

**CUSTODIAL TORTURE – TRANSFORMING ACCUSED INTO  
VICTIMS**

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**ABSTRACT**

*The reformatory theory is the basic functioning platform for Indian criminal justice system. Application of various punishments in criminal law is reformatory in nature. In the Latin phrase “nulla poena sine lege”, a person can be punished for an offence only in accordance with the law. But the deviance by the Police and Prison authorities plays a major role in violation of Human rights as which affects the physical and mental health of the victims.*

*In recent days there were many custodial deaths which took places in every part of India, even though it drawn an attention of media and public. Every custodial death is caused by a way of some custodial torture such as physical torture, mental torture and sexual torture. Whenever the victim thinks of their custodial agony, horror and fear remains till the end of their life. This Paper aims to enumerate the prisoner’s rights and recent situation of custodial torture in India.*

**Introduction**

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**Meaning of Custody**

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The word Custody is not expressly defined in criminal laws. In code of criminal procedure while defining the term making an arrest “The police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action”<sup>2</sup> in this explanation the word custody has been used.

Defining the detention of arrested person. “No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty- four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate’s Court”<sup>3</sup> by these section it is clearly understood that custody means taking a person under lawful detention.

Under Indian Laws custodies are categories into two major types as they are (i) Police custody and (ii) Judicial custody. In police custody were an accused is taken for investigation it is purely about under trail prisoners whereas judicial custody is consist of both under trail and convicted prisoner.

### **Meaning of Torture**

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has defined ‘torture’ as “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 actions inherent in or incidental to lawful sanctions.”<sup>4</sup>

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<sup>2</sup>Code of Criminal Procedure, 1973, s. 46

<sup>3</sup>Code of Criminal Procedure, 1973, s.57

<sup>4</sup>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, art 1

Torture has not been defined in the Constitution or in other penal laws. The task of defining torture is as difficult and debatable as any other social phenomenon. In the words of Adriana P Bartow: “Torture is a 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 as 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.”<sup>5</sup>

### **Different types of Custodial Torture**

There are different types of custodial torture every torture starts with the primary force of deviance by authorities. Sometimes this type of torture leads to death of a person. As they are namely, (i) Physical torture, (ii) Mental torture, (iii) Sexual torture and (iv) Pharmacological torture. There are three essential elements which constitute custodial violence;<sup>6</sup>

- (i) The infliction of severe mental or physical pain or suffering,
- (ii) By or with the consent or acquiescence of the state authorities,
- (iii) For a specific purposes such as gaining information, punishment or intimidation.

Every physical torture is a battery there will be a physical contact by body or any another instrument which inflict a pain and harm towards the body of a victim Physical torture are Causing disfigurement and exhaustion, Causing torture to such an extent that the victim feels fear of immediate death, Forcing the victims to sleep on damp floor, Making the children stay naked in extreme cold weather or under the sun in temperature for more than 30 degree, Scratches and cuts are made on different parts of the body with sharp objects, Use of irritants like chili powder, table salts etc. are applied on delicate parts or on open wounds.<sup>7</sup>

Following are the methods of torture applied by police and other agencies in India:<sup>8</sup>

- Beating on the spine.

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<sup>5</sup> D. K. Basu v. State of West Bengal, AIR 1997 SC 610

<sup>6</sup> Dr. Raghunathan Opeh., Torture [www.geocities.com/athenes/forum/2088/d\\_tort.htm](http://www.geocities.com/athenes/forum/2088/d_tort.htm)

<sup>7</sup> <http://www.legalserviceindia.com/legal/article-55-custodial-violence-indian-perspective.html>

<sup>8</sup> Shailendra Mishra, Police Brutality: An Analysis of Police Behavior

- Beating with canes on the bare soles of the feet.
- Beating with rifle butts.
- Burning with lighted cigarettes and candle flames.
- Causing of death by constant torture.
- Denial of medical treatment.
- Denying food, water and sleep and then forcing the victim to drink his own urine.
- Extended detention in solitary confinement.
- Forcible extraction of teeth.
- Forcibly lying the victim nude on ice slabs.
- Hauling the victim on 'airplane' position. Victims hands tied behind the back with a long rope, the end hauled over on pulley, leaving the victim dangling in mid-air swinging.
- Ill-treatment and misbehavior with the victims.
- Inserting live electric wire into body crevices.
- Insertion of metal nails under toenails.
- Making the victim crouch for hours in 'Z' position.
- Mock execution or threat of death.
- Public flogging.
- Severe beating with fist blows, lathi or iron rod.
- Slapping with cupped hands on both ears until the victim bleeds and loses consciousness.
- Stamping on the bare body with heeled boots.
- Stripping and parading of girls and women in public, commission of rape and ill treatment to them.
- Stripping the victim, blackening face and parading him or her in public.
- Stubbing out or burning with cigarettes or blown torch.
- Submersion in water.
- Suffocation.
- Suspending the victim by his wrists.
- Threats of releasing police dogs on them.
- Victim is crushed under heavy rollers.

