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TORTURE BEHIND CLOSED DOORS: CUSTODIAL VIOLENCE, POLICE BRUTALITY, AND INDIA'S RELUCTANCE TO RATIFY UNCAT

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ABSTRACT

Custodial Torture represent a silent crisis within criminal justice system of India. Behind the closed doors of police custody, brutality by police authorities replaces due process, thus, standing in direct violation of Constitutional guarantee of right to life and right to live with Dignity. Furthermore, India's reluctance to ratify the United Nations Convention Against Torture (UNCAT) entrenches the culture of impunity. This paper endeavours to expose the expanding culture of brutality in India's social and penal structure.

Police audacity and brutality is not an uncommon phenomenon. It has caught the attention of the public and the judiciary and eventually a catena of directions was promulgated by the National Human Rights Commissions (NHRC), High Courts as well as the Supreme Court of India. Yet, the menace and inhumane attitude of the police officials have not declined; instead, it is increasing day by day and one step ahead.

The paper will start by providing a quick historical overview of India's torture laws. Secondly, it will discuss various legal provisions including the statutes and the Constitution surrounding custodial violence. Thirdly, the paper will address the urgent need for an anti torture law in India while discussing India's position on the United Nations Convention against Torture (UNCAT) in a descriptive analysis. Finally, using the Supreme Court's directives as well as findings from the Law Commission and the National Human Rights Commission (NHRC), the paper will make recommendations for actions that should be taken to prevent the escalation of police abuse.

Key words: Crisis, Police authorities, Torture, Brutality, UNCAT.

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RESEARCH METHOD USED

The present study employs doctrinal legal research, relying on primary sources such as statutory provisions, judicial precedents and secondary sources such as reports, journal articles and online legal databases.

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CHAPTER 1

INTRODUCTION

Torture is a grave violation of human rights, and international law, including the UN (United Nations) Convention contrary to Torture and also Other Harsh, Inhuman or Humiliating Conduct or Punishment (UNCAT), which forbids the use of torture in all circumstances.² India is a signatory to the UNCAT and not ratified it in 1997.³ However, there have been instances of abuse and torture in Indian legal custody, which raises questions about human rights abuses. The deliberate infliction of severe physical or psychological pain or suffering on a person for purposes such as punishment, information collection, intimidation, or coercion is described by the UNCAT as torture. It also mandates that states take the necessary steps to stop torture inside their borders.

“Police brutality” often refers to the violent and deadly treatment of suspects and inmates awaiting trial. An Amnesty International survey from 1992 found that electric shocks and severe beatings, frequently while the victim is hanging upside down, are the most common forms of torture. In addition, people have been burned, stabbed with sharp items, and crushed

² Lene Wendland, *A Handbook on State Obligations Under UN-CAT* 13-18 (Apt, Geneva, 1st edn., 2002).

³ Government of India, “Issues Related to Rohingya Muslims on UNCAT” 1-2 (Government of India Ministry of Home Affairs, 2021).

by big rollers. There have been accounts of victims' genital parts being maimed. Another typical kind of torture is rape. In addition to this, a number of additional destructive techniques are employed to extract information from the accused. Such methods of obtaining confessions have been accepted by police officials.

In India, the topic of custodial abuse has long been discussed and debated. According to the rules of the Constitution and criminal laws, it is completely forbidden to treat accused people cruelly or humiliatingly. Whether it takes place during a trial, an inquiry, or an investigation, torture is never appropriate government agencies and nonprofit groups have also made proactive measures to reduce the threat of unethical and cruel treatment of people in police and court custody.

CHAPTER 2

HISTORICAL PERSPECTIVE

Since torture violates fundamental human rights, it has been seen as the most heinous act against mankind. The history of crimes and criminals is as old as human civilization itself. In the ancient, medieval, and contemporary eras, it was customary to punish criminals severely and with brutality.

Deaths, rape, torture, unlawful arrest and detention, false accusations, disappearances from police custody, fictitious encounters, and other police excess are all included in the very broad category of "custodial violence." Custodial violence has always existed and is an integral part of human history.

