

**AN ANALYSIS OF CUSTODIAL TORTURE LEADING TO DEATH WITH
REFERENCE TO INDIA**

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ABSTRACT

“Custodial torture is worse than terrorism because the authority of the state is behind it”

Justice V.R. Krishna Iyer

Though custodial torture is the worst form of terrorism neither our Indian Constitution nor our Indian Criminal laws have attempted at defining it. But Section 3 of The Prevention of Torture Bill defines; “Whoever, being a public servant or being abetted by a public servant or with the consent or acquiescence of a public servant, intentionally does any act for the purposes to obtain from him or a third person such information or a confession which causes-

- i) Grievous hurt to any person; or*
- ii) Danger to life, limb or health (whether mental or physical) of any person, is said to inflict torture:*

Provided that nothing contained in this section shall apply to any pain, hurt or danger as aforementioned caused by any act, which is inflicted in accordance with any procedure established by law or justified by law.”

It is a well-known fact in India that custodial torture is part and parcel of police investigation. The 1980’s incident which happened in Bhagalpur jail still is a wound which needs healing. On analysis of the meaning of the word ‘custody’ it means, protective care or guardianship of someone or something. When the State has someone in its protective care it is the heightened responsibility of the State to genuinely ensure that there is no room for human rights violation.

This paper is an attempt to not just understand the meaning and definitions of custodial torture at both national and international level but also the statutory safeguards and scenarios leading to even the death of an individual while in custody

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due to torture. This article will also do an exposition on judicial interpretation and reflect on suggestions based on current scenario to curb such a nasty crime as this.

Introduction

“Torture is wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold ice and heavy as a stone, paralyzing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself”, - Adrian P. Bartow

India is a land of Gandhi and Buddha and the largest democracy of the world; it is time that the inequalities are addressed and resolved. The custodial violence needs to be heard as it is a human right violation and should not be treated as a “public secret” anymore.

The meaning of ‘custody’ equates to protective care or guardianship of someone or something and we are left to ponder “is it not the heightened responsibility of the state to genuinely ensure that there is any room for human right violation?”

Kautilyan Jurisprudence on Prison Administration

Kautilyan Jurisprudence refers to eighteen departments of administration out of which prison is one of them which lays out prison laws. It differentiates lockups where accused persons were kept till the case was decided. Separate ward for men and women prisoners with walls, pits, wells, bathrooms and place of worship of respective deities were constructed. They provided proper sanitation arrangements protection against fire, poisonous and dangerous creatures. Provision of punishment was also there for the misdeeds of the jail officers. This was kind of ethics followed previously in our ancient time whereas now the scenario is not the same anymore and it is time we reflect it on the issues related to custodial torture.

Definitions of the word Torture

The word “torture” is defined as² “Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

In simple words it is the intentional infliction of severe physical or mental suffering which is carried out by a public official directly or indirectly for a particular purpose.

The United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment is a convention to which India is a signatory but has so far not ratified the convention. The Law Commission of India submitted a report to the ministry of law and Justice regarding the said convention. The commission also introduced the draft of Prevention of Torture Bill. In order to create deterrence, effect the draft bill also proposed for punishments to individuals committing such crimes i.e., Punishment up to 10 years imprisonment and fine. In scenarios of death it is life imprisonment in addition to fine. Apart from reiterating that citizens have the constitutional rights such as right to life and personal liberty it also recommended changes in both Criminal procedure Code (to allow payment of compensation in case of torture) and Indian Evidence Act (if there is an injury in police custody it will be presumed that it is done by the police).

The Prevention of Torture Bill has defined it to be:

“Whoever, being a public servant or being abetted by a public servant or with the consent or acquiescence of a public servant, intentionally does any act for the purposes to obtain from him or a third person such information or a confession which causes i)Grievous hurt to any person; or ii)Danger to life, limb or health (whether

² Article 3 of the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

mental or physical) of any person, is said to inflict torture: Provided that nothing contained in this section shall apply to any pain, hurt or danger as aforementioned caused by any act, which is inflicted in accordance with any procedure established by law”

International Instruments

There are many International Instruments that are responsible for curbing and focusing on the issues related to Custodial Torture.³

