Marlborough: Adam Matthew Publications Ltd., 2005), microform.

South Indian Mitran, a Tamil daily, complained in a January 1900 issue that police officers extorted confessions from innocent people by use of torture.³¹

Over the course of the decades, explanations other than the constable's recalcitrance were offered for the persistence of torture. Notably, officials claimed that policemen succumbed to extorting confessions because they needed to show good results in investigations in order to get promoted within the ranks. In 1902, national- and presidency-level committees instituted to inquire into police administration in Madras Presidency concluded that police oppression was "a fact which is spoken of by practically every witness."³² They observed that the police victimised people to extort confessions and foisted cases on innocent people. The reason for such behaviour, according to the committees, was not just "want of detective ability or... indolence" on the part of the police, but also their desire to show a laudable percentage of cases detected.³³

The Madras government took various steps to eliminate torture, all of which stemmed from its identification of the source of the problem in the native constable's tendency to extort confessions. First, it undermined the value of the confession as judicial evidence. The Foujdari Adalut, which was the highest court of the Madras Presidency, passed a circular order in 1806 prohibiting the police from using force to extort confessions. Simultaneously, it cautioned courts from accepting confessions made to police as evidence. An 1835 order strengthened the injunction, by explicitly ruling that confessions made before a native police officer, unless corroborated by other evidence, could not be used for convictions. The very frequency with which these orders were circulated (in 1817, 1820, 1822, 1823, 1824, 1835, 1836 and 1852) suggests that they didn't have much impact on the occurrence of torture.³⁴

In addition to the orders of the Foujdari Adalut, the Indian Evidence Act, 1872 also discounted the value of the police confession. The Act ordained that a confession by an accused person be

³¹ *Native Newspaper Reports*, 1900, TNA.

³² Miller L.C. Andrew J, Fawcett F, "Statement of the Police Committee on the Administration of the District Police in the Madras Presidency," (Madras1902). p. 63. Andrew H. L. Sir Fraser, *Report of the Indian Police Commission and Resolution of the Government of India* (London, 1905).

³³ *Report of the Indian Police Commission and Resolution of the Government of India*. p. 26

³⁴ *Report of the Commissioners for the Investigation of Alleged Cases of Torture in the Madras Presidency*.

irrelevant in a criminal proceeding, “if the making of the confession appears to the court to have been caused by any inducement, threat or promise.”³⁵ Further, it specifically disallowed any confession made while in custody of a police officer from being proved against that person, unless it be made in the presence of a magistrate.³⁶

In a different approach to discouraging policemen from extorting confessions, the government stopped evaluating police performance based on the number of cases they had successfully detected. In 1888, it urged the police to “abstain from commending, or granting promotion for, detections based on the procurement of confessions.”³⁷ The Fraser committee in 1902 advocated the removal of misplaced incentives to detect cases and “unhesitatingly condemn(ed) the application of the statistical test.”³⁸ Following this, the government ordered the police to stop altogether rewarding their men based on detection statistics.³⁹

Neither the prohibition of police confessions as evidence, nor the elimination of the statistical test to reward policemen put an end to torture. The government then targeted its efforts on the magisterial confession since it feared that the policeman could intimidate the prisoner into confessing in front of the magistrate. Magisterial confessions, in contrast to police confessions, could be used as judicial evidence.⁴⁰ After the 24 hours of police custody, prisoners had to be taken to the magistrate who put them to remand in what were called subsidiary jails. The magisterial sub-jail, in contrast to the police lock-up, was usually located alongside the busiest government offices of the area, including those of the magistrate and the registrar.⁴¹ While some government officials believed that this would

³⁵ *The Indian Evidence Act*, Act I of 1872. Section 24.

³⁶ However, the Act allowed any information given by the accused while in police custody, so long as it was not a confession of guilt, to be used in the criminal investigation. This escape clause kept alive the issue of confessions and torture: inquiries into allegations of torture often showed the police as having tortured the accused to extract information that would enable the investigation. For instance, in a case of theft, they would torture the suspect to recover from him/her information on where the stolen goods had been concealed. E.g. Case of Lakshmi et al, case of P Thevan et al. In either case, whether the police tortured to extract a confession or information, the explanation was still framed as that of the errant policeman who used torture as a short cut to his investigative work.

³⁷ G.O.1600 Judicial 1888, TNA.

³⁸ Fraser, *Report of the Indian Police Commission and Resolution of the Government of India*. p. 208.

³⁹ G.O. 523 (ms), Judicial, 29 March 1912, TNA.

⁴⁰ *Code of Criminal Procedure*, Act V of 1898. Section 164.

