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RAMIFICATIONS OF CUSTODIAL VIOLENCE IN INDIA: A STUDY

AUTHORED BY: AAYUSHI KUMARI & KUMAR SAURABH

ABSTRACT

Custodial violence is not a novel occurrence. It is known to have existed in many forms over the course of the world's history. Only in recent years has it become a problem of highest urgency and significance. Custodial maltreatment has grown to be a significant human rights problem and one of the main roadblocks to democracies and the improvement of human dignity in the modern world. Numerous instances of police and other state agencies cruelty are not the result of individual aberrations, but rather systemic compulsions. Due to the tacit assistance of senior police officials, bureaucrats, politicians, and the judges, the practice is more pervasive and has gone unchecked. A considerable portion of the population also supports the practice in the false notion that it is required for the effective maintenance of peace and order.

Since the beginning of time, both violence and the instruments of terror have been present. What is it about the modern terror phenomena that necessitates an immediate response? Why is it necessary to pass a law against custodial violence? Why do we convene from around the globe, transcending all worries and considerations of race, religious affiliation, nationality, and even strategic advantage and historical grievance, to determine how to contain and combat this plague? In reality, custodial violence is emerging as a new menace to the individual, his family, community, country, law and order, and the entire civilised world.

INTRODUCTION

The term 'torture' has become synonymous with the dark side of human civilization, posing a problem for the medical, legal, and other professions. In the modern age, torture and death in custody are hardly unique ideas. That has long been known. Yet, violation of the Constitution's and other laws' authority and violence in prison have produced serious issues with respect to human rights, which is a hindrance to the development of our democracy and modern society. It has negative effects on people's social functioning, both their mental and physical health, as well

as those of their families, communities, and society at large. This has long been the practise of law enforcement organisations with convicts, criminals, and wrongdoers. A considerable number of cases and incidents of prisoner abuse are periodically brought to light.

The protection of civilians, the maintaining of law and order, and the protection of public property are the orientation of the police, an organised collection of government employees. The police role in a democratic country is to protect liberties, not to curtail them. A democratic police force is unconcerned with the views and associations of individuals, as well as their movements and obedience to official ideology. Even the execution of regulations and formal processes are not its main concerns. Instead, the police force of a democracy is solely concerned with maintaining secure communities and applying the criminal law equally and impartially to all individuals.¹

In a democracy, the police are treated as a service. An effective and trustworthy police force is the nation's primary defense against any violation of human rights. The criminal justice system (courts, police, and prisons) cannot afford to be inattentive, inactive, careless, cruel, or insensitive towards the human rights of its residents. But when legislators and law enforcers become lawbreakers and defenders of human rights become persecutors, democracy is undermined. Unfortunately, our police and prisons share the blame for disregarding the limitations of their power.

Custodial violence can be committed in a variety of ways, including any form of harassment that causes mental or physical suffering, by word of mouth, by requiring an individual to sit at the police station for extended periods of time for no apparent reason, by employing third-degree methods, stripping, molesting, raping, etc. It is performed by those whose primary duties revolve on upholding law and order, finding and preventing crime, and enforcing it. This propensity and temptation must be eliminated for the greater good of justice.²

CUSTODY AND CUSTODIAL VIOLENCE: MEANING AND DEFINITION

Neither the procedural laws nor the substantive laws define the word custody. But it refers to protective care.³ The *dictionary defines custody* as having the authority or responsibility to look

¹ United Nations International Police Task Force, 1996.

² *Dagdu v. State of Maharashtra*, (1977) 3 SCC 68.

³ R.E. Allen, *Concise Oxford Dictionary of Current English* (1990) p.286.

after someone. It is the condition of being guarded or temporarily imprisoned, often by the police. A formal arrest is not always required to be in police custody. It might also entail some form of police surveillance and a restriction on the person in question's freedom of movement.⁴ A situation in which the accused can be considered to have been placed under police control, surveillance, or restraint is referred to as being in custody.⁵ More than only possession, custody also refers to caring. When a judge grants the correctional authority custody of an offender, he is immediately stating that the power the correctional authority has over the criminal must be used to advance the offender's health. The term "custody" suggests protection and supervision. It has no sinister signs of violence while in captivity, even when used to denote arrest or incarceration.

