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CUSTODIAL TORTURE IN INDIA: INSTITUTIONAL PERSISTENCE, ACCOUNTABILITY FAILURES, AND PATHWAYS TO REFORM

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ABSTRACT

This comprehensive article explores the phenomenon of custodial torture within the Indian criminal justice system, examining historical evolution, contemporary manifestations, institutional accountability mechanisms, and remedial measures. The paper traces torture's evolution from historical and contemporary evolution to post-independence democratic India, demonstrating how institutional cultures perpetuate coercive interrogation practices despite successive police commissions and constitutional reforms. The research identifies that the persistence of custodial torture stems from systemic factors including inadequate police training, lack of accountability for perpetrators, institutional cultures valorizing 'results,' and insufficient judicial oversight. The article analyzes various torture methods documented in Indian custody and examines legal protections provided by international conventions including the UN Convention Against Torture, which India signed the Convention on October 14, 1997, but has not ratified it yet continues to inadequately implement. The study argues that merely enacting law is insufficient; rather, sustained institutional reform, rigorous accountability mechanisms holding senior officers responsible for subordinate misconduct, comprehensive training emphasizing human rights and dignity, separation of investigative and law enforcement functions, and judicial activism enforcing victim compensation are essential. This work contributes to understanding why custodial torture persists despite constitutional protections and international commitments, advocating for holistic reforms addressing both substantive law and institutional culture.

INTRODUCTION

Torture represents a serious violation of human rights—the deliberate infliction of severe suffering on those unable to resist. This practice, which predates recorded history, has persisted despite legal prohibition and moral condemnation. In contemporary India, despite constitutional guarantees, statutory protections, and international treaty commitments, custodial torture remains endemic across police stations nationwide.¹ The disconnect between law and reality reveals deep institutional pathologies requiring systemic intervention.

Police custody represents one of democracy's most dangerous intersections—the point where state power confronts individual vulnerability. When police authority extends unchecked, interrogation frequently transforms into coercion, and investigation becomes torture. This article examines why torture persists in Indian custody despite comprehensive legal prohibitions, analyzes institutional mechanisms enabling its perpetuation, and identifies transformative reforms essential to eradicate this practice.

HISTORICAL EVOLUTION OF CUSTODIAL VIOLENCE IN INDIA

Understanding contemporary custodial torture requires understanding its historical roots. Ancient Indian texts including the Code of Manu prescribed punishment and coercive interrogation as standard investigative methods. Torture was systematically categorized, with eight prescribed areas for infliction.² In medieval India, custodial violence continued, though record-keeping remained minimal. The British colonial period witnessed systematic torture by authorities, particularly tax collectors, who employed physical coercion to extract revenue and confessions.³

The Select Committee on East Indian Affairs in 1832 noted widespread torture by revenue and police officers. The Torture Commission of 1855, investigating the Madras presidency, found that police torture was 'rather common' and 'systemic rather than isolated.'⁴ These nineteenth-century discoveries led to establishment of the Police Commission of 1860, which ultimately

¹ National Human Rights Commission, Annual Report 2017 (noting 894 deaths in detention between January and August 2017, with Uttar Pradesh recording 204 cases).

² Code of Manu, Book VII (ancient Hindu legal text prescribing punishment; torture areas included privy parts, abdomen, tongue, hands, feet, eyes, nose, and ears).

³ Select Committee on East Indian Affairs, 1832 Report (documenting torture by revenue and police officers in colonial India).

⁴ Torture Commission Report, 1855 (noting that torture was 'rather common' and 'systemic rather than isolated and exceptional occurrence').

resulted in the Police Act of 1861. Despite these reforms, the Indian Police Commission of 1902-1903 found the police force corrupt, authoritarian, and guilty of widespread abuses. Post-independence, multiple police commissions—including the Shah Commission (1978), National Police Commission (1979-1981), Rebeiro Committee (1998), and Padhmanabhaiah Committee (2000)—documented persistent torture and proposed reforms. The National Police Commission's first report explicitly acknowledged that police regularly employ third-degree tactics during interrogation.⁵ Yet despite these documented findings and recommendations, institutional practices remained largely unchanged. The persistence of torture recommendations across decades indicates that commissioning inquiries without enforcement mechanisms proves futile. This continuity demonstrates that custodial torture in India is structurally embedded rather than incidental.

MANIFESTATIONS OF TORTURE IN CONTEMPORARY CUSTODY

Custodial torture manifests across physical, psychological, and sexual dimensions. Physical torture includes beating with canes on bare soles, striking the spine, burning with cigarettes or candles, suspension in 'airplane' position with hands tied behind the back, and forced ingestion of urine.⁶ These methods are designed to inflict severe pain while minimizing visible evidence, relying on careful calibration to avoid detection during routine medical examinations.