⁴¹ G.O. 1582 ms, Judicial, 11th October 1911, TNA.

deter torture, critics argued that the sub-jail too was accessible to the police and therefore not a sufficient protection against torture.⁴²

In a series of attempts towards curtailing the use of magisterial confessions, village magistrates were first prohibited from taking written confessions.⁴³ In addition, the Fraser Commission objected to the provisions of the Criminal Procedure Code, 1898 which allowed any state magistrate to record confessions. “Third class magistrates too often show themselves unfit to judge either as to the circumstances under which a confession should be taken or those which justify its rejection,” it argued, and suggested that “confessions should be recorded only by the magistrate having jurisdiction in the case.”⁴⁴ Before recording a confession, a magistrate had to put certain questions to the accused, “When did the police first question you? How often were you questioned by the police?” and so forth.⁴⁵ If, following these questions, the magistrate had any doubts regarding the voluntary nature of the confession, he could remand the accused to a sub-jail for a further period of time before recording the confession. As with earlier reforms, placing restrictions on magisterial confessions did not put an end to the concerns around torture, and there was a running debate on which magistrates were qualified to record confessions and how such confessions should be recorded.⁴⁶

Torture and judicial process

⁴² G.O. 1582 ms, Judicial, 11th October 1911, TNA. For instance, H. Moberly, a retired judge, argued that the government orders did not prohibit the police from interrogating the prisoner in the sub-jail. G.O. 2353 mis, Judicial, 27 September 1915, TNA.

⁴³ G.O. 601, Judicial, 28 March 1913, in 11/judicial/ 1913, 22/4/1913, DRCM.

⁴⁴ Fraser, *Report of the Indian Police Commission and Resolution of the Government of India*. p. 163

⁴⁵ G.O. 601, Judicial, 28 March 1913, in 11/judicial/ 1913, 22/4/1913, DRCM.

⁴⁶ For instance in a discussion on the subject of police torture in magisterial confessions that took place in 1912, Justice Sankaran Nair of the Madras High Court raised the issue of salaries earned by magistrates and the police. A police inspector’s pay ranged from Rs.150 – Rs. 250 and that of a sub-inspector from Rs.50 - Rs.100. A magistrate’s pay was around Rs.50 – Rs.100 “Pay determines the social grade and influence,” the judge argued, “and even a permanent magistrate’s presence is not a guarantee of the voluntary nature of the confession.” The temporary submagistrates, he said, “were decidedly inferior in status and position to the police officers who have to deal with them. They generally hesitate to act against police wishes.” Justice Abdur Rahim of the Madras High Court complained that magistrates were “too prone to grant the application of the police officer (to send the accused back to their custody) and are seldom alive to the requirements of the law on the subject... I would not authorise any but first class magistrates to make orders for remand to police custody in any case.” G.O. 1221-22 Press (NP), Judicial, 31 July 1912, TNA.

Cases of torture in the governmental archive point to blatant departures in police conduct from the rules of custodial interrogation. Consider, for instance, what was referred to in government correspondence as the “Koilpatti Torture case” of 1923, involving the death of one Mariappa Samban.⁴⁷ The case began when the Ramnad police received report of the death of a Nadar woman. They found no direct evidence for the murder, but suspected a Vellasami Kone of the village. They also suspected that Vellasami’s servant, Mariappa Samban (a Christian Dalit), may have played a secondary part in the murder.⁴⁸ During the initial investigation into the murder, conducted in the village, Mariappan was away attending a wedding. The police sub-inspector Sundaram Iyer and constable Subramania Ayyar, who wanted to turn Mariappan into an approver in the case, told two of his relatives that “they would be put to a lot of trouble if they did not secure the presence of Mariappan.”⁴⁹ Accordingly, the two, “in order to avoid the troubles of the police, brought Mariappan on Sunday morning (22-7-23) and handed him over to the police constable Subramania Ayyar.”⁵⁰ The policemen took Mariappan from the village to Koilpatti town, where he stayed for the next five days, either free to move but kept under police surveillance (according to the police) or in actual police custody (according to the magistrate investigating the case).⁵¹ At the end of this period, Mariappan, according to the police, finally agreed to turn approver and provide information regarding the murder – specifically, to show them where jewels stolen from the murdered woman had been kept. The sub-inspector writes,

Mariappan was accordingly taken from Koilpatti by 8:45 p.m. train to Nellai and thence 4 miles by cart track to his village by midnight. For safe custody his hands were tied with his own cloth by the escort constables... As it was late in the night and as properties could be recovered only in the morning,

⁴⁷ G.O. 159 mis, Judicial (Police), 21 March 1924, TNA.

⁴⁸ Naicks were usually dominant castes in this region. Konars and Nadars were low castes in the local hierarchy, but stood higher than Dalits.

⁴⁹ An import from British law, an approver was one of the accused who turned (or was made) State’s Witness in the hopes of a pardon.

⁵⁰ Submagistrate’s Report, G.O. 278 ms, Judicial (Police), 27 May 1924, TNA.

⁵¹ There were no witnesses for this period.

he was locked in for the night inside the shop of one Sivamuruga Nadar, which was the only place then available, his hands being set free before he was locked in.⁵²

The next morning, Mariappan was found hanging in the room (which measured 7 ft. * 8 ft. * 5 ¼ ft. and had no vents). In this case of custodial death, the police obviously violated several rules of custody. They arrested a man in the absence of sufficient evidence. They held him in their custody for over five days without sending him to magisterial remand, as opposed to the prescribed 24 hours. They held him in custody in a tiny, possibly suffocating room, rather than in the station-house.⁵³ Yet, this was not an exceptional case, at least in the early decades of the twentieth century. When a case of theft was reported at the Maniyachi station in Tirunelveli in October 1917, the sub-inspector, Subramania Aiyar, and a few constables proceeded to the village, and took up residence in the house of a local. They sent for three women – the wife, sister, and concubine of the suspected thief - and attempted to extort a confession from them.⁵⁴ The women were kept in the house for a couple of days before being released.⁵⁵ But there are no recorded cases like this after the 1930s, suggesting that those arrested were kept in custody mainly in the station-house.⁵⁶

