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# **BREAKING THE SILENCE: PIONEERING LEGAL REFORMS AND HUMAN RIGHTS ADVOCACY TO CONFRONT THE EPIDEMIC OF CUSTODIAL TORTURE IN INDIA**

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## **ABSTRACT**

This in-depth research paper addresses the pervasive and pressing issue of custodial torture in India, shedding light on a phenomenon lacking a precise legal definition. Custodial torture involves subjecting individuals under police or judicial custody to physical, psychological, and sexual suffering. The research explores the gravity of this problem, considering its immediate and enduring consequences on victims, encompassing both psychological trauma and enduring social ramifications post-release. Factors contributing to custodial torture include pressure on law enforcement agencies, external influences, and the absence of a specific anti-torture law in India, leading to alarming statistics as reported by the National Human Rights Commission (NHRC) on custodial deaths. Adopting a human rights perspective, the paper draws insights from international frameworks such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), condemning torture and emphasizing the protection of individuals from inhumane treatment. Despite the legal foundation provided by the Indian Constitution through fundamental rights like equality, freedom, protection against arbitrary arrest, and the right to life, the paper underscores gaps in the implementation of these rights. Advocating for comprehensive reforms, the research emphasises the meticulous enforcement of existing laws, increased public awareness, responsible media coverage, police management reform, and the integration of science and technology in criminal investigations. The ultimate goal is to ensure justice, protect human rights, and uphold the rule of law within custodial situations in India, aligning with democratic values and respecting the dignity of every individual.

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**Keywords:** - Custodial Torture, Human Rights Violations, Legal Reforms, Police Management, Judicial Determinations.

## INTRODUCTION

Custodial torture, despite lacking a specific legal definition in Indian laws, remains a pervasive and serious concern that demands urgent attention. This research paper delves into the multifaceted dimensions of custodial torture, which encompasses the imposition of physical and mental suffering on individuals under police or judicial custody. In doing so, it explores the violation of fundamental human rights, particularly the right to dignity and respect, guaranteed to every person, regardless of their legal status. While the term “custodial torture” may conjure images of physical violence, it is crucial to understand its broader classification, encompassing physical, psychological, and sexual torture. The gravity of custodial torture lies not only in its immediate impact on the victims but also in the long-term psychological and social consequences that persist even after their release.

Rooted in various factors, including pressure on law enforcement agencies, external influences, and the lack of a specific anti-torture law in India, custodial torture has led to alarming statistics, as evidenced by the National Human Rights Commission’s reports on judicial and police custodial deaths. This paper further examines the issue from a human rights perspective, drawing insights from international provisions such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). These global frameworks unequivocally condemn torture and emphasize the need to protect individuals from inhumane treatment, irrespective of their legal status.

The Indian Constitution, with its fundamental rights, provides a legal foundation for safeguarding individuals in custody. Articles such as 14, 19, 20, and 21 underscore the right to equality, freedom, protection against arbitrary arrest, and the right to life, respectively. Additionally, the Code of Criminal Procedure, 1973, includes provisions to prevent unnecessary restraint, inform the arrested person of the grounds of arrest, and notify the substance of a warrant. Judicial determinations, as exemplified by landmark cases like *D. K. Basu v/s. State of West Bengal*, have played a pivotal role in shaping guidelines for arrests and interrogations to prevent custodial violence. However, the persistent occurrence of custodial torture reveals gaps in the implementation of these guidelines. As the research unfolds, it will explore the need for reforms

in addressing custodial torture, emphasizing the enforcement of existing laws, public awareness, media responsibility, police management reform, and the integration of science and technology in criminal investigations. The ultimate goal is to ensure justice, protect human rights, and uphold the rule of law within custodial situations in India.

## **THE MULTIFACETED NATURE OF CUSTODIAL TORTURE: PHYSICAL, PSYCHOLOGICAL, AND SEXUAL DIMENSIONS**

The term custodial torture may not have a specific legal definition in the Indian laws but the fact is that it is a prevalent issue which should be addressed. Custodial Torture can be understood as an imposition of physical and/or mental suffering on the person who is under police or judicial custody. It entails subjecting the victim to inhuman treatment while being in custody. It is a grave breach of human rights as every person regardless of them being an accused or not is guaranteed a right to dignity and respect. This dignity is striped off when they are subjected to illegal violence by police officials.