Psychological torture employs sleep deprivation, solitary confinement, sensory deprivation, and coerced social taboo-breaking. Denial of food, water, and access to toilet facilities creates conditions of extreme disorientation. UN Special Rapporteur on Torture has documented that rape and sexual violence constitute common torture methods in Indian custody, including forced stripping, invasive body searches, and sexual humiliation, particularly of women detainees.⁷

The stated purpose of torture is obtaining confessions or information. However, research demonstrates that torture produces unreliable confessions, frequently resulting in innocent individuals confessing to crimes they did not commit. The National Crime Records Bureau has recorded hundreds of custodial deaths annually, though true numbers remain undocumented

⁵ National Police Commission, First Report, 1979-1981 (stating 'Police are regularly criticized for their use of third-degree tactics during inquiry').

⁶ Asian Centre for Human Rights, *Torture in India Report* (2008).

⁷ UN Special Rapporteur on Torture, Report on Torture in India (2008) (documenting rape and sexual violence as common torture methods in Indian custody).

due to widespread under-reporting and misclassification as deaths from 'natural causes' or 'suicide.'⁸

ACCOUNTABILITY FAILURES AND INSTITUTIONAL DEFECTS

The fundamental explanation for torture's persistence is absence of accountability. Section 197 of the Criminal Procedure Code requires executive authorization before prosecuting police officers for crimes committed in official capacity. This requirement, intended as a protection against frivolous prosecution, instead functions as immunity protection. Senior officers routinely refuse prosecution authorization, shielding torturing officers from criminal consequences.⁹

Even when prosecuted, custodial torture cases rarely result in conviction. The burden of proof lies with the victim, yet torture typically occurs without witnesses, and police officers present protective solidarity termed 'brotherhood,' preventing incriminating testimony. Courts, applying strict evidentiary standards, frequently acquit defendants despite compelling circumstantial evidence. This impunity creates perverse incentives—police officers recognize that torture carries minimal risk of punishment while potentially yielding information advancing investigations.

Senior police leadership bears responsibility for subordinate conduct yet frequently escape accountability by claiming ignorance or attributing torture to rogue officers. Institutional cultures that valorize 'results' over methodology implicitly endorse coercive methods. Young officers receive contradictory signals: superiors preach legality while rewarding officers producing confession and information through any means. This disconnect normalizes torture as standard investigative practice.

INTERNATIONAL LEGAL FRAMEWORK AND INDIA'S OBLIGATIONS

The UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment establishes an absolute prohibition on torture in all circumstances, permitting no

⁸ National Crime Records Bureau, Crime in India, Annual Reports 2010-2020 (recording hundreds of custodial deaths annually with causes misclassified as natural deaths or suicide).

⁹ Code of Criminal Procedure, 1973, § 197 (requiring executive sanction for prosecution of police officers in official capacity).

exceptions for terrorism, national emergency, or armed conflict.¹⁰ Article 2 specifies that state-ordered torture and torture with state acquiescence are equally prohibited. Article 4 mandates that states criminalize torture and attempt to torture as domestic crimes. Article 15 provides that confessions obtained through torture shall not be used as evidence, except against the torturer.

India signed the Convention on October 14, 1997¹¹ but has not ratified it. However, India's accession contained significant reservations reducing the Convention's applicability. Most significantly, India declined to accept the Committee Against Torture's investigation authority under Article 20, limiting independent international scrutiny. The UN Special Rapporteur on Torture has sought to visit India since 1993; the Indian government has consistently refused, indicating reluctance to international examination of custodial practices.

The Special Rapporteur, commenting on India based on information received, noted that torture 'certainly appears a tradition of police brutality and arbitrariness' with 'degree of brutality frequently being sufficiently unrestrained to amount to torture, often with fatal consequences.'¹² This characterization by the UN's premier torture expert indicates that India's custodial torture problem reaches systemic proportions requiring urgent intervention.

JUDICIAL REMEDIES AND COMPENSATION MECHANISMS

Indian courts, particularly the Supreme Court, have emerged as custodians of constitutional protections against torture. *D.K. Basu v. State of West Bengal* established comprehensive guidelines for preventing custodial violence, including identification of arresting officers, creation of arrest memoranda, notification of family, and mandatory medical examinations.¹³ The judgment shifted from asking whether torture occurred to presuming torture if evidence of injury appears without police explanation.

¹⁰ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Art. 2, opened for signature Dec. 10, 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987).