In layman's terms, torture or *violence is defined* as "cruelty," "atrocious," and "injury," which refers to the intentional infliction of severe physical and emotional suffering in order to punish, obtain information, or force a confession. Violence or torture that exceeds the victim's threshold for toleration results in death.⁶ Yet, neither the Indian Constitution nor any other penal laws define torture.

Custodial violence refers to any form of violence committed while a person is in custody, regardless of whether it is authorised by the law. Violence can manifest in various forms, ranging from covert to overt, such as verbal abuse, emotional or physical aggression, severe beating, sexual assault, or even homicide. Detention may occur under different circumstances, whether it's legal, police custody, or under the supervision of institutions responsible for the care of the detainees, including hospitals or homes. Torture in a police or other type of custody is considered to be custody violence.

In its historic rulings⁷, the *Supreme Court of India defined custodial offences* as those that take place while a person's freedom is restricted, either directly or indirectly, by the police. It explicitly broadens the definition of crimes committed while in a person's custody by saying that it makes no difference whether the harm, torture, or assault takes place on the grounds of a police station

Custody according to shorter Oxford Dictionary, means safe keeping, protection, charge, care, guardian ship; M.C.Desai, *Venkata Ramaiya's Law Lexicon with Legal Maxims* (1996) p.574.

⁴ *Gurdial Singh v. Emperor*, AIR 1932 Lah. 609, p. 611. In fact, actual detention or confinement is not essential, suffice it will be if the accused is submitted to custody by action or by word of the police; N.K. Jain, *Custodial Crimes – An Affront To Human Dignity, Human Rights* (2000) p. 64.

⁵ *Mihir Adhikary v. State*, 1983 Cri LJ (Cal) 1559.

⁶ Collins Cobuild, *English Language Dictionary* (1992) p.1546.

⁷ *SAHELI-A Women Resource Centre v. Police Commissioner of Delhi*, AIR 1990 SC 513.

or police post.⁸

VARIOUS METHODS AND TYPES OF CUSTODIAL VIOLENCE

The following torture techniques are still used by Indian police and other agencies⁹:

- i. Striking the bare soles of the feet with canes
- ii. Rifle butts striking
- iii. Burning with candle and lit cigarette flames
- iv. Refusal to give medical care
- v. Depriving the victim of food, water, and sleep before making him drink his own urine
- vi. Prolonged solitary confinement in jail or prison
- vii. The extraction of teeth under duress
- viii. Placing the victim forcibly naked on slabs of ice
- ix. Insertion of metal nails beneath toenails
- x. Forcing the victim to crouch in the "Z" position for hours
- xi. Death threat or mock execution
- xii. Severe beating with a lathi, iron rod, or fist blows
- xiii. Giving Electric shocks
- xiv. Sexual Assault
- xv. Forced Labour
- xvi. Stabbing victim with sharp instruments
- xvii. Public whipping
- xviii. Hitting on the spine
- xix. Mock amputations
- xx. Submersion in water

In order to achieve the desired outcomes, government agencies use a variety of custodial violence-inflicting tactics.

1. PSYCHOLOGICAL VIOLENCE

The following techniques are employed to undermine the victim's self-assurance and morale:

⁸ *D.K.Basu v. State of West Bengal*, AIR 1997 SC 610.

⁹ Shailendre Mishra, *Police Brutality: An Analysis of Police Behavior* (1986) pp.32-33.

- a) Communication techniques in which the victim is misinformed and subjected to mental torture.
- b) The act of mental torture can involve coercing or threatening the victim to engage in or witness torturous behaviors. The victim may be compelled to choose between two equally horrible options that cause mental suffering. Examples of such torture may include forcing the victim to break social taboos or subjecting them to witness the torture of others¹⁰.
- c) Pharmacological methods, such as the use of various drugs to aid in torturing a victim, mask the effects of torture, or both.
- d) Threats and humiliations made against detained individuals, their loved ones, or friends.

2. PHYSICAL VIOLENCE

Physical torture techniques aim to induce pain, discomfort, and dysfunction in different parts of the body, but typically not to the point of killing the victim. To prevent detection during routine examinations, torturers take precautions to conceal signs of torture on the victim's body¹¹. Thanks to advances in medical science, it is now possible to detect internal injuries that may persist for years after the torture incident.