Government correspondence and newspaper reports highlighted instances of police misconduct such as those mentioned above, and consequently the colonial government's attempts to end torture, as detailed in the earlier section, focused on the native constable and his investigatory practices, making them perpetual objects of colonial pedagogy. This narrative of the untrained constable distanced the constable from the state and disguised the extent to which the constable's exercise of power was entwined with the judicial system. Even when the police adhered to the rules of custody, criminal investigation required them to carve out a space of interrogation, a space that marked the imbalance of power between the state and its judicial apparatus on the one hand, and the criminal suspect on the

⁵² Sundram Ayyar's petition in G.O. 159 mis, Judicial (Police), 21 March 1924, TNA.

⁵³ A witness for the defence claimed that the inspector had asked around if there was a better place to keep him in custody that night, but had been assured that the shop was the best location.

⁵⁴ G.O. 1191 mis, Home Judicial, 27 May 1919, TNA.

⁵⁵ For another example, see G.O. 602 ms, Judicial, 28 March 1913, TNA.

⁵⁶ In fact when I visited a few station-houses in 2013, suspects were not even kept within the lockup, for fear of allegations of custodial violence. Rather they sat squatting on the floor of an open room, accessible as soon as one entered the station.

other. For this reason, police interrogation in general, and the confession in particular, occupies an uncertain place within judicial procedure, whether or not accompanied by physical violence.⁵⁷ In addition, cases of torture (including the two mentioned above) were almost never proved because courts privileged medical evidence over what was seen as unreliable witness testimony.⁵⁸

The body as evidence

Judicial redress for custodial violence presented difficulties because the act of torture did not leave evidence that met the requirements of due process. The only witnesses to torture were the torturer, the victim, and his body. While the native constable was not trusted as a credible witness, courts paid even less regard to the voice of his victims, who were inevitably subaltern. Only the evidence offered by the body was considered impartial in the judicial court. In British India as well as after independence, courts routinely dismissed the testimony of victims and their kin in favour of medical evidence.⁵⁹ Sadly, the body almost consistently failed to provide judicial proof of the violence it had endured.

Medical evidence failed to corroborate allegations of torture in all but one of the dozen-or-so cases that I came across in the archives. Medical records of torture victims uniformly either pronounced a case of “simple injuries” (where the victim survived the torture) or “death by

⁵⁷ For charges of brutality during police interrogation in Britain and the US, see Alan Marlow and Barry Loveday, *After Macpherson : Policing after the Stephen Lawrence Inquiry* (Lyme Regis: Russell House, 2000). Dean J. Champion, *Police Misconduct in America : A Reference Handbook*, Abc-Clio Contemporary World Issues Series (Santa Barbara, Calif.: ABC-CLIO, 2001). p. 11. G. Daniel Lassiter, Christian A. Meissner, and American Psychological Association., *Police Interrogations and False Confessions : Current Research, Practice, and Policy Recommendations*, Apa Decade of Behavior Volumes (Washington, DC: American Psychological Association, 2010). Dixon, *Law in Policing : Legal Regulation and Police Practices*. In India, see Shahid Amin’s deconstruction of the approver’s testimony in Shahid Amin, *Event, Metaphor, Memory : Chauri Chaura 1922-1992*, Oxford India Paperbacks (Delhi ; New York: Oxford University Press, 1996). Anupama Rao examines a case of police torture in Bombay Presidency that took place in 1854 to expose the violence of colonial law and problematize its attempts to establish truth through confessions. She asserts that the truth of a confession extorted by the police was questionable, “because it was too closely tied to an experience of the body – pain – that was seen as incapable of producing an uncompromised statement. Rao, "Problems of Violence, States of Terror: Torture in Colonial India."

⁵⁸ The PAR of 1887 gives figures for convictions in cases of torture across Madras Presidency for the preceding 5 years: 5 in 1883, 2 in 1884, none in 1885, 11 in 1886 and 5 in 1887. G.O. 1958, Judicial, 14 September 1888, TNA. From 1905-10, cases were instituted against 51 policemen, of which 17 were convicted. G.O. 523 ms, Judicial, 29 March 1912, TNA.

⁵⁹ For a discussion of medical jurisprudence and its privileged role in rape cases, see Elizabeth Kolsky, "'The Body Evidencing the Crime': Rape on Trial in Colonial India, 1860-1947," *Gender and History* 22, no. 1 (2010).

asphyxiation” (where he did not).⁶⁰ For instance, a local newspaper reported the case of a woman who had died after being beaten by constables in their attempt to extort a confession from her (1892). The medical officer gave verdict of natural death.⁶¹ Following the deaths of Mariappa Samban (1924) and Andi Kudumban (1960) in custody, the respective doctors declared that the injuries observed were “not of the kind that result from torture,” and that the suspects must have hanged themselves.⁶² The doctor examining Nallamma Naick described his wound as “4 inches long, 1 inch broad and bone deep. The bone was cut for ½ inch in length and 1/8 inch in depth,” but declared that the wound may have been either self-inflicted or “caused by the man’s leg knocking whilst he was running against a palmyra stalk.”⁶³ The alleged “severe beating” of Karuppana Thevan by the constables of Mudukulathur was “not borne out by the medical evidence” (1912).⁶⁴ The government surgeon declared that the injuries on the three women confined and beaten by the police (1919) were “all of a trivial nature,” prompting the judge to take seriously the defence suggestion that they may have been self-inflicted.⁶⁵