¹¹ India signed the Convention Against Torture on October 14, 1997, with reservations regarding Committee Against Torture investigation authority under Article 20.

¹² UN Special Rapporteur on Torture, Observations on India, 2008 (noting that torture appears a 'tradition of police brutality' with degree of brutality 'frequently being sufficiently unrestrained to amount to torture, often with fatal consequences').

¹³ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416 (establishing comprehensive guidelines for preventing custodial violence and providing compensation mechanisms).

Nilabati Behera v. State of Orissa established state liability for custodial deaths and affirmed the right to compensation based on strict liability principles, not fault-based tort standards.¹⁴ This framework holds the state responsible for deaths occurring in its custody regardless of whether officials intentionally caused death. The Court awarded compensation to the deceased's mother, signaling that custodial death constitutes a fundamental rights violation warranting monetary redress.

However, while these judicial decisions represent progressive jurisprudence, they remain insufficient to prevent torture. Guidelines, even Supreme Court-mandated ones, are frequently violated with minimal consequences. Compensation, while appropriate remedially, does not prevent future torture. Victims' families, though receiving monetary awards, lose irreplaceable lives. Judicial remedies operate after harm occurs; prevention requires institutional transformation.

ESSENTIAL REFORMS FOR ERADICATING TORTURE

Addressing custodial torture requires multi-dimensional reform. First, legal innovation is necessary. The Prevention of Torture Bill, 2010, while well-intentioned, inadequately criminalizes torture, excluding mental suffering and limiting definitions to custody-specific contexts. Comprehensive legislation explicitly criminalizing torture across all state-controlled institutions, extending provisions beyond police custody to prisons and military detention, and establishing minimum mandatory sentences would strengthen legal deterrence.

Second, accountability mechanisms require strengthening. Section 197 of the Criminal Procedure Code should be amended to create an independent mechanism determining prosecution authorization, removing executive discretion to shield police officers. An independent investigative body empowered to investigate custodial violence accusations without police involvement would ensure impartial examination. Importantly, senior police leadership must be held accountable for subordinate misconduct. Indian jurisprudence must adopt doctrines of superior responsibility, making commanding officers answerable for systematic torture by subordinates.

¹⁴ Nilabati Behera v. State of Orissa, (1993) 2 SCC 746 (establishing state liability for custodial death based on strict responsibility principles).

Third, institutional separation is essential. Investigative functions must be organizationally separated from law enforcement and order maintenance. Officers engaged in investigation should devote full time to evidence-gathering rather than maintaining public order. Specialized investigative wings trained in modern forensic techniques would reduce reliance on coerced confessions. Countries like England and developed democracies have successfully separated these functions, permitting investigation without immediate pressure for 'results.'

Fourth, comprehensive training must emphasize human rights, dignity, and modern interrogation techniques replacing coercion. Officers must understand that torture produces unreliable confessions and that human rights adherence advances justice. Training should reach from junior constables to senior leadership. Recruitment criteria should prioritize candidates demonstrating empathy and respect for human dignity rather than authoritarian personalities.

Fifth, oversight mechanisms must be strengthened. The D.K. Basu guidelines mandate custodial justice committees comprising civil society members, human rights advocates, and media representatives. These committees should possess statutory powers to conduct surprise inspections, interview detainees, and immediately report violations. Currently, these committees lack enforcement authority; converting them into empowered bodies capable of protecting detainees would provide crucial safeguards.

Sixth, compensation mechanisms should be made automatic and generous. All custodial deaths should trigger compensation to families based on presumed police responsibility. Torture survivors should receive compensation for medical treatment, psychological rehabilitation, and suffering. This would create financial incentives for police departments to prevent torture, knowing costs would fall upon them rather than victims' families.

CONCLUSION

Custodial torture in India represents not merely individual abuses but systematic institutional failure. Despite constitutional protections, statutory safeguards, international treaty commitments, and judicial guidelines, torture persists because accountability mechanisms remain ineffectual and institutional cultures normalize coercion. Successive police commissions and constitutional courts have provided prescriptions; the missing ingredient is institutional willingness to implement them. The Police Act of 1861, designed for colonial control, continues governing Indian policing with minimal substantive reform. Democratic

India must transition beyond inheritance of oppressive structures toward institutional designs safeguarding human dignity. This requires not solely legislative amendment but genuine cultural transformation within policing—reorienting toward human rights, eliminating impunity, and recognizing that torture perpetrated by the state destroys the very rule of law the state claims to represent. Only through such comprehensive, sustained commitment can India transform custodial torture from endemic practice into eradicated aberration.