2.1 Custodial Torture during Ancient Period

The practice of brutal behaviour against criminals and suspects by the law enforcement machinery was a common phenomenon in ancient India. Maharishi Ved Vyas, while explaining his conception of virtue and sin pointed out the acid test for virtue is the sensitivity for the wellbeing of others whereas inflicting of pains to others is sin.⁴ These high ideals of life and philosophy of sages and saints were well followed even in case of prisoners, criminals and accused in ancient period in India. However, in the second phase of ancient period custodial violence was on peak. Tortures, rapes, deaths, illegal arrests, false implications and other police

⁴ Surender Singh, *Rural Development and Human Rights in India- A Critique*, quoted in P. M. Katare and B.C. Barik, *Development Deprivation and Human Rights violation* P.,109 (2002).

excesses were common incidents in ancient India. Very severe punishments for criminal were prescribed in various Hindu scriptures. In fact, the contemporary penology has its roots in ancient India.⁵ All the barbaric methods of torture such as cutting of tongue, pouring molten hot lead in the ears, throat cutting the limbs, whipping etc. were well known and were part of the law of the land.⁶

Since the Vedic period (2000–1400 B.C.), police in India have been linked to violence and torture. The Rigveda expressly mentions thieves (taya or sutayas) and robbers (taskars). These thieves and criminals were brutally handled by the king's agent. Punishment was viewed at this time as a form of atonement that transformed a person's character and rid them of their qualities. A number of agonizing procedures were used to dispense justice, such as those involving fire, water, poison, single combat, etc. The whole intent of these ordeals and oaths, which seemed to be magical, was to scare the parties into telling the truth.

There was a lot of humanitarianism during the Buddhist era (B.C. 320–300 A.D.). Any kind of torture while incarcerated was strictly prohibited, and convicts who happened to be women, elderly, or had numerous dependents were granted special treatment. During this time, criminals were detained and given harsh punishments. The bilanga-thalika, also known as a "gruel-pot," "porridge pot" or "saucepan," was a form of torture in which the victim's skull was first trepanned before a red-hot iron ball was dropped in, causing the brain to boil over like porridge. Even though Ashoka inherited an effective bureaucratic structure from his predecessors, the emphasis was on religious obedience of the law, which was supposed to result in appropriate justice and a decrease in criminal activity.

2.2 Custodial Torture during Medieval Period

The history of India shows that the Hindu era was followed by a string of Muslim invasions, beginning with Mohammad Bin Qasim in 712 A.D. Muslim dominance started to emerge after Babur slew the last Lodhi monarch in 1526. This marked a watershed in Indian history, particularly in the fields of administration and law. During the Mughal era, when the legal system was quite similar to that of ancient India, Muslim criminal law served as the basis for criminal justice. In Muslim law, crimes were frequently classified into two categories.

The first, includes crime of human and private nature and secondly, theft brigandage, extra – marital sexual relations, apostasy and wine drinking. Similarly, in Muslim law, punishments

⁵ Giriraj Shah, *Indian Police - A Retrospects* P.9 (1992).

⁶ See, *Manusmirti, Yajnavalkya Smriti, Narada Smriti, brihaspati Smriti and Katyayana Smriti*; see also Shukla. Das, *Crime and punishment in Ancient India* PP.73-76 (1977).

for these offences were divided into Hadd, Quisas, Diya and Tazir. Quisas or retaliation meant in principle for tooth and eye for an eye with certain exception. Diya or Diyut meant blood money. In certain cases, like international injuries, Diya was awarded to the victim on fixed scale. Hadd was a punishment for offences both of which (punishment and offences) were equally defined. If a man was guilty of adultery, he was stoned to death or put to death in an ordinary manner. If he was guilty of fornication, the punishment was scouring (one hundred stripes).⁷

Thus, during this period, the sovereign and the law enforcement agency had acted arbitrarily and discretionary, while conducting investigations of crime Tazir, which was one of the major forms of punishment during this regime, was clear evidence of sovereign's independent attitude. Imprisonment was a very common form of punishment in Mughal India. The Quazi and Magistrate had a right to send anyone to prison for the offence or crime for which the punishment could be awarded and the accused had to show the sign of repentance to secure his freedom.⁸ It was Abdul Fazal, one of the learned ministers of Akbar, who gave an interpretation that the Muslim rulers could award punishment to offenders.

But under Aurangzeb's leadership, there were fewer arbitrary detentions and arrests. He repeatedly urged Gazis that no one should be imprisoned without a good reason and that the Kotwal should only jail persons for stealing, disturbing the peace, and rioting (Waja-i-sharai). In 1672, the emperor ordered the release of innocent persons, the rapid trial of criminals once a month, and the issuance of orders for the expeditious trial of others. It meant that enough safeguards were in place at the time to prevent violence against detainees.