Custodial Torture in a layman's understanding would only comprise of the physical force used upon the person under custody. However, it is much broader than that. It can be classified into three forms: Physical, Psychological and Sexual Torture. Physical torture may include battering the person under custody by use of force and in extreme cases also includes electrocution. It may not be limited to just that but may also include restricting a person unlawfully within the police or judicial custody. Acts such as use of derogatory language, issuing threats and omissions like providing, extorting incorrect information or failing to meet basic needs encompasses Psychological Torture. While physical torture is evidently more common to report and recognise, it is the psychological torture which leaves deep imprint in the minds of the victims. Sexual Torture includes verbal as well as physical sexual abuse of the victims. While rape is a commonly occurring offense in jails among the inmates, but the fact that the same is also a phenomenon seen in custodial torture is a serious issue as in this case the protectors of law become the perpetrators by means of sexual torture in the custody. It is pertinent to note that sexual torture affects individuals of all genders and is not limited to a specific group.

Custodial torture may stem from various reasons, such as the work pressure on the police administration to provide speedy investigation leading to wrongful extortion of information from individuals in custody or the involvement of powerful external forces making the victim a

scapegoat. Psychologically as well, police officials may have a tendency to resort to custodial torture due the violent nature of their day-to-day work. Violence becomes a common occurrence in a police officer's life and if its effects are not regulated then the same will lead to arbitrary use of their own power. While the above reasons stem from the internal work system of legal enforcement agencies, one other reason related to law making also leads to increased number of cases of custodial torture. There no specific anti torture law in India. While the Indian Penal Code, 1860 provides for charges such as punishment for murder or death by negligence under section 302<sup>3</sup> and 304<sup>4</sup> respectively if a police officer is convicted for the offence of custodial death; but the same is insufficient. This is because a lack of specific anti torture law undermines the seriousness of such criminal acts and poses as a deterrent in decreasing custodial torture.

Custodial Torture not only undermines the legal rights of the accused but also has grave consequences in the form of custodial deaths. According to National Human Rights Commission (NHRC) Annual Report<sup>5</sup> 1,586 judicial custodial deaths and 114 police custodial deaths have been intimated to NHRC in the year 2019-20. Surprisingly, no custodial death was intimated from paramilitary/defence forces custody in this particular period. While the guidelines of NHRC emphasise on strict intimation within 24 hours of the custodial death and further submission of post mortem reports, videographic reports, etc. within 2 months; it is questionable as to how much adherence has been there to such guidelines.

Additionally, where the custodial death is not a consequence of the torture, such incidents leave grave psychological impact on the sufferer. The victim may experience post-traumatic stress disorder leading to anxiety, depression, and nightmares. Social consequence is also an issue as the victim and his/her family may be ostracised from the society. This phenomenon is a result of how stigmatised our society is towards the working of legal enforcement agencies. The fact that it is assumed that any person who is involved in a legal matter may have done something wrong on their part without considering wrongful accusations of the victim makes the case of a sufferer of the custodial torture weaker in the eyes of the society.

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<sup>3</sup> Indian Penal Code, 1860, § 302, No. 45, Acts of Parliament, 1860 (India)

<sup>4</sup> Indian Penal Code, 1860, § 304, No. 45, Acts of Parliament, 1860 (India)

<sup>5</sup>National Human Rights Commission India, Annual Report 2019-20 (Available at-[https://nhrc.nic.in/sites/default/files/AR\\_2019-2020\\_EN.pdf](https://nhrc.nic.in/sites/default/files/AR_2019-2020_EN.pdf)) (Last visited - Oct 1, 2023 02:03 PM)

# MODERN-DAY CUSTODIAL TORTURE: BALANCING THE SCALES BETWEEN HUMAN RIGHTS AND LAW ENFORCEMENT

Human rights are those inalienable rights which every human being must possess. It cannot be said that such rights are granted by the state, rather the rights exist solely because human beings exist. Human rights are of varied nature, including those dealing with fundamental, moral, social and cultural rights. When it comes to custodial torture the human right being protected here is the Civil and Political Right of a person. These encompass a wide range of entitlements such as freedom to make political choices, fair and impartial legal proceedings and prohibition on any kind of cruel or torturous treatment to an individual. Custodial Torture is a serious infringement of human rights as no person regardless of their legal status should be subjected to cruelty, let alone by the hands of the legal enforcement officers who are duty bound to protect the citizens. Moreover, we follow the concept of 'Innocent Until Proven Guilty'. The fact we should not consider a person as bearing criminal nature until and unless there is evidence beyond reasonable doubt makes it even more concrete that we have no right to torture a person merely on the basis of suspicion regarding their involvement in a crime.