3. SEXUAL VIOLENCE

Sexual violence can have significant social and psychological impacts on its victims. It often begins with verbal abuse and humiliation aimed at demeaning the victim's dignity, and may escalate to rape or sodomy¹². Perpetrators of sexual violence often use various methods to quickly break the victim's resistance and satisfy their own desires.

FACTORS LEADING TO VIOLENCE IN CUSTODY

Empirical evidence from numerous nations indicates that effective governance plays a crucial role in promoting human welfare and facilitating sustainable development. Conversely, it is imperative to acknowledge that inadequate governance has the potential to undermine individual competencies, as well as the institutional and communal capacities required to fulfil even the most fundamental requirements for survival among significant portions of the populace.

It is now widely acknowledged that poverty is not solely attributable to unfavourable economic conditions, but also to inadequate governance. The lack of agency and representation poses a

¹⁰ Nithya Ramakrishnan, *In custody: Law, Impunity and Prisoner Abuse in South Asia 5* (Sage Publication Ltd., 2013).

¹¹ Ibid.

¹² Ibid.

significant challenge for individuals who are economically disadvantaged, rendering them vulnerable to the actions of the state and its institutions, including law enforcement and the privileged class, who may impede their access to justice.

The availability of dependable data regarding custodial crimes is limited and frequently inadequate due to the gravity of the offences committed within the confines of a custodial setting, which are readily concealed and transpire within a secluded and safeguarded environment¹³.

The current accountability framework is insufficient, resulting in a state where law enforcement officials enjoy a high degree of immunity. Consequently, it is challenging to accurately determine the frequency of violent incidents that occur during police custody. In situations where the issue at hand is not particularly severe, it is worth noting that nearly all allegations of police misconduct are disputed, as law enforcement officials are often able to provide a credible rationale for their behaviour.

The primary cause of custodial offences is linked to the practise of torture and its association with corruption and collusion among prominent members of society. The lack of a robust institutional framework and the failure to hold accountable those responsible contribute to the obstruction of justice for the affected parties¹⁴.

There seems to be a prevalent notion in India that torture is justifiable in exceptional situations, particularly for individuals deemed as "hardened criminals" and "terrorists." Despite the presence of judicial activism, extensive media coverage, efforts by the National Human Rights Commission, and intervention by civil society, the issue of combating torture and preserving human dignity remains a concern.

The occurrence of violence within custodial settings can be attributed to a diverse array of underlying factors and rationales. Numerous governmental agencies possess a significant degree of authority and latitude bestowed upon them by diverse statutes and regulations, the prevailing political atmosphere, and the broader societal context. The occurrence of custodial crime within law enforcement or other governmental institutions is indicative of an underlying issue rather than

¹³https://www.academia.edu/9267466/CONCEPT_OF_CUSTODIAL_VIOLENCE_AND_TYPES_OF_TORTUE

¹⁴ Ibid.

the root cause itself. The pathology is located elsewhere. The statement posits that the operational context of our governmental agencies is a direct manifestation of the prevailing social environment¹⁵. The aetiology of this phenomenon is complex and involves multiple factors.

The system of internal awards, which offers financial incentives or promotions for the performance of extrajudicial executions, functions as a catalyst. The individuals affected by this offence predominantly originate from marginalized, economically disadvantaged, socially oppressed, less privileged, and uneducated segments of the populace, who typically encounter limited opportunities to avail themselves of the scant legal recourses that are available. The absence of coherence among regional entities has resulted in the current support structure's inability to effectively address the issue¹⁶.

The issue of corruption within the police force and various governmental and legal institutions is a systemic and pervasive problem that serves to worsen the situation by allowing such criminal activities to remain unaddressed. Misuse of laws relating to arrest and investigation also provides the opportunity to the police to commit torture.