It is not coincidental that in the only case where the charge of torture was proved, the complainant was “a respectable resident of the village,” who owned 5 acres of land.⁶⁶ Victims of torture inevitably belonged to marginal sections of the population. In the recorded cases of torture between 1900 and 1970 from Madras Presidency that I found, the victims were all brown, most belonged to Dalit or other lower castes, some belonged to the political opposition, many were poor, some were female, and one was a child. Judges had no qualms dismissing the testimony of victims and their kin, on grounds of their inferior social position. For instance, the magisterial officer enquiring into a case of death after custodial violence reported that “before discussing about the merits of the

⁶⁰ G.O. 1246 ms, Judicial, 14 Aug 1901, G.O. 602 ms, Judicial, 28 March 1913, G.O. 278 ms, Judicial (Police), 27 May 1924, G.O. 1191 mis, Home (Judicial), 27 May 1919, GO 917 ms, Public, 19 March 1958, GO 1519 ms, Public, Sep 24 1960, TNA.

⁶¹ *Vettikodiyon*, 16 July 1892, *Native Newspaper Reports*, TNA.

⁶² G.O. 278 ms, Judicial (Police), GO 1519 ms, Public, Sep 24 1960, TNA.

⁶³ GO. 1246 ms Judicial, 14 August 1901, TNA.

⁶⁴ G.O. 602, Judicial, 28 March 1913, TNA.

⁶⁵ G.O. 1191, mis, Home (Judicial), 27 May 1919, TNA.

⁶⁶ G.O. 85 ms, Home, 17 January 1970, TNA.

evidence, it [was] necessary to deal with the character of the petitioner and her witnesses so that the value of their evidence may be correctly assessed.”⁶⁷ In addition to the low social standing of some victims, judges also drew upon a broader notion that perjury was common in Indian society: in particular, they fell upon the trope of “the Indian faction” to discount witness testimonies. “With such factious spirit existing between the accused 3 to 6 on one side and Vadakku Veetu Nagamani, PW13, PW9 and others on the other, the evidence of the prosecution witness has to be examined with the greatest caution,” said the judge in one case of police ill-treatment.⁶⁸ In another, where the police tortured the victims on the verandah of the station-house, the judge dismissed the evidence of “the eyewitnesses PWs 2, 5 and 6 [since they were] relations of the accused’s enemy Piranmalai Rowther and are puppets in his hands.”⁶⁹

While witness testimonies focused on tropes of violence (the kicks of the inspector, the shrieks of the victims, the unbearable pain, and so on), medical reports focused on the specifics of the injuries (e.g. “an oblique incised wound in front of lower third of the left leg about 4 inches long”). Courts often latched on to differences in detail between medical and witness testimonies to dismiss the latter. For instance, in a case from 1930 where four toll-gate operators accused the police of torture, all eight injuries on the complainants were found to be “simple and... might have also been caused with a cane... or by the application of some vegetable poison,” and not curved in shape as they would have been had they been caused with a long whip, as alleged by the complainants.⁷⁰

In addition to possible complicity between policemen, medical experts, and judges, the stylised nature of torture ensured that marks left on the body of the victim were inadequate to prove the violence it had endured.⁷¹ The 1855 Torture Commission noted that “ordinarily the violence is of a petty kind, although causing acute momentary pain, and even many of the severe kinds invented by

⁶⁷ RDO Report in G.O. 388 ms, Public, 2 February 1956, TNA.

⁶⁸ G.O. 1191 ms, Home (judicial), 27 May 1919; G.O. 602, Judicial, 28 March 1913, TNA.

⁶⁹ G.O. 300 ms, Public Police, 28 May 1930, TNA.

⁷⁰ G.O. 300 ms, Public Police, 28 May 1930, TNA.

⁷¹ For an analysis of stealthy forms of torture in modern democracies, see Darius M. Rejali, *Torture and Democracy* (Princeton: Princeton University Press, 2007).

native ingenuity leave no mark behind them.”⁷² The report mentioned various forms of torture including tightly binding around the arm a rope soaked in hot chillies, mustard seeds and salt, introduction of hot chillies or scratching insects into sensitive parts of the body such as the eyes or the genitalia, whipping with an instrument composed of four or five thongs of leather, and placing people in the sun, stooped and with a stones on their backs.⁷³ Cases from the twentieth century that I draw upon include allegations of the police tying a string around a woman’s breast, forcing a man to kneel in front of another for hours at a time, making a child perform *ucki* (a punitive exercise imposed on juveniles where the victim had to hold his earlobes and go down on his haunches repeatedly), or even simply beating or kicking a man. These were stylised instances of torture that humiliated and caused pain without leaving a permanent mark on the body of the victim, and therefore, could not be captured by medical evidence.