## International Provisions

### Universal Declaration of Human Rights (UDHR)

**Article 1 - All human beings are born equal and free<sup>6</sup>:** The opening statement of the first article of UDHR encapsulates the core belief that every person, irrespective of their background or circumstances of birth, possesses inherent dignity and rights. Custodial torture directly contradicts this principle by subjecting an accused or a witness to degrading and inhumane treatment, stripping them of their inherent right to live with dignity. This practice not only violates their physical well-being but also erodes their fundamental human rights.

**Article 5 - Prohibition of Torture and Inhuman Treatment<sup>7</sup>:** This article unequivocally prohibits any form of torture or cruel, inhuman, or degrading treatment or punishment. Custodial torture is an antithetical to the aforementioned article as it inflicts severe physical, sexual and

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<sup>6</sup> Universal Declaration of Human Rights, Art. 1, Available at <https://www.un.org/en/about-us/universal-declaration-of-human-rights>, (Last Visited on Nov. 18, 2023, 06:54PM)

<sup>7</sup> Universal Declaration of Human Rights, Art. 5, Available at <https://www.un.org/en/about-us/universal-declaration-of-human-rights>, (Last Visited on Nov. 18, 2023, 06:59PM)

psychological harm upon individuals who find themselves in the custody of law enforcement. It emphasises the absolute imperative to protect individuals from such cruel practices, regardless of their legal status.

**Article 9 - Arbitrary Arrest, Detention, and Exile<sup>8</sup>:** This article affirms the right to freedom and security of person, as well as the protection against arbitrary arrest or detention. Custodial torture often accompanies situations of arbitrary arrest or detention, where individuals are held without proper legal justification or due process. Such practices not only infringe upon an individual's right to liberty but also create an environment where torture can occur with impunity. In summary, these articles of the UDHR collectively establish a framework for safeguarding the dignity, equality, and freedom of all individuals. Custodial torture stands in stark contrast to these principles, as it undermines the very essence of human rights by subjecting individuals to brutal and degrading treatment, often in the absence of proper legal procedures. Upholding these principles is essential in ensuring that every person is treated with the respect and dignity they inherently deserve.

## **International Covenant on Civil and Political Rights (ICCPR)**

### **Article 7 - Prohibition of Torture and Inhumane Treatment<sup>9</sup>:**

Article 7 of the ICCPR, is a mirror to the Article 5 of UDHR which forbids torture, cruel, inhuman, or degrading treatment or punishment. The word 'degrading' in this article shows that torture extends beyond physical abuse and includes any form of mental or psychological harm inflicted intentionally. The differentiating element of this article is that it emphasises the prohibition of scientific and medical experimentation without the informed consent of the individual. This provision is vital in safeguarding the physical and mental integrity of individuals under any form of custody or detention. Modern-day custodial torture can take various forms, including psychological manipulation or non-consensual medical procedures, which this article aims to prevent.

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<sup>8</sup> Universal Declaration of Human Rights, Art. 1, Available at- <https://www.un.org/en/about-us/universal-declaration-of-human-rights>, (Last Visited on Nov. 18, 2023, 07:10PM)

<sup>9</sup> International Covenant on Civil and Political Rights, Art. 7, Available at- <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (Last Visited on Nov. 18, 2023, 07:15PM)

**Article 9 - Liberty and Security of a Person<sup>10</sup>:**

Article 9 establishes the right to liberty and security of a person. It outlines specific procedures that must be followed during an arrest to prevent arbitrary arrest or detention. The term “promptly” as used in this article highlights the effectiveness with which authorities must act when detaining an individual. It is crucial that the reasons for arrest and any charges against the detainee are promptly communicated, ensuring transparency and accountability in the legal process. Unfortunately, wrongful arrests do occur, constituting a form of custodial torture, as individuals are subjected to unwarranted deprivation of their liberty.

Additionally, Article 9 recognizes the right to compensation in cases of illegal detention. This provision is a crucial safeguard against abuse of power by authorities. However, it is often observed that victims of custodial torture may not be aware of their right to compensation. Factors like illiteracy, lack of resources to hire legal representatives, and limited knowledge of available legal aid contribute to the underutilization of this right.

Furthermore, in India it is the duty of National Human Rights Commission (NHRC) and its state counterparts that is State Human Rights Commissions (SHRCs) to take into account that appropriate compensation is granted to the custodial torture victims.