SL NO	International Instrument	Year
1	Universal Declaration of Human Rights ⁴	1948
2.	American Declaration of the Rights and Duties of Man ⁵	1948
3.	European Convention for the Protection of Human Rights and Fundamental Freedoms ⁶	1950
4.	United Nations Convention Relating to the Status of Refugees	1951
5.	United Nations Standard Minimum Rules for the Treatment of Prisoners ⁷	1955
6.	Draft Principles on Freedom from Arbitrary Arrest Detention and Exile	1963
7.	International Convention on the Elimination of All forms of Racial Discrimination ⁸	1965
8.	International Covenant on civil and Political Rights ⁹	1966

³ Law Commission of India – Report No. 273

⁴ Article 5

⁵ Article 27

⁶ Article 3

⁷ Article 31

⁸ ICERD

⁹ Articles 4,7 & 10

9.	American Convention on Human Rights ¹⁰	1969
10.	Declaration on the Protection of all persons from being subjected to Torture and other Cruel Inhuman or Degrading Treatment or Punishment.	1975
11.	Optional Protocol to the International Covenant on Civil and Political Rights	1976
12.	Code of Conduct for Law Enforcement Officials ¹¹	1979
13.	Convention on the Elimination of All Forms of Discrimination against Women ¹²	1979
14.	African Charter on Human and Peoples Rights ¹³	1981
15.	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ¹⁴	1984
16.	UN Declaration on Basic Principles of Justice for Victims of Crime and abuse of Power	1985
17.	Inter-American Convention to Prevent and Punish Torture,	1985
18.	European convention for the Prevention of Torture and Inhuman or Degrading Treatment	1987
19.	Convention on the Rights of the Child ¹⁵	1989
20.	European Convention for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	1989
21.	Cairo Declaration on Human Rights in Islam ¹⁶	1990

¹⁰ Article 5

¹¹ Article 2,3,5&6

¹² CEDAW

¹³ Article 5

¹⁴ CAT

¹⁵ Article 37

22.	Charter of Paris for a New Europe	1990
23.	Convention on the Protection of the Rights of Migrant Workers and Members of their families ¹⁷	1990
24.	International Convention on the protection of the Rights of All persons against Enforced Disappearance ¹⁸	1992
25.	Arab Charter on Human Rights ¹⁹	1994

Constitutional and Statutory Safeguards against Custodial Brutality

❖ Constitution of India

Though Constitution of India does not specifically mention the term custodial torture or custodial death anywhere but being the law of land, it definitely provides protection against such inhuman cruelty by the law agency. The glimpse of such protection can be drawn from various provisions.

- Article 21 of Indian constitution provides that “no person shall be deprived of his life and personal liberty except according to procedure established by law.” This clearly establishes that no one has the right to take any other person’s life or personal liberty and this no one even includes the state. The word personal liberty first explained by Supreme Court²⁰ as liberty concerning the person or body of an individual. The word life and personal liberty is again elaborated by the apex court of the country²¹ as any act which damages or injures or interferes with the use of any limb or faculty of a person, either permanently or temporarily, is direct inhibition of Article 21 again held

¹⁶ Articles 19 &20

¹⁷ Article 10

¹⁸ CPAED

¹⁹ Article 8

²⁰ A. K. Gopalan v. Union of India AIR 1950 SC 27

²¹ Maneka Gandhi v. Union of India. AIR 1978597

in *Francis Coralie Mullin v The Administrator, Union Territory of Delhi &Ors*²². Therefore, to have any other rights of a person he has to have life first.

- Article 20(3) “No Self-incrimination” which means no person accused of any offence shall be compelled to be a witness against himself. Therefore, it directly prohibits any form of custodial brutality by prescribing specific mandates to be followed by criminal justice system.
- Article 22 provides procedural requirements which must be followed and complied with on arrest of a person. These requirements include the right to be informed as soon as may be of grounds of arrest, right to consult and to be represented by an advocate of his choice, right to produce before a magistrate within 24 hours of arrest.
- Article 14 provides right to equality which is of two-fold i.e., equality before law and equal protection of law.
- Article 32 which is soul of the constitution enables a person to directly approach Supreme Court in case of fundamental rights violation.