EFFECTS OF CUSTODIAL VIOLENCE

The following are the most disturbing aspects of the widespread use of torture and violence against prisoners¹⁷:

1. The public usually views police as being just as brutal as murderers.
2. It tarnishes the reputation and furthers the separation between the people and the police.
3. Because of violence committed while in custody, rape, and deaths while in custody, the population engaging in policing is the lowest.
4. Because human rights are frequently violated, the public has less faith in the legitimacy of government institutions.
5. Victims lose their mental equilibrium, experience extreme insomnia, and develop paranoia.
6. The negative effects of all the positive work done by other officers holding the custody are negated by violence, rapes, and deaths in custody.
7. The victim of the violence or torture dies, is driven to commit suicide, suffers from a disability,

¹⁵ <https://knowlaw.in/index.php/2023/05/22/indian-police-custodial-violence-and-interrogations/>

¹⁶ Ibid.

¹⁷ <https://www.clearias.com/custodialviolence/#:~:text=It%20sometimes%20leads%20to%20psychological,social%20hatred%2C%20and%20many%20more.>

and loses his identity, personality, and capacity to live a complete life with his family and friends in the future.

8. The victim experiences intense mental anguish, including feelings of guilt and humiliation, a lack of confidence and self-worth, hopelessness, posttraumatic stress disorders, etc.

9. Many innocent people become criminals as a result of being traumatised by the insensitive police. The victim is inspired to rebel against the entire system, the nation, and society by their grievances against even one specific individual. Even common offenders leave jail properly hardened.

10. A vicious cycle of poor interrogation, fabricated investigation findings, and mistrust of the criminal justice system is created by the criminal justice system's growing dysfunction and torture in custody.

INTERNATIONAL CONVENTIONS AND TREATIES

The act of torture is considered a violation of international law and is subject to the legal concept of 'jus cogens', which refers to a fundamental norm that cannot be overridden. Under international law, the use of custodial torture cannot be justified on any grounds, regardless of whether it is deemed an emergent situation or not. Several international conventions have been established regarding this matter, including the Geneva ICCPR, UNCAT, UDHR.

UNITED NATIONS CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, 1984

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) is a globally recognised human rights treaty that operates with the objective of preventing the occurrence of torture on a global scale. This convention mandates that States implement efficient measures to prevent the occurrence of torture within their territorial jurisdiction, and prohibits the repatriation of individuals to their native country if there exists a reasonable basis to infer that they may be subjected to torture¹⁸.

The second article of the Convention explicitly forbids the use of torture and mandates that signatory parties implement efficacious measures to preclude its occurrence within any region under their control. The use of torture cannot be justified under any circumstances, including but

¹⁸<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

not limited to war, the threat of war, political instability within a country, a public emergency, terrorist activities, violent criminal behavior, or any type of armed conflict. The principle of absolute prohibition, which has been recognised as a customary international law, has gained acceptance since the inception of the convention.

India has signed the convention against torture in 1997 but has not yet ratified the convention, as a result currently in India there are no anti-torture laws. This has led to the lack of accountability for the perpetrators of such heinous crime.

THE PREVENTION OF TORTURE BILL, 2010

To ratify the 1975 *UN Convention against Torture (UNCAT)*, the bill was presented in the Lok Sabha. The objective of the Bill is to make the act of inflicting torture on an individual while they are in custody a criminal offense. The definition of torture is described as causing severe harm or posing a risk to the victim's life, body, or health. There are some flaws in the bill, such as the definition being inconsistent with the UNCAT definition and being limited to acts of violence committed while a person is being held against their will in order to force them to make a confession. It also excludes mental pain or suffering and many other acts that would otherwise qualify as torture, doesn't specify a minimum sentence for those who commit such crimes, and does not address victim compensation¹⁹.

The Bill has failed to pass due to insufficient political support and certain unsatisfactory provisions.

UNIVERSAL DECLARATION ON HUMAN RIGHTS, 1948

Human rights, much like fundamental rights, possess a paramount, eternal, sacrosanct, and transcendental nature. They must be regarded as inalienable and unavoidable in order to uphold the dignity of individuals. The acknowledgement and declaration of human rights serves to uphold and advance the innate dignity of all individuals within the human community. The year 1948 saw the advent of a global movement towards safeguarding and ensuring fundamental human rights with the introduction of the Universal Declaration of Human Rights. Article 3 of the UDHR proclaims that everyone has the right to life, liberty and security of person.²⁰

¹⁹ <https://prsindia.org/theprsblog/the-prevention-of-torture-bill-2010>

²⁰ Article 3- "Everyone has the right to life, liberty and security of person."