## **United Nations Convention Against Torture**

**Article 2<sup>11</sup>**

Article 2 of the United Nations Convention Against Torture firmly declares that no exceptional circumstances, including the orders from superior authorities of the legal enforcement agencies of a state can justify employing torture techniques on a person.

**Article 11<sup>12</sup>**

Article 11 addresses the formation of systematic guidelines, procedures and protocols for interrogations, along with the arrangement of custody and proper treatment of persons in custody.

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<sup>10</sup> International Covenant on Civil and Political Rights, Art. 9, Available at- <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (Last Visited on Nov. 18, 2023, 07:20PM)

<sup>11</sup> United Nations Convention Against Torture, Art. 2, Available at- <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading> (Last Visited Nov. 18, 2023 05:35PM)

<sup>12</sup> United Nations Convention Against Torture, Art. 11, Available at- <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading> (Last Visited Nov. 18, 2023 05:35PM)

This article is framed with the aim to prevent custodial torture and provide basic human rights to a person who has been detained.

Interrogation and custodial torture have deep roots as one's failure leads to latter's occurrence. This is why better interrogation techniques are the need of the hour. This can be done by focusing on the questioning pattern used to interrogate a detainee.

While the convention provides such detailed reference to custodial torture, India has just been a signatory to the same and has not ratified the convention. The 273rd report of the Law Commission of India emphasised on ratifying the convention. Though a different step was taken in response to the report wherein the Anti Torture Bill, 2017 was drafted. However, the bill never took off and has not resulted in India's Anti Torture Act.

## **Provisions in the India**

### **Constitution of India, 1950**

#### **Article 14 - Right to Equality<sup>13</sup>**

Article 14 of the Indian Constitution ensures that everybody is treated equally in the eyes of the law and they receive equal protection of law. This is a relevant human right in the concept of custodial torture as the mere suspicion of criminality, or any differentiating factor of a detainee i.e., their caste or gender should not be a justification which leads to custodial torture.

#### **Article 19 - Right to Freedom<sup>14</sup>**

Right to freedom entails various provisions which are a part of a human's liberty and one such freedom is that of speech and expression. It encompasses not just the right to speak but also the right to remain silent. Torture is no means to extract information, which why confessions made under police custody are not admissible in court.

#### **Article 20 - Protection in Respect of Conviction for Offences<sup>15</sup>**

The article provides for the concept of Double Jeopardy, in which no person shall be punished more than once for the crime committed by them. Moreover, the person should be punished only

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<sup>13</sup> INDIA CONST. Art. 14, amended by The Constitution (One Hundred Fifth Amendment) Act, 2021

<sup>14</sup> INDIA CONST. Art. 19, amended by The Constitution (One Hundred Fifth Amendment) Act, 2021

<sup>15</sup> INDIA CONST. Art. 20, amended by The Constitution (One Hundred Fifth Amendment) Act, 2021

for the specific crime that they have committed.

### **Article 21 - Right to Life<sup>16</sup>**

One of the most important human rights which every person deserves is the right to life and liberty. When a person undergoes custodial torture or has been illegally detained, this right is infringed.

### **Article 22 - Protection Against Arrests and Detention in Certain Cases<sup>17</sup>**

Every person who is arrested should be informed duly about their cause of arrest and has the right to consult an advocate. Furthermore, a person may not be under custody perpetually without any evidence against them, precisely not more than 90 days.

The Indian Constitution, through Part 3 outlining fundamental rights, ensures the protection of various human rights for individuals in custody. The legal authority's control over a person does not entail the deprivation of their rights. Consequently, the concept of Habeas Corpus, as mentioned in Article 226, assumes significance in preventing illegal detention—a form of custodial torture.

## **Code of Criminal Procedure, 1973**

### **Section 49 - No Unnecessary Restraint<sup>18</sup>**

Whenever a person is arrested, arrangements are made to prevent escape, but this should happen in a limited manner. A person should not be restrained unnecessarily.

### **Section 50 - Person Arrested to Be Informed of Grounds of Arrest and of Right to Bail<sup>19</sup>**

This section derives its similarity from Article 22 of the Constitution of India, 1950.