Despite limits to its applicability, medical evidence held dominant status as evidence by virtue of being ‘scientific’ and ‘objective’. This ensured that courts decided in favour of the medical report, even when it directly contradicted the testimony of witnesses. Consequently police officers were rarely convicted for torture. On the few occasions that they were punished, it was for documentary lapses related to the torture rather than for the act itself, and the punishment was extraordinarily light. The case of Mani’s death is illustrative of the difficulties that arose from privileging the medical certificate above all other evidence. Sometime in the evening of 25 July 1956, a police constable found four young boys – including Mani - playing cards for money near the town bus stop.⁷⁴ He took them to the police station, where the sub-inspector made the boys perform a punitive exercise called *ucki*. Mani stopped doing them after a few repetitions, citing physical discomfort. The sub-inspector reportedly kicked him a few times for his impertinence, after which the boys were released on bail. Four days later, responding to his complaints of severe pain in the abdominal area, Mani’s mother took him to the clinic of a private practitioner. Mani complained to the doctor that he had been beaten and kicked by

⁷² *Report of the Commissioners for the Investigation of Alleged Cases of Torture in the Madras Presidency*.p. 20

⁷³ Ibid. Peers, "Torture, the Police, and the Colonial State in the Madras Presidency, 1816-55."

⁷⁴ They had, between them, about 12 annas (16 annas made a rupee).

the police a few days earlier. The doctor observed a large swelling in his stomach, but sent him back after giving him some sedatives, claiming he could do nothing to cure him at this stage. Mani nevertheless went to a government doctor too, hoping to find some remedy for his pain. He died that night.

The next day, a resident of the town sent a telegram to the magisterial officer at Madurai, the district headquarters, asserting that the boy had been beaten to death by the police. During the inquest, the officer interrogated everyone concerned with the case – the sub-inspector, other constables, the other boys, the fruit vendor, and Mani’s mother. This was one component of the enquiry into the death - an enquiry which sought to piece together the events of the past four days and to establish causes and consequences. The other component of the enquiry was the medical examination – the testimonies of the doctors who had attended to Mani on his last day, the post-mortem report, and the opinion of an external expert on the post-mortem report.

The doctor’s post-mortem report, which enshrined on paper the possible causes of Mani’s death, was arguably the most important piece of evidence for the enquiry, and was surrounded by controversy. By default, the body of the victim should have gone to the local hospital for post-mortem. Mani’s relatives, however, objected to that, claiming that the doctor there was a friend of the inspector’s, and would consequently not state the truth. Accordingly, it was sent to the Madurai hospital, but without mentioning that the policeman had kicked the boy. The Madurai doctor therefore merely conducted a routine examination, without paying particular attention to the boy’s abdominal region. The private doctor whom Mani had consulted before his death was excluded from the investigation at this stage. Later enquiries initiated at government’s insistence had only the post-mortem report to fall back on: it had become, as it were, the originary document of the crime, and its

gaps could not be filled later. There was no way to ascertain whether the kick had caused the death or not, thus leaving the inspector scot-free.⁷⁵

The medical certificate's potential for misuse was recognised as early as the 1880s, when it was only beginning to acquire the stature it was to hold through the twentieth century as principal evidence in criminal cases. A debate that took place in 1887 between the Madurai medical officer and the Inspector-General of Police for Madras Presidency pre-empted a century of controversy on the subject, and set in place a tradition that privileged the medical certificate as evidence.⁷⁶ There was no standard format for the post-mortem certificate or for the certificates of wounded persons at this time, in contrast to the detailed reports that would be written even a decade later.⁷⁷ The medical officer argued that since his evidence was intended to help only the magistrate with his decision, and not the police, the certificate should be as brief as possible so that there may be no details offering "temptation to the police to get up a case to fit those injuries." The IGP took exception to his insinuation of police corruption. He contended that the medical certificate was, in fact, intended to help the police in preparing their case, and therefore should be detailed. "The medical officer, in a criminal question, is not, in the first place, a witness; he is, like the police themselves, an active agent in the enquiry..." The government supported the IGP's recommendations entirely and ordered that "a full and complete record of appearances observed (be) made immediately after the examination of the dead body or wounded person".

During the first half of the twentieth century, the importance of the medical expert's evidence was steadily consolidated. In one case from 1901, the first hospital to which the constable took the corpse "had no post-mortem instruments" and therefore the constable had to go to a hospital further away.⁷⁸ Yet, we rarely come across situations like this in later years, and as early as 1901, medical

⁷⁵ During the inquiry, it emerged that the inspector had fudged the police station journal for the 25th, to make it seem like he had not been in the station all day. He had possibly done so for fear of being linked with the boy's death, and was punished for this crime, with a departmental censure.

⁷⁶ G.O. 928, Judicial, 19 April 1888, TNA.

⁷⁷ For instance even as early as Madura sessions case 43 of 1901, in G.O. 1246 Judicial 1901, TNA.

⁷⁸ G.O. 1246 Judicial 1901, TNA.

reports were extremely detailed and standardized. By the 1940s, the government doctor was inevitably the first or second prosecution witness in cases of murder.⁷⁹

As the medical certificate gained in stature, it was increasingly shrouded in controversy too. Government officials were aware of the risks of collusion between policemen and medical experts, as evidenced by a policy discussion from 1930. The Surgeon-General of Madras proposed that the police mention the suspected cause of death when they sent a body for medical examination. “Such a suggestion,” he noted, “might on occasion be of great value to the medical officer in bringing him to make particular parts of the examination with unusual care.” The Inspector-General did not object to the proposal, but the Chief Secretary of the Government thought the suggestion “rather extraordinary”. “Having regard to absolute justice, it would seem better for the medical man to approach his problem entirely uninfluenced by any theories the police may have formed,” he argued. Other officers agreed, claiming that if the suggestion were adopted, “the value of post-mortem certificates as evidence in criminal cases in courts of law will be considerably reduced.”