- Victim is stabbed with sharp instruments

It can be said that custodial violence, rape and death is that timid form of behavior which changes the whole concept of life of the victim and which has been prevalent in India since the ancient and medieval times. It was quite popular during the British Raj. The physical violence paralyses the bodily simulation of the person and the psychological violence break down the victim's personality.<sup>9</sup>

### **Measures to Prevent Torture**

Human rights and the practice of torture are contradictory to each other. Human rights support human dignity, self-respect, liberty from atrocity. Torture and Human rights cannot go hand in hand. Justifications for the use of torture, or more euphemistically, "coercive interrogation," depend on accepting the principle that there is an appropriate balance between liberty and security that may include depriving individuals of their human dignity by subjecting them to torture or cruel, inhumane, or degrading treatment. The governments at international and national level have evolved various strategies and control mechanism against the use of torture.<sup>10</sup>

#### 1. International level Measures

##### Universal Declaration of Human Rights, 1948

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.<sup>11</sup> These lines from declaration enrich the human right of every single individual of the world.

##### United Nation Convention against Torture, 1987

The Convention against torture provides protection by stating that torture is always wrong in every circumstance. Article 1 provides a fundamental definition of torture: the intentional infliction of severe suffering, for a specific purpose, by state authorities. Article 2 goes on to state that there are 'no exceptional circumstances

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<sup>9</sup>[https://shodhganga.inflibnet.ac.in/bitstream/10603/75380/11/11\\_chapter%203.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/75380/11/11_chapter%203.pdf)

<sup>10</sup> Torture in Opposition to Human Rights: A Discourse, IOSR Journal of Humanities And Social Science

<sup>11</sup> Universal Declaration of Human rights, 1948, art 1

whatsoever' to justify torture. This means that torture is always absolutely prohibited.<sup>12</sup>

#### Basic Principles for the Treatment of Prisoners, 1990

Basic Principles for the Treatment of Prisoners adopted and proclaimed by General Assembly Resolution 45/111 of 14 December 1990 it states that all prisoners shall be treated with the respect due to their inherent dignity and value as human beings. And there shall be no discrimination on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. It is, however, desirable to respect the religious beliefs and cultural precepts of the group to which prisoners belong, whenever local conditions so require.<sup>13</sup>

#### 2. National Level Measures

The case of *Sheela Barse v. State of Maharashtra* has provided for guidelines on rights of the arrested persons especially women. The court in this case also emphasized on the need for Magistrates to inform all arrested persons of their rights. Guidelines were also given by the Supreme Court in *D.K Basu v. State of West Bengal* with respect to rights of arrested persons. The most significant one being the arrestee should be subjected to medical examination every 48 hours during his detention by a doctor from the approved panel of doctors and copies of all prescribed documents should be sent to the concerned Magistrates. Also, the arrestee may be permitted to meet his lawyer during interrogation.<sup>14</sup>

Section 55A of the Code of Criminal Procedure, 1973 provides that, it shall be the duty of the person having the custody of an accused to take reasonable care of the health and safety of the accused.<sup>15</sup>

Section 50A of the Code of Criminal Procedure, 1973 provides that,

(1) Every police officer or other person making any arrest under this Code shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his friends; relatives or such other persons as may be

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<sup>12</sup><https://eachother.org.uk/un-convention-torture-protect-enforceable/>

<sup>13</sup><https://www.ohchr.org/en/professionalinterest/pages/basicprinciplestreatmentofprisoners.aspx>

<sup>14</sup><http://www.legalservicesindia.com/article/297/Custodial-Torture.html>

<sup>15</sup> Code of Criminal Procedure (Amendment) Act, 2008.

disclosed or nominated by the arrested person for the purpose of giving such information.

(2) The police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station.

(3) An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as may be prescribed in this behalf by the State Government.

(4) It shall be the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that the requirements of sub-section (2) and sub-section (3) have been complied with in respect of such arrested person.<sup>16</sup>

### **Conclusion**

The National Crime Record Bureau's Crime Statistics – 2018, Volume III clarifies that there were nearly 202 deaths were happened in the custody it covers the both persons in remand and persons not on remand and this report is only towards the person who were in police custody. It shows the ill-treatment and torture done by the authorities towards the accused. This report is only about the death record but there were many custodial tortures still rolls around the accused these human rights violation maybe the reason behind many custodial deaths. The crime statistics shows that nearly 218 cases were registered against the police personnel for the human rights violation this might be a step towards preventing deviance of the authorities and which may in future reduces the custodial torture and prevent transforming accused into victims.

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<sup>16</sup> Code of Criminal Procedure (Amendment) Act, 2005.