### **Section 75 - Notification of Substance of Warrant<sup>20</sup>**

The police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

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<sup>16</sup> INDIA CONST. Art. 21, amended by The Constitution (One Hundred Fifth Amendment) Act, 2021

<sup>17</sup> INDIA CONST. Art. 22, amended by The Constitution (One Hundred Fifth Amendment) Act, 2021

<sup>18</sup> Code of Criminal Procedure, 1973, § 49, No. 2, Acts of Parliament, 1973 (India)

<sup>19</sup> Code of Criminal Procedure, 1973, § 50, No. 2, Acts of Parliament, 1973 (India)

<sup>20</sup> Code of Criminal Procedure, 1973, § 75, No. 2, Acts of Parliament, 1973 (India)

### **Section 24 of the Indian Evidence Act<sup>21</sup>**

This section talks about if any confession is recorded by the police officer by way of Threat, Inducement or any kind of Promise then, that confession is not admissible in the eyes of law.

## **CHANGE IN NATURE OF CUSTODIAL TORTURE OVERTIME WITH THE ADVENT OF HUMAN RIGHTS**

Although custodial torture is strictly prohibited in India, the way it is practised has changed overtime. The shift has been towards inflicting torture in a manner that leaves no discernible physical evidence behind. This change can be traced back to colonial era wherein custodial torture was acted upon because the British legal enforcement agencies saw every Indian under their custody as their enemy and treated them with hostility. The nature of torture employed then was more physical in nature. Victims endured electrocution, severe physical abuse, and brutal beatings. With the global emergence of human rights principles and their adoption into municipal laws, custodial violence was formally recognised in several landmark judgements and legislations. Thus, it has led to a higher scrutiny of police conduct and their responsibilities towards witnesses and prisoners. Unfortunately, the aftereffect of this is that methods have been found to torture a victim without any physical evidence.

## **CONTINUED VIGILANCE: JUDGE'S OVERSIGHT ON ENSURING JUDICIAL REVIEW AND ACCOUNTABILITY IN CUSTODIAL CASES**

The Constitution of India is a cornerstone of democracy, safeguarding the fundamental rights of every individual in the country. Among these rights, Article 21 holds immense significance, despite its brevity in the text. Over the years, the Supreme Court of India has expanded the scope of Article 21 through remarkable interpretations, ensuring that every citizen's personal and professional development is protected within the framework of the law. This constitutional provision is especially crucial when it comes to preventing custodial torture and safeguarding the liberties of individuals in police custody. By virtue of the Constitution of India, every individual has been given the basic fundamental rights which are very helpful for the personal and professional development and growth of the human being. Just imagine the Indian Country being

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<sup>21</sup> Indian Evidence Act, 1872, § 25, No. 1, Acts of Parliament, 1872 (India)

under the dictatorship where all the individuals of the country are supposed to surrender their all freedoms to the sovereign command of the country. Fortunately, we are a democratic country where we are given the fundamental rights under the supreme law of the land i.e., the Constitution of India. Article 21 of the Indian Constitution covers only two lines in the bare act of the Constitution, but the interpretation done by the Supreme Court of India in this regard is unbelievable. From 1951 to till date, the scope of Article 21 has become so much broader that one can easily claim his right.

By looking at the figures, it is hard to believe that, in a democratic country like India, people are not safe even in the custody of the Police. I am not saying that there is an external threat to the accused and police are not able to deal with the same, the threat is the police officials itself. The cases of the custodial torture are rising in the last decade. After the initiative taken by the Justice Krishna Iyer in the Social Action Litigation, Supreme Court has provided the numerous verdicts and guidelines to eliminate the cases of the Custodial Torture. In the case of *Rudul Sah v/s. State of Bihar*<sup>22</sup>, in this case the petitioner was imprisoned for 14 years even after the verdict of the acquittal by the court. The court held that not awarding compensation to the petitioner will be a violation of the liberty rights given in the Constitution. In another case of *Joginder Kumar v/s. State of U.P.*<sup>23</sup>, a petitioner advocate was without any reason confined by the police officer even after the completion of the inquiry and then writ of habeas corpus was filed before the Supreme Court. The court held that arresting someone without any justification would amount to illegal detention and police officials are not supposed to misuse their powers. In the case of *Nilabati Behera vs. State of Orissa, 1993*<sup>24</sup>, the son of the petitioner was found dead on the railway track the day after police arrested him. The contentions from the police were that the accused tried to escape from custody and this incident took place, but the Supreme Court later on found that there were injury marks on the body of the deceased and court awarded the compensation to the victim indicating the custodial torture inflicted upon him. In another landmark case of the *D. K. Basu v/s. State of West Bengal*<sup>25</sup>, the Supreme Court of India recognized the custodial violence done by the police officers and by way of this verdict, the court provided guidelines while making the arrest of any person and for further proceedings. the guidelines are as follows:

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<sup>22</sup> Rudul Sah v/s. State of Bihar, 1983 AIR 1086