Despite governmental recognition of complicity between policeman and doctor, and despite unremitting controversy over the medical certificate, the Madras government’s efforts to improve investigation into complaints of police torture did not address the problematic nature of medical evidence. Instead, they focused on expediting the inquiry process and on shifting the investigating agency away from the police towards the magistracy and the judiciary. For instance, in 1896 government ordered that the preliminary investigation into all complaints of custodial violence against police officers should be made by divisional magistrates and not be left to sub-magistrates or subordinate police officers.⁸⁰ In 1907, the Madras government ordered that an independent magisterial inquiry, in addition to the one conducted by the police, be conducted in cases of suicide in jails.⁸¹ It was reiterated in 1912 through an order mandating that “all cases of hurt or more serious injury

⁷⁹ E.g. in IOR: L/P&J/7/3973, IOR: L/P&J/7/4508, IOR: L/P&J/7/4517, IOR: L/P&J/7/4659, IOR: L/P&J/7/4763, IOR: L/P&J/7/4889, IOR: L/P&J/7/7306, IOR: L/P&J/7/7920, IOR: L/P&J/7/8051, IOR: L/P&J/7/8481, IOR: L/P&J/7/10164, IOR: L/P&J/7/10291, British Library. All of these were cases of murder from the 1940s.

⁸⁰ In G.O. 1807, Judicial, 14 November 1896, quoted in G.O. 525 P, Judicial, 25 March 1902, TNA.

⁸¹ G.O. 1454, Judicial, 16 August 1907, in Madura Collectorate file 78/ judicial/ 07, 28/08/1907, DRCM.

inflicted by a police officer for the purpose of extorting a confession or information, should always be inquired into by a magistrate.”⁸² The 1912 order also mandated that an officer connected with a particular case could not be involved in the investigation of cases of misconduct arising from that case. A 1942 order increased the role and discretion of the sub-divisional magistrate in conducting enquiries into charges of police torture, possibly towards expediting such enquiries which earlier depended on the authority of the district magistrate.⁸³ Furthermore, it clarified that while the magistrate could invite a police officer to help him with the enquiry, the police should not conduct a parallel enquiry.⁸⁴ Pushing the burden of investigation from the police department to the magistracy did not always result in a speedy and honest trial. In March 1912, the Madras government took note of a case where a magistrate had taken five months to try a case of torture and extortion against certain police officials, and pressed “the importance of promptitude in the disposal of such charges, in order that no time may be given to concoct evidence or tamper with witnesses.”⁸⁵

The redress to police torture, which involved filing reports, lodging complaints, and waiting for corrective action by state officials, stayed largely within a logic of documentary power.⁸⁶ Towards correcting this flaw, government sought to make investigation automatic rather than requiring a complaint from the victim. The Criminal Rules of Practice required the police superintendent to immediately submit a full report on all cases of suicide in police lock-ups to the Inspector-General of

⁸² G.O. 1098, Judicial, 9 July 1912, in 23/mgl/1912, 6/8/1912, DRCM.

⁸³ G.O. 1186 (ms), Home, 21 March 1942, TNA.

⁸⁴ This was markedly different from a 1902 order clarifying that notwithstanding earlier orders emphasising magisterial role in investigating allegations of ill-treatment by police to persons in their custody, police superintendents were not debarred from conducting departmental inquiries into the same and to submit such reports to the district magistrates. G.O. 525 Press, Judicial, 25 March 1902, TNA.

⁸⁵ G.O. 381, Judicial, 9 March 1912, in 7/mgl/1912, 26/3/1912, DRCM.

⁸⁶ An 1895 case of police torture illustrates this. The case provoked sharp criticism from the local press and later the Madras government, more for the criminal negligence displayed by senior magistracy and police officers in the matter than for the torture itself. The police had tortured to death a man of the Yerukula caste (which would be declared a criminal tribe in 1911). The relatives of the deceased attempted to register a complaint with the divisional magistrate and the district superintendent of police, both of whom happened to be on tour in the village at that time. They were completely ignored. Independently, the police superintendent received departmental reports on the death of the man, indicating torture as a likely cause. But he did not launch the required enquiry into the custodial death and swept the matter under the carpet. When the government finally took upon the case after seeing reports in vernacular newspapers, it punished the officers with demotion in rank, freezing of promotions, and a transfer. The constable responsible for the death was sentenced by the sessions’ court to five years’ rigorous imprisonment. Madura Collectorate File 908/ mgl/ 1896, 30/9/1896, DRCM.