According to Sir Jadunath Sarkar, the Kotwals and Quazis of Mughal days were notoriously corrupt. Torture of extort confession was wide-spread and common.

2.3 Custodial Torture during Modern India

After the Mughal Empire fell, the British established their own kingdom. The idea of utilizing the English legal system as a model to enhance the Indian legal system piqued the interest and enthusiasm of the British. But even throughout their reign, severe and inhumane punishments were common. People who were held by the police have been cruelly treated in many instances. British administration policy in India was based on coercion.

They abused people, violated their civil rights, discriminated against them, and tortured them in different ways within their own country. In India at the time, there was no fundamental

⁷ S.N.Dhyani, *Morality and Justice* P.92 (1984) .

⁸ Satya Prakash Senger, *Crime and Punishment in Mughal India* P.159 (1907). [41]. *Supra note* 38 at 90.

legislation safeguarding the rights and freedoms of the subjects. People who were detained often had their rights violated.

The agony that Indians went through while living under British rule from 1857 to 1947 is exemplified by the history of the Indian liberation movement.

In order to maintain monarchy and supremacy during British rule in India, custodial brutality was justified. The human rights issue was a curse for police personnel, who prioritized safeguarding British masters. Torture, illegal detentions, rapes, killings in police custody, and other forms of custodial violence were widespread during colonial rule, as history shows. Bengal banned mutilation in 1790, and criminal courts were told to replace the punishment with hard labor imprisonment.

In 1833, the odd and sometimes contradictory rulings that had previously been utilized to execute the law were brought to the attention of the British parliament. Consequently, that year saw the approval of an Act that fundamentally changed the nation's constitution. An Indian law commission was formed in order to develop a uniform set of legal rules. Due to frequent reports of rapes, deaths in prison, violence in jails, and widespread corruption against police officers, the government of the day was compelled to change some of the laws that were in effect at the time. Over the following three years, the Indian Penal Code, the Civil Procedure Code, and the Criminal Procedure Code were all passed.

The adoption of the Constitution gave victims of police torture a glimpse of hope. Even though police officers were protecting the public's interests, it is unfortunate that they were branded for violating human rights. The purported analysis makes it abundantly evident that extremely severe penalties have been imposed for offenders and suspected since the beginning of time. However, it was because of the Indians' freedom of movement in India that British people began to consider the worsening practice of custodial violence for the first time. In order to combat the threat of custodial abuse and hold governments responsible, it is imperative that all human rights activists and the general public who supports them band together. A civilized society cannot be built with broken hands. Torture is made possible by the public's indifference. It is our duty to respond to indignation and apathy.

CHAPTER 3

LEGAL PERSPECTIVE

1.2 Constitutional Provisions Pertaining to Custodial Violence

Article-14: Equality before law- Under this article accused shall be treated as equal as other person before law. This is the duty of state i.e. guards of laws, shall not deny to any person

equality before the law.

Article-19: Protection of right regarding to speech and expression etc. Here authorities, guards of laws are suspended their freedom of speech.

Article-20: It provides protection in respect of conviction for offences under sub-section (1), (2) & (3) of article 20.

Article-21: Protection from torture is recognized as a fundamental right under article 21. Article 21 of the constitution which reads that; no person should be deprived of his life or personal liberty except according to procedure established by law. This procedure not only refers to the enacted law but also extends to the principles of natural justice.

Article-22: Protection against arrest and detention in certain cases- No Person is arrested shall be detained in custody without being informed as soon as may be of the grounds for such arrest nor shall he be denied the right to consult and to be defended by, a legal practitioner of his choice.

1.3 The Bhartiya Sakshya Adhiniyam, 2023

Section-22: Confession made by threat or inducement from a person in authority to avoid any kind of gain and evil of temporal nature to accused would be irrelevant in criminal proceeding.

Section-23(1): Provides that confession made by an accused person to police officer shall not take as evidence against that accused person.

Section-23(2): Provides that confession made by accused person in police custody, shall not to be proved against him, unless confession is made in presence of magistrate.

1.4 Indian Police Act, 1861

Section-7 & 29: Provide if any police officer who are negligent in performing his duty and unfit for perform, is liable to dismissal, penalty, suspension.