<sup>23</sup> Joginder Kumar v/s. State of U.P., 1994 AIR 1349, 1994 SCC (4) 260

<sup>24</sup> Nilabati Behera vs. State of Orissa, 1993 AIR 1960, 1993 SCR (2)

<sup>25</sup> D. K. Basu v/s. State of West Bengal, (1997) 1 SCC 416: 1997 SCC (Cri) 92

1. At the time of making arrests or conducting inquiries, police officers have to put on identifiers that carry their designations.
2. Arrest memo must be created, and a copy must be attested by a member of the family or an admired member of the community. The arrestee must also sign it, and the time and date of the detention has to be mentioned.
3. If the person who is arrested and his associates or relatives are not present during his arrest, the arrested person has the right to tell a single friend, relative, or other person with an interest in his welfare of the arrest and site of incarceration.
4. If the arrestee's relative or friend lives outside the district or town, they must be informed of the date and time, location of arrest, and site of imprisonment within 8-12 hours.
5. The arrested person must be informed of his right to notify someone of his arrest.
6. A notation in the journal of the site of imprisonment, the name of the friend who has been notified, and the names and contact information of the police officers in whose possession the arrestee is.
7. Major and minor injuries must be documented and signed by both the arrestee and the police officer at the moment of arrest. The arrestee will be given a copy of it.
8. During the arrestee's incarceration, he or she is subjected to a doctor's examination every 48 hours.
9. Every document must be sent to the Judge.
10. During questioning, suspects may be allowed to see their counsel.
11. Every district will have a police control centre, and arrests will be reported to the control room within 12 hours.

This verdict is considered as a significant verdict in the criminal justice system since it is providing the guidelines for the making arrest of any person without violating the rights of him. In a democratic nation like India, the custodial safety of its citizens is of paramount concern. The unfortunate rise in cases of custodial torture in recent years has prompted the judiciary to take substantial measures to protect citizens' rights. Notable judgments such as Rudul Sah v/s. State of Bihar, Joginder Kumar v/s. State of U.P., Nilabati Behera v/s. State of Orissa, and the landmark D. K. Basu v/s. State of West Bengal has collectively laid the foundation for comprehensive guidelines aimed at preventing custodial violence and ensuring that the rights of those in police custody are respected. These guidelines, coupled with the enduring spirit of India's democratic values, serve as a beacon of hope and justice for all its citizens.

# COMPREHENSIVE TRANSFORMATION: SAFEGUARDING JUSTICE, PRESERVING HUMAN RIGHTS, AND UPHOLDING THE TENETS OF LEGAL INTEGRITY

The issue of custodial torture in India has long been a matter of concern, despite landmark verdicts by the Supreme Court aimed at curbing such abuses. The recent data from the National Human Rights Commission and other reputable sources reveal a disheartening reality: custodial violence continues to persist across the country. This persistent problem underscores a failure of the administration to effectively implement the court's directives. While existing legislation does address custodial torture, the key challenge lies in the proper execution of these laws and guidelines. This article explores the various steps that can be taken to address custodial torture, including the meticulous enforcement of laws, public pressure, media responsibility, police management reform, and the use of science and technology in criminal investigations. The landmark verdicts of the Supreme Court have provided detailed elaboration regarding the custodial torture and if it is properly followed then, no specific law should be made to curb the Custodial Torture. If we look at the data which are annually published by the National Human Rights Commission and other authentic publications, unfortunately, results are very shocking for everyone because even after the verdict of Apex Court, the cases of Custodial Violence are still taking place across the country. This shows the failure of the administration to follow the verdict of the court. Apart from the verdict of the court, there are following steps that can be taken into consideration<sup>26</sup>.

## 1. Execution of laws and various guidelines

We are not denying the fact that, government has not made any legislations to curb the Custodial Torture, but the implementation of the said legislations and other legislations which are working co-jointly with the principal legislation should be done appropriately and there must be a checks and balances for the same also. when it comes to the guidelines provided by the Supreme Court of India in the verdicts of *Joginder Kumar v/s. State of U.P.*<sup>27</sup> and *D. K. Basu v/s. State of West Bengal*<sup>28</sup>, the implementation is not done appropriately by looking at the present figures of the data which are published. In these cases, the Supreme Court has provided very exhaustive

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<sup>26</sup> Legal Service India, Custodial Torture and Reforms in Police Administration, Available at-<https://www.legalserviceindia.com/legal/article-3120-custodial-torture-and-reforms-in-police-administration.html> (Last Visited Oct. 01, 2023, 01:48PM)

<sup>27</sup> *Joginder Kumar v/s. State of U.P.*, 1994 AIR 1349, 1994 SCC (4) 260

<sup>28</sup> *D. K. Basu v/s. State of West Bengal*, (1997) 1 SCC 416; 1997 SCC (Cri) 92

guidelines, if these are followed then, there is no separate legislation that needs to be passed and implemented. If, for example, guidelines provided by the Apex Court are not followed then the punishment for non-compliance of the same should be done on immediate basis.