Police.⁸⁷ In 1913, the Government of India ordered that cases of torture be recognised not only when a victim lodged a formal complaint (whether with the police or with the magistrate) but also if a judge discovered evidence to its existence in the course of his investigations.⁸⁸ In addition, the Madras Government ordered in 1911 that

Directly an accused person is placed under arrest, the investigating police officer shall, as the first step in the police investigation, ask him whether he has any complaint to make of ill treatment by the police and enter in the case diary the question and answer. If an allegation of ill treatment is made, the investigating officer shall there and then examine the person's body, if the prisoner consents, to see if there are any marks of ill treatment and shall record the result of his examination.⁸⁹

Directly or indirectly, these attempts to improve investigation into police misconduct reinforced the primacy of medical evidence, for they assumed that a less biased authority, in control of the right evidence at the right time, could reach an accurate judgment on the occurrence of torture. It was implicit in these efforts that medical evidence was the most objective and reliable way of determining the occurrence of torture. The story of Andi Kudumban exemplifies the problems inherent in using the body of the victim, and not his voice, as the only evidence in court, and by extension, the near impossibility of judicial redress to torture.

Andi Kudumban was a 60-year old Dalit labourer who died in the Ottapidaram Police Station, Tirunelveli in March 1959.⁹⁰ At 8 a.m. on the morning of the 28th, Karuppanan, a watchman in a cotton field, came to the police station complaining that he had caught Andi stealing some cotton. The inspector sent out three constables, who apprehended Andi in the village tea-shop and brought him to the police lock-up. Meanwhile, the inspector had to leave the station on work and the station-writer

⁸⁷ Criminal Rules of Practice Rule 598.

⁸⁸ This order was passed through despite objections from local governments that it was “an unnecessary and undesirable innovation”. Government, however, ignored these objections and ordered that “in serious cases of misconduct where a Sessions court or a court of superior status records its opinion that a special enquiry is necessary, that enquiry should take place automatically.” File 17/1914, 28/2/1914, DRCM.

⁸⁹ Official memorandum No. 1277/a-3, judicial, 31 August 1911, in 23/mgl/1912, 6/8/1912, DRCM. These rules were inspired by those in practice in Bombay Presidency.

⁹⁰ G.O. 1519 (ms), Public (General A), 24 September 1960, TNA.

filed the charge against Andi.⁹¹ Around 11 a.m., the writer sent the two constables who had the morning shift home, earlier than scheduled, and bid the constables of the second shift to come in late, on some pretext. Thereby, he manoeuvred to have the station to himself for a couple of hours, although he fudged the station diary to hide this fact. Around one p.m., three workers at a construction site opposite the station heard cries of pain and saw the writer beating Andi. The constables who came in on duty an hour later found Andi's body hanging inside the lock-up. Meanwhile, the construction workers had spread the word and a crowd had gathered outside the station. When it became known that Andi had been found dead, the President of the local Dalit Welfare Society, who had some political clout, telegraphed government ministers to ensure that an inquiry was instituted.

The medical officer who conducted the post-mortem observed no signs of external injury except some marks around the neck. He pronounced the cause of the death to be asphyxiation, caused by hanging. However, the Revenue Divisional Officer (RDO) who conducted the magisterial enquiry observed that the height of the cell vastly reduced, if not eliminated, the chance of death by hanging.⁹² Also his dhoti, which he had ostensibly used to hang himself, showed no signs of having been twisted.⁹³

Based on the RDO's suspicions, the post-mortem report was sent to the Director of Medical Services, Madras for a second opinion. But by this time, the report had become the central document pertaining to the death. Even though he sympathised with the RDO's suspicions, the medical officer could pass a judgment only based on the post-mortem report and, naturally, returned an opinion of death by hanging. The charge against the writer therefore came down to documentary lapses i.e. failure to record his movements for the day in the police diary and making incorrect entries in the First

⁹¹ The station writer is a constable with specific duties - involving registering the cases, updating records etc. and not so much the beat.

⁹² The ceiling of the cell was only a few inches more than the height of the victim, and even if he had tried to hang himself, he would have instinctively held on to a crossbar for support.

⁹³ Dhoti – part of a man's garment

Information Report for the initial crime of cotton theft. As punishment, his increment was stopped for two years.

Suggestively, the panchayat president and a nephew of the deceased had requested that the body be sent to the hospital in Tirunelveli, a large town at some distance from the village, for the post-mortem. But as the RDO could not “adduce proper reasons for the request”, this request was declined and the body sent to the nearest hospital for examination. A proper reason, presumably, had to fall within the vocabulary of bureaucratic procedure and could not simply stem from villagers’ suspicions of the networks of police power or a particular doctor’s integrity.

In any case, there was enough circumstantial evidence for the case against the station-writer to be tried in the court.⁹⁴ However, the post-mortem report cast its long shadow here as well, and the writer was acquitted. The judge’s remarks reflect the extent to which medical expertise was privileged over oral testimonies of subaltern witnesses. The judge discounted the testimonies of the three construction workers as lacking clarity and consistency and claimed that “the main evidence is that of the post-mortem certificate and the evidence of the medical officer... The opinion of the doctor was that the man died by asphyxiation. *So that, the evidence of PWs 6 to 8 that they saw at 1:30 pm Andi Kudumban being kicked by the station writer must be false.*”⁹⁵ And there the case and any possibility of making amends for Andi’s death presumably ended.

Law, justice, and forms of protest

After the post-mortem, Andi Kudumban’s family refused to take his body for burial, and the village headman had to perform this task. This nugget is mentioned in the RDO’s report simply as a procedural detail, perhaps to explain what had been done with the body. But why did the family refuse to take their husband’s, father’s, uncle’s body? Can this act be read as a protest against the death and

⁹⁴ A judicial enquiry followed the magisterial enquiry, if made necessary by its findings.