According to Article 5, individuals shall not be subjected to torture or any form of cruel, inhuman, or degrading treatment or punishment.²¹ Article 11 stipulates the safeguarding of the presumption of innocence for individuals accused of a criminal offence until such time as guilt has been established. The purpose of this measure is to provide insulation to the individual in question against any potential arbitrary actions by the authorities involved in the case.²²

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966

Article 7 of the ICCPR states that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”²³

UNITED NATIONS VOLUNTARY FUND FOR VICTIMS OF TORTURE, 1981

The United Nations Voluntary Fund for Victims of Torture was established in 1981 in accordance with General Assembly Resolution 36/151 of December 16, 1981. Its purpose is to receive voluntary contributions and allocate them through established channels of assistance as humanitarian, legal, and financial aid to individuals who may have been subjected to torture, as well as to their family members. Various forms of humanitarian aid are extended to victims, encompassing medical, psychological, legal, social, and economic assistance.

The escalating occurrences of custodial violence within police custody across various regions of the nation are a subject of profound apprehension. Allegations of power abuse and torture of detainees by law enforcement officials who possess the authority to detain individuals during the process of interrogation and investigation of criminal activity appear to be resulting in the emergence of additional offences.

National Human Rights Commission has reported numerous instances of human rights violations in police custody resulting from acts of torture, spanning from its inception in 1993 until 2005-2006. Over the years, the NHRC has made a significant observation that the State of Uttar Pradesh

²¹ Article 5- “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

²² Article 11-“(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense. (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.”

²³<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights#:~:text=the%20present%20Covenant.,Article%207,to%20medical%20or%20scientific%20experimentation.>

has reported the highest number of such complaints. The Commission, in its 2005-2006 report, observed that despite the establishment of a Human Rights Commission by the state, the trend of human rights violations in Uttar Pradesh persists.

In the year 2020, during covid-19 lockdown period, a father and son in Tamil Nadu were killed in police custody after allegedly being tortured by the Toothukudi district police for keeping the shop open after the covid-19 curfew hours.

The National Crime Record Bureau (NCRB) data shows that India has in total recorded 88 custodial deaths in the year 2021 and Gujrat has recorded the highest number of deaths for the second consecutive year, followed by Maharashtra.²⁴ According to the National Crime Report Bureau, one person dies in India's prisons every six minutes. The need for a law forbidding torture has been repeatedly stated by the courts, numerous legal experts, the Law Commission of India, yet, the legislation does not appear to be in the works due to the gap between words and actions.²⁵ The 273rd Law Commission report released in 2017 suggested, among other things, payment of compensation to victims of torture keeping in mind socio-economic background of the victim, nature, purpose, extent and manner of injury, including mental agony caused to the victim such as the amount suffices the victim to bear the expenses on medical treatment and rehabilitation. The Commission had also observed that tolerance of police atrocities, amounts to acceptance of systematic subversion and erosion of the rule of law and that it is not permissible whether it occurs during investigation, interrogation or otherwise²⁶.

CONSTITUTIONAL AND LEGAL SAFEGUARDS AGAINST CUSTODIAL VIOLENCE IN INDIA

The Indian Constitution mandates that the State has a duty to uphold and guarantee the protection of fundamental rights of all individuals, including those who are incarcerated, under trial, or detained by authorised personnel. Human rights are inherent and inalienable rights that are afforded to individuals and cannot be revoked or surrendered. The Indian judiciary has been instrumental in safeguarding the rights of individuals, including those who have been marginalised

²⁴<https://www.deccanherald.com/india/ncrb-report-gujarat-records-highest-custodial-deaths-in-india-1140709.html>

²⁵ <https://knowlaw.in/index.php/2023/02/19/riding-the-roughshod-is-it-time-to-ratify-uncat/>

²⁶<https://cjp.org.in/why-has-india-still-not-ratified-un-convention-against-torture/#:~:text=India%20signed%20it%20but%20did,binding%20as%20per%20international%20law.>

and have lost faith in the system. The Indian legal framework, encompassing both constitutional and statutory provisions, incorporates clauses pertaining to custodial violence, torture, and other offences committed while in custody. The Indian Penal Code outlines the legal consequences for individuals who inflict harm, torment, or fatality upon an individual who is in custody. The Criminal Procedure Code and Evidence Act encompasses various provisions that serve to protect the fundamental rights and interests of individuals who are in custody.