❖ **Indian Penal Code, 1860**

The Indian Penal Code has a few arrangements disallowing custodial savagery.

- Section 220 punishes the public servant in whose custody any person is tortured during interrogation, investigation with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.
- Section 330 provides that voluntarily causing hurt for the purpose of extorting a confession or to compel restoration of property carries a punishment up to seven years imprisonment and with fine.
- Section 331 provides punishment for voluntarily causing grievous hurt to extort confession, or to compel restoration of property, which may extend to ten years with fine.

²² 1981 SCR (2) 516

- Section 342 provides punishment for wrongful confinement.
- Section 348 provides punishment for wrongful confinement to extort confession or compel restoration of property.

❖ **Indian Evidence Act, 1872**

- Section 25 specifically provides that no confession made to a police officer, shall be proved against a person accused of any offence.
- Section 26 mentions that confession by accused while in custody of police not to be proved against him, unless the same is made in the immediate presence of magistrate.

❖ **Criminal Procedure Code, 1973**

- Section 49 provides safeguard against using more restraint than necessary for arrest.
- Section 57 provides that arrested person not to be detained more than twenty-four hour in the absence of extension by magistrate under section 167.
- Section 162 provides that statements to police during the course of investigation need not be signed and it will not be used for any purpose except contradiction of witness during cross-examination.
- Section 163 provides that no inducement shall be made by the police to extract confession.
- Section 176 provides that where a person dies in the custody of police it has to be inquired by the magistrate to find out the cause of death.
- Section 315 enables an accused person to be competent witness.

❖ **The Indian Police Act, 1861**

- Section 7 and 29 of this act provides for the dismissal, suspension and other penalties to police officers who are unfit to perform their duties and negligent.

❖ **Human Right Act, 1993**

- Section 2 (1) (d) provides for the meaning of human rights.

❖ **Mali math Committee Report²³**

- “It was observed that historically criminal justice system seems to exist to protect the power, the privilege and the values of the elite sections in society”²⁴.
- The Committee also observed: “Manner in which investigations conducted is of critical importance to the functioning of the criminal justice system. Not only serious miscarriage of justice will result if the collection of evidence is vitiated by error or malpractice, but successful prosecution of the guilty depends on thorough and careful search for truth and collection of evidence, whether for or against suspect. Protection of the society being of paramount consideration, the laws, procedures and police practices must be such as to ensure that the guilty are apprehended and punished with utmost dispatch and in the process the innocent are not harassed. The aim of investigation and in fact, the entire criminal justice system is to search for truth. To achieve this objective, the investigating officers must be properly trained and supervised and necessary scientific and logical support should be made available to them.”

Judicial Precedents on Custodial Deaths

“With great power comes greater responsibility” Supreme Court

In catena of judgments Supreme Court of India declares any form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity and right to life. Allahabad High Court had an occasion to make the following remarks, in a case pertaining to police deviance that there is not a single lawless group in the whole country whose record of crime comes anywhere near the record of that organized sector which is called as Indian Police Force. It further goes on saying... Where every fish, barring perhaps a few stinks, it is idle to pick out one or two and says that it stinks.

- *D. K. Basu v. State of West Bengal*²⁵: The Supreme Court while dealing with issue of custodial torture including third-degree methods and custodial death held that

²³ March 2003

²⁴ Custody Jurisprudence under Criminal Justice Administration, Eastern law house private Ltd, New Delhi Kavita Singh, pg 279

²⁵ AIR 1997 SC 610

suspected criminal should be interrogated scientifically in accordance with law instead of using torturing methods to extract confessions.