## **2. Stress from the general population, high-ranking officials, and government agencies**

Many at times, we have seen that, in order to resolve a case, the highest-ranking officers and the government at large put unnecessary burdens on police officers functioning at the grassroots, and that inappropriate pressure causes officials to employ torture to get information or an admission of guilt. This sort of stress is one of the causes of incarceration torture. In *Prakash Singh v/s. Union of India*<sup>29</sup>, the Indian Supreme Court asked both the Central and State governments to make certain that no excessive stress be placed on police. Stress from the general population in the current Hyderabad case of rape resulted in the detention of the perpetrator, which was highlighted; this must stop. In a system of democracy, retribution is not a choice.

## **3. The impact of media organisations and the views of individuals**

The function of media organisations in multiple instances has been called into doubt by members of the legal profession as well as by the judicial system. Media frequently presents an accused individual as an offender prior to the verdict of the court being delivered. The media has to acknowledge its duties to the public. It has an impact on how someone thinks. While we look at a person getting assaulted by police, we overlook it since our opinion is that the individual who was assaulted might have done anything wrong. When a bail is denied by the court, we assume that something went wrong. This thinking must transform. We don't have to overlook these issues. These factors only help police officers thinking they are doing the correct approach.

## **4. The strategic intrigue of police management**

Not all police officers seek prison torture to get the truth and a confession. Some of them perform extremely well at their jobs, and it is when they are constantly relocated that their excellent performance suffers.

This in-depth research paper addresses the pervasive and pressing issue of custodial torture in India, shedding light on a phenomenon lacking a precise legal definition. Custodial torture involves subjecting individuals under police or judicial custody to physical, psychological, and

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<sup>29</sup> Prakash Singh v/s. Union of India, Writ Petition (Civil) 310 of 1996

sexual suffering. The research explores the gravity of this problem, considering its immediate and enduring consequences on victims, encompassing both psychological trauma and enduring social ramifications post-release. Factors contributing to custodial torture include pressure on law enforcement agencies, external influences, and the absence of a specific anti-torture law in India, leading to alarming statistics as reported by the National Human Rights Commission (NHRC) on custodial deaths. Adopting a human rights perspective, the paper draws insights from international frameworks such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), condemning torture and emphasizing the protection of individuals from inhumane treatment. Despite the legal foundation provided by the Indian Constitution through fundamental rights like equality, freedom, protection against arbitrary arrest, and the right to life, the paper underscores gaps in the implementation of these rights. Advocating for comprehensive reforms, the research emphasizes the meticulous enforcement of existing laws, increased public awareness, responsible media coverage, police management reform, and the integration of science and technology in criminal investigations. The ultimate goal is to ensure justice, protect human rights, and uphold the rule of law within custodial situations in India, aligning with democratic values and respecting the dignity of every individual. In my experience is that a few officers who safeguard the humanity and rights of those incarcerated or detained, who conduct true law enforcement activities are repeatedly relocated by the higher officials since they fail to adhere to standard torture procedures and do not yield under governmental coercion strategies.

### **5. Method of Investigation of the cases of Custodial Torture and Provisions of Punishment**

The formal mechanism of punishment in situations of custodial torture is either suspended or dismissal. There is hardly any independent investigation carried out for the same.

In every case of incarcerated torture, an independent investigation must be conducted under the supervision of a court. A harsher punishment should be inflicted upon the person who has inflicted unjustifiable corporeal pain on the accused person who is in the custody of Police.

### **6. Changes needed in the internal Police Administration**

Along with the external changes to curb the Custodial Torture, the internal administration and mechanism of the police enforcement should be modified, and hoe it can be done is as follows;

A. Officers in higher positions are liable for the actions of their lower officers. The idea is

known as Vicarious Liability in tort law. This will provide a certain level of accountability to the police management, which is now lacking.