The Indian judiciary has adopted a broad interpretation of Article 21, which mandates that all actions taken by the state must adhere to the principles of justice, fairness, and reasonableness. Article 21 has been interpreted as a prohibition against the use of torture and other forms of cruel, inhuman, or degrading treatment.

Article 20 of the Constitution²⁷ holds significant relevance to the criminal process. According to Article 20(3), individuals who are accused of any offence cannot be forced to testify against themselves. The relevance of Article 20(3) is significant in terms of safeguarding against custodial violence and torture. This provision ensures the protection of an individual's right to refrain from providing evidence that may implicate oneself in a crime. The protection against testimonial compulsion, as provided by the Constitution and statutory law, is based on the notion that such compulsion could potentially exert a coercive influence on the accused²⁸.

The three clauses of Article 20 may seem to be addressing distinct subjects or aspects but a recurring theme among these perspectives is the concern for safeguarding the accused individual from potential oppression through the various components of the criminal justice system, including substantive, procedural, and evidentiary aspects.

The present purpose necessitates consideration of Article 22(1) and 22(2) of the Constitution, as they serve the purpose of establishing legal safeguards to prevent the misuse of the power of arrest and detention. As per the provisions of Article 22(1), it is impermissible to detain an arrested

²⁷ Article 20- "(1) No person shall be convicted of an offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself."

²⁸ Smith v. Director, Serious Fraud Office, (1992)3 ALL EF 456 (463); People's Union for Civil Liberties v. Union of India, (2004)9 SCC 580.

individual without promptly informing them of the reasons for their arrest. Additionally, it is unlawful to deprive them of the right to seek counsel and representation from a legal professional of their preference. According to Article 22(2), it is required that any individual who is apprehended and held in custody must be presented before the nearest magistrate within a 24-hour period following the arrest and it is prohibited to detain such an individual in custody beyond the designated period without the authorization of a Magistrate. Article 22(2) guarantees the right to be presented before a Magistrate for several reasons, including the assurance of an impartial review of the lawfulness of the detention, the provision of a satisfactory and efficient opportunity to apply for release on bail, and the availability of a forum for the detained individual to express any grievances regarding their treatment while in custody.

Also we have Article 32 and Article 226 of the Indian Constitution through which the aggrieved person can move directly to Hon'ble Supreme Court and High Courts for the violations of their fundamental rights and can claim fair and reasonable compensation.

The Code of Criminal Procedure of 1973 comprises provisions designed to function as a protective measure against custodial torture. Such provisions are Sections 49, 50, 54, 56, 57, 162, 163, 164, 313, 315, etc. of the CrPC, 1973.

Similarly we have provisions under the Indian Evidence Act, 1872 in order to prevent instances to torture in police custody. Such provisions are Sections 24, 25 and 26 of the IEA, 1872.

Indian Judiciary has for years emphasized the problem of custodial torture and has made every effort on their part to protect individual's liberty and dignity. Hon'ble Supreme Court of India in *Kishore Singh v. State of Rajasthan*²⁹ observed that "nothing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts deeper wound on our constitutional culture than a state official running berserk regardless of human rights".

In the landmark judgment of *D.K. Basu v. State of West Bengal*³⁰, Hon'ble Supreme Court observed that "Torture has not been defined in the Constitution or in other penal laws. 'Torture' of a human being by another human being is essentially an instrument to impose the will of the strong over the weak by suffering. The word torture today has become synonymous with the

²⁹ AIR 1981 SC 625

³⁰ AIR 1997 SC 610

darker side of the human civilisation”.

In *Raghubir Singh v. State of Haryana*³¹, upon death of a person in police custody due to inflicting torture for extracting confession upon suspicion of theft, Hon'ble SC made an observation by stating that “We are deeply disturbed by the diabolical recurrence of police torture resulting in terrible scare in the minds of common citizens that their lives and liberty are under a new peril when the guardians of law gore human rights to death”.