- *Gauri Shanker v. State of U.P.*²⁶: while dealing with the custodial death the Supreme Court held that death in police custody must be seriously taken otherwise, we will move in the direction of police raj. It must be curbed with strict action. The punishment in cases of custodial death should deter such perpetrators.
- *Rabia @ Mamta & ors. V. NCT of Delhi and ors*²⁷: The high court of Delhi held that custodial deaths are endemic in India on a large scale. The court also held that custodial violence should be tackled from two ends i.e., remedial and preventive.
- *State of Madhya Pradesh v. Shyam Sunder Trivedi and Ors*²⁸: the uncivilized method of interrogation of a suspect took its toll and a fatal blow was inflicted on human dignity when custodial violence claimed yet another victim - Nathu Banjara. Supreme Court held that Police excesses and the mal-treatment of detainees/under trial prisoners or suspects tarnishes the image of any civilized nation and encourages the men in 'Khaki' to consider themselves to be above the law and sometimes even to become law unto themselves. Unless stern measures are taken to check the malady, the foundations of the criminal justice delivery system would be shaken and the civilization itself would risk the consequence of heading towards perishing.
- *Saheli, A Women's Resources Centre v. Commissioner of Police, Delhi*: In this case child died due to beating by the police wherein Supreme Court held that for the tortuous act of its employee the state is responsible.
- *Raghubir Singh v. State of Haryana*²⁹: The Hon'ble Supreme Court held that custodial violence, torture and abuse of police power are not peculiar to this country, but it is spread worldwide.
- *State of Uttar Pradesh v. Ram Sagar Yadav*³⁰: Hon'ble Supreme court held that Government need to amend the law appropriately so that policemen who commit

²⁶ AIR 1990 SC 709

²⁷ W.P. (CRL) 2348

²⁸ (1995) 3 SCALE 343

²⁹ AIR 1980 SC 1087

atrocities on persons who are in their custody are not allowed to escape by reason of paucity or absence of evidence. The result is that persons, on whom atrocities are perpetrated by the police in the sanctorum of the police station, are left without any evidence to prove who the offenders are. It is ironical that, in the instant case, a person who complained against a policeman for bribery was done to death by that policeman, his two companions and his superior officer, the Station House Officer.

- *Kartar Singh v. State of Punjab*³¹: Hon'ble Supreme Court held that the recognition of the inherent dignity and of the equal is the foundation of freedom, justice and peace in the world. If these human rights are outraged, then the court should set an example with deterrent action by exercising its majestic judicial authority.
- *Munshi Singh Gautam v. State of M.P*³²: The Court observed: "Rarely in cases of police torture or custodial death, direct ocular evidence is available of the complicity of the police personnel, who alone can only explain the circumstances in which a person in their custody had died. The courts must not lose sight of the fact that death in police custody is perhaps one of the worst kinds of crime in a civilised society governed by the rule of law and poses a serious threat to an orderly civilised society. Torture in custody flouts the basic rights of the citizens recognised by the Indian Constitution and is an affront to human dignity. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve; otherwise the common man may tend to gradually lose faith in the efficacy of the system of the judiciary itself."
- *Sube Singh v. State of Haryana*³³: The Court observed: "The expectation of quick results in high-profile or heinous crimes builds enormous pressure on the police to somehow 'catch' the 'offender'. The need to have quick results tempts them to resort to third degree methods. They also tend to arrest "someone" in a hurry on the basis of incomplete investigation, just to ease the pressure."

Recommendations and Suggestions

³⁰ AIR 1985 416

³¹ AIR 1961 SC 1787

³² AIR 2005 SC 402

³³ AIR 2006 SC 1117

Custodial torture is a naked violation of human dignity and a degradation which destroys, to a very large extent human personality. Suggestions to curb such inhuman blast on humanity are as follows:

- 1) Custodial torture must be identified as a specific offence under criminal laws.
- 2) United Nations conventions against torture and other cruel inhuman and degrading treatment or punishment must be ratified by central government.
- 3) Involvement of NGOs is very crucial for country like ours and the government should allot funds in order to create awareness.
- 4) Guidelines provided by Supreme Court in D.K. Basu case should be strictly adhered to.
- 5) Tolerance level should be zero in the instance of custodial death.
- 6) Scientific interrogation methods should be adopted to eradicate such menace.

Conclusion

Custodial torture is the worst form of human rights violation and it has become a very serious & alarming tragedy for a country like India. There is no law or procedure which authorises such inhumane and arbitrary treatment. It is calculated assault on human dignity and whenever human dignity is wounded civilization takes a step backward, the flag of humanity must on each of such occasion fly half-mast. Therefore, effort should be made to remove the very cause that leads to such violation; endeavour should be made to achieve a balanced level of functioning.

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