- B. The police agency should create various divisions, and postings, transfers, and advancements should take place solely inside these departments. There shouldn't be cross-division transfers or upgrades.
- C. Using the Mind and Science: Today's police work on abuse and confession of guilt. In our nation, forensic science is still not used to solve crimes and even if forensic science is called for the investigation, until then, there is a lot of delay which affects the case. Science and technology today have advanced so much in the police department that not enough emphasis is placed on using mental abilities and technology; this has to change. Without the use of torture, forensic science can assist in cracking the case. Mind intelligence should be utilised to manipulate the accused's thoughts; intelligence can be used to gather data and proof, and technology can confirm the credibility of evidence.

The issue of custodial torture in India demands a comprehensive and multi-pronged approach for effective mitigation. While the Supreme Court has provided essential guidelines and verdicts to tackle this problem, their implementation remains deficient. The focus should shift towards rigorous enforcement of existing laws and guidelines, coupled with stringent penalties for non-compliance. The undue stress placed on law enforcement officers must be addressed, with an emphasis on professional and ethical conduct. Media organisations should exercise restraint in prejudicing cases, and the public should refrain from passing premature judgments. Furthermore, police management reforms, including vicarious liability and departmental divisions, can enhance accountability within the force. Finally, embracing forensic science and technology can revolutionize criminal investigations and reduce reliance on custodial torture. It is imperative that India takes these steps to ensure justice, protect human rights, and uphold the rule of law in custodial situations.

## **CONCLUSIONS SUGGESTIONS AND RECOMMENDATIONS**

Custodial torture is a grave violation of human rights, and despite the existence of legal provisions and guidelines, its prevalence remains a significant concern in India. The multifaceted nature of custodial torture, encompassing physical, psychological, and sexual forms of abuse, necessitates a comprehensive and sustained effort to address the issue. The implications of custodial torture go beyond the immediate violation of an individual's rights, extending to custodial deaths,

psychological trauma, and social ostracization.

The international legal framework, including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), unequivocally prohibits torture and underscores the need to protect individuals in custody. India's constitutional provisions, such as Article 21 guaranteeing the right to life and liberty, and various sections of the Code of Criminal Procedure, offer protection against custodial abuse. Judicial pronouncements, particularly landmark cases like *D. K. Basu v/s. State of West Bengal*, have provided guidelines for the humane treatment of individuals in custody.

However, the gap between legal provisions and their implementation is evident in the persistently high number of custodial deaths and instances of torture. To bridge this gap and address the root causes of custodial torture, several recommendations and suggestions emerge:

- ❖ **Strengthen Implementation:** - There is an urgent need to strengthen the implementation of existing laws and guidelines. Law enforcement agencies must ensure strict adherence to the Supreme Court's directives, particularly those outlined in cases like *D. K. Basu v/s. State of West Bengal*.
- ❖ **Public Awareness and Pressure:** - The general public plays a crucial role in shaping societal attitudes and expectations. Increased awareness about human rights and the detrimental effects of custodial torture can lead to public pressure for accountability and reforms.
- ❖ **Media Responsibility:** - Media organizations should exercise responsible journalism, refraining from prejudicing cases and contributing to a culture of impunity. Reporting should be objective, and media can play a role in raising awareness about the issue.
- ❖ **Reform in Police Administration:** - Internal reforms within the police administration, including accountability measures for higher-ranking officers, transparent transfer policies, and a focus on ethical conduct, can contribute to a culture of professionalism.
- ❖ **Independent Investigations:** - In every case of custodial torture, there should be an independent investigation under the supervision of the court. Vicarious liability should be applied to hold higher-ranking officers accountable for the actions of their subordinates.
- ❖ **Embrace Forensic Science and Technology:** - Modern investigative techniques, including forensic science and technology, can reduce reliance on custodial torture. The

police should be trained in utilizing these tools effectively to solve crimes without resorting to inhumane practices.

- ❖ **Legislative Reforms:** - While existing laws address custodial torture to some extent, consideration should be given to enacting a specific anti-torture law, as recommended by the Law Commission of India. Clear and stringent legislation can act as a deterrent and provide a more robust legal framework.
- ❖ **Global Cooperation:** - India should actively participate in international efforts against torture, including ratifying the United Nations Convention Against Torture. Collaboration with global organizations can provide insights and best practices for combating custodial torture.

In conclusion, addressing custodial torture requires a holistic approach involving legal, societal, and systemic changes. By implementing and reinforcing existing laws, raising public awareness, and embracing reforms within the police force, India can work towards eradicating custodial torture, upholding human rights, and fostering a justice system that is fair, transparent, and humane.