⁹⁵ PW - prosecution witness. Emphasis mine.

the futile enquiry that followed it? If so, it was a poignant protest for it exposed the fact that Andi's body held little value in obtaining justice.

While victims who survived custodial violence usually returned home silenced, in cases of custodial death, that the victim's voice, ironically, had a better chance of being heard – at least outside the courts. Police torture usually intended to hurt and humiliate, not to kill. This can be interpreted at two levels. At the most pragmatic one, a death left the policeman with a body on his hands and the prospect of punitive proceedings. Staged suicides were one way out of the mess.⁹⁶ But at another level, Hansen and Stepputat locate “the secret of sovereignty... in the tension between the will to arbitrary violence and the existence of bodies that can be killed but also can resist sovereign power, if nothing else by the mere fact of the simple life force they contain.”⁹⁷ In light of this tension between arbitrary violence and the need to preserve life, we can interpret the staged suicides of torture victims by the police not simply as a means of avoiding controversy. Rather, we can also think of it as a tactic used by the police to give the victim the guise of voice, and to displace the agency for the violence from the state to its subject -- at least in the governmental and judicial record.

One instance from the archive indicates a possible subaltern appropriation of this tactic of redirecting the agency for violence. Around 2:30 am on November 28, 1923, a constable found a man hanging dead from the neem tree in the compound of the Sholavandan police station in Madurai.⁹⁸ The man, who had been registered under the Criminal Tribes Act, 1911 had, according to the rules, reported himself at the police station that night, but then fallen asleep in the station verandah instead of returning home. The police inquest the next day returned a verdict of suicide, based partly on the testimony of local panchayatdars that the deceased had had a disagreement with his concubine. The post-mortem confirmed the inquest finding of death by hanging, and “no suspicion of foul play was

⁹⁶ The Amnesty International reports (from the 1980s onwards) that the Indian police also secretly dump the bodies of victims of custodial violence in rivers or wastelands far away from the station.

⁹⁷ “Even in situations of total control, exception from legality, and psychological humiliation, as in the camps at Guantanamo bay, it is imperative to keep the bodies of the prisoners alive and in good health in order not to be seen to violate the ultimate – biological life itself.” Thomas Blom Hansen and Finn Stepputat, *Sovereign Bodies : Citizens, Migrants, and States in the Postcolonial World* (Princeton, N.J. ; Oxford: Princeton University Press, 2005).P. 13.

⁹⁸ G.O. 327 mis, Judicial Police, 23 June 1924, TNA.

elicited.”⁹⁹ A letter was later found in the clothing of the deceased, indicating that he had planned to commit suicide. The story ends there, somewhere inconclusively.

The man, unnamed in the government report, may, in truth, have killed himself after a quarrel with his concubine. But if so, why did he choose to do so within the premises of the police station? The harsh policing of criminal tribe members, including the requirement to report all their movements to the police, has been commented upon both by contemporary critics and in the historiography. The protagonist of this story did achieve some kind of retribution for this unremitting surveillance through his act of dying. Nationalist non-cooperators created a fuss and called for an explanation for the death from the government. In addition, “there was a lot of vague talk and obstruction to the holding of the inquest.”¹⁰⁰ And although the police were ultimately exonerated, they were called upon by the Madras government to give an adequate account of the events.

People had access to more obvious forms of protest after India won independence from British rule. News of custodial deaths spread easily in the neighbourhood of the police-station, sometimes causing angry crowds to gather in protest.¹⁰¹ On occasion, the police fired on these crowds, which were frequently led by leaders of the political opposition.¹⁰² Yet, more often than not, the police continued to be exonerated in court and by the government both for the custodial deaths and for the public firings, keeping alive the question of judicial blindness to police activity in postcolonial India too.

⁹⁹ Letter from District Magistrate to the Madras Government, dt. 27th April 1924, in Ibid.

¹⁰⁰ Letter from District Magistrate to the Madras Government, dt. 27th April 1924, in Ibid.

¹⁰¹ Construction workers who saw the policeman beat Andi (1959) immediately ran to inform the village Panchayat president. The word spread and soon a large crowd gathered outside the police station.

¹⁰² When Veerabhadran, a cart-puller, was tortured by the police (1969), the complainants and his family heard about it and came to the police station to withdraw the complaint, so that he might be released. The police refused. Two days later, when his body was found lying near the station, the news spread like wildfire in the city, and people gathered in front of the police station to protest against the killing. The station was inadequately staffed, tension built over the course of the afternoon. Sometime after 4 p.m., there were reinforcements and the police fired. Two were killed and several injured. *Theekadir*, 26 June 1969. There was a similar episode a few years later, when Chinnaperumal, accused in a burglary case, was found to have committed suicide in a Tirunelveli police lock up. While his body was taken for autopsy after the inquest, a mob of 500 people demanded a confrontation with the constables responsible for the death. When this demand was rejected, the mob grew violent and surged towards the police station. The police responded with a lathi charge and by opening fire. *Report on the Administration of the Police of the Madras Presidency*, (Madras: Superintendent, Government Press). 1972.

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