CONCLUSION AND SUGGESTIONS

In a democratic society, employment within a correctional facility is considered a form of public service. Prisons, akin to schools and hospitals, ought to be managed by civil authorities with the aim of promoting the welfare of society. Correctional facilities are an essential component of the justice system, and as a public sector obligation, many states mandate the establishment of correctional facilities or the placement of inmates in other government-owned facilities. Crimes committed by custodial authorities violate fundamental human rights and confessions obtained through such means are often deemed inadmissible in a court of law. The utilisation of violence by law enforcement or any governmental or non-governmental entities is counterproductive. The process has the potential to transform individuals who are initially deemed innocent suspects or incarcerated individuals into individuals who exhibit characteristics commonly associated with hardened criminals. Occasionally, individuals' grievances towards a specific government representative can serve as a catalyst for their insurrection against the entire nation and its populace. The significance of custodial management in the broader context of jail management cannot be overstated, as it enables the authorities to achieve their objectives in the face of diverse obstacles.

It is imperative for the government to initiate a process of re-education for the police force, aimed at instilling a deep reverence for the sanctity of human life. This process must be primarily led by setting a positive example, rather than relying solely on verbal persuasion. In the event that a law enforcement officer or any other government agency official engages in misconduct, it is imperative that the authorities refrain from concealing the offence under the guise of police solidarity or fraternity.

³¹ AIR 1980 SC 1087

It is imperative that the Indian government expeditiously ratify the United Nations Convention against Torture and It is also imperative to amend the Constitution to include provisions that prohibit acts of torture and other forms of cruel, inhuman, or degrading treatment or punishment, which are currently absent.

It is recommended that the Government of India ratify the initial Optional Protocol to the International Covenant on Civil and Political Rights. It is recommended that the Government of India consider removing the reservations it placed upon accession to the Covenant, thereby facilitating the ability of Indian citizens to seek redress for instances of unjustified arrest or detention.

It is recommended that India extend an invitation to the Special Rapporteur on Torture and the Special Rapporteur on Violence against Women to conduct an investigation into the prevalence of custodial violence against women in the country.

It is recommended that the Government implement measures to ensure expeditious and efficient inquiry into all instances of torture as reported by the media, utilising an independent and unbiased entity. It is recommended that model prosecution proceedings be initiated against the individuals responsible for acts of torture.

The Custodial Crimes (Prevention, Protection and Compensation) Bill of 2006, currently awaiting passage through both houses of parliament, ought to be enacted with a strong display of political resolve towards the government's zero tolerance policy. The proposed mechanism aims to establish institutional provisions that enable the participation of victims in the inquiry, investigation, and trial phases. This is intended to safeguard the victim's entitlement to access information, receive equitable justice, and obtain rehabilitation, safety, and security.

It is imperative for Indian legislation to provide a precise definition of the term 'custodial violence' in both its substantive and procedural laws.

It is imperative to promote media coverage of incidents and cases of custodial violence in order to ensure that perpetrators are held accountable and victims receive due legal recourse. The investigating agencies should not succumb to pressures exerted by the politicians.

It is imperative that the investigative efforts of law enforcement remain entirely insulated from any external political or other influences.

It is imperative that the Government of India expeditiously implement the recommendations on custodial violence put forth by the National Police Commission and other relevant Committees and Commissions.

Individuals who are in police custody and are unable to retain legal counsel due to financial constraints should be provided with free legal assistance by the State.

The issue of custodial violence necessitates a dual approach, encompassing both remedial and preventive measures. Compensation award is among the remedial actions taken subsequent to an occurrence. It is imperative to address the root causes of custodial violence in order to proactively prevent its recurrence. The attainment of this objective is contingent upon the collective efforts of individuals to collaborate towards the establishment of a robust national character. Given that force cannot operate in isolation, it follows that all other components of the criminal justice system, including prosecution, legal representatives, judges, and correctional personnel, must collectively take action to eliminate instances of torture, violence, rape, and custodial death. The success of this endeavour is contingent upon the comprehension and synchronisation of all societal factions and governmental apparatuses.

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