1.5 Protection of Human Rights Act, 1993

Parliament passed this Act in response to national and international calls for legislation protecting human rights. The needs of society and the nature of crime are changing, necessitating an effective and efficient approach to addressing this problem and delivering justice through increased accountability and openness.

1.6 The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)

The colonial-era Code of Criminal Procedure, 1973 is superseded by the Bharatiya Nagarik

Suraksha Sanhita, 2023 (BNSS), which aims to modernize India's criminal procedure system with a focus on accountability, transparency, and protection of citizens' rights. The new regulations guarantee legal arrest and detention procedures and offer comprehensive safeguards to protect people from abuse while in custody.

Sections 35 to 51: These sections are equivalent to the CrPC's previous Sections 41 through 60A. They provide a thorough explanation of the arrest and detention process. Notably, Section 35 of the BNSS adds a critical layer of openness and court scrutiny by limiting the authority to make an arrest to situations when it is absolutely required and requiring that the arrest be made only after documenting the grounds in writing.

Section 43: Controls the use of force when making an arrest. It expressly forbids the use of fatal force unless the individual being arrested is charged with a major crime that carries a death or life sentence, actively resists arrest, or makes an attempt to flee. The proportionality principle in law enforcement is reaffirmed in this section.

Section 51: The right to a medical examination by a licensed medical professional is granted to the arrested individual under Section 51. In addition to creating a medico-legal record that may be crucial evidence in cases of abuse or maltreatment during detention, this clause is crucial for identifying any injuries or indications of torture while in custody.

Section 198: In all incidents of death, disappearance, or suspected rape while in detention, this section requires a court investigation. This clause aims to combat impunity and fortifies the judicial oversight system in prison situations. However, questions regarding the impartiality, promptness, and comprehensiveness of these investigations still exist, particularly when state police are assigned to conduct preliminary investigations.

1.7 The Bharatiya Nyaya Sanhita (BNS), 2023

The BNS, 2023 has superseded the Indian Penal Code (IPC), retaining and reorganizing the protections found in IPC Sections 330, 331, and 302 while adding specific provisions pertaining to torture and deaths in custody. The following areas are now covered by the new legal framework:

Section 120: This section makes it illegal to intentionally cause harm or severe harm in order to coerce a confession or information. It is especially pertinent when detainees are subjected to physical abuse by law enforcement in order to get statements. The clause stipulates severe penalties for such behavior, particularly when it is carried out by public employees while they are performing their official duties.

Section 101: Addresses the crime of murder, including fatalities in custody brought on by

torture, excessive force, or wilful neglect. A police officer may face prosecution under this provision if they are proven guilty of causing the death of a person in custody. Depending on the seriousness of the offense and the conclusions of the court, the clause permits either the death penalty or life in prison.

CHAPTER 4

INDIA'S NON-RATIFICATION OF UNCAT: LEGISLATIVE GAPS, INSTITUTIONAL RESISTANCE, AND THE POLITICS OF IMPUNITY

4.1 Brief Note on UNCAT

The UN Convention on Torture was directly influenced by the General Assembly's "Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (the "Torture Declaration") of December 9, 1975. The Covenant is organized similarly to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights, with a preamble and 33 articles divided into three sections. Seven countries, including the United States and India, have signed but not ratified this convention.

Under this Convention the definition of torture can be found under Article 1- UNCAT Article 1⁹

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

Every signatory to the treaty is required to put appropriate safeguards in place to prevent torture.¹⁰ The creation of the Committee against Torture¹¹, which is tasked with "receiving,

⁹ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1, Dec. 10, 1984, 1465 U.N.T.S. 85.

¹⁰ Mockeli Daniel, Shah Sangeeta and Sivakumaran Sandesh, International Human Rights Law, Oxford University Press at P.214.

¹¹ Article 17 Of the Uncat.

studying, and commenting on periodic reports from the States parties on the measures they have taken to give effect to their undertakings under the Convention¹²; initiating an investigation when there is reliable information which appears to contain well-founded indications that torture is being systematically practised in the territory of a State party and to receive and examine complaints by one State party of violations of the Convention by another State party.¹³

4.2 INDIA'S RELUCTANCE TO RATIFY UNCAT

As of 2024, 174 states have ratified the UN Convention against Torture; these States include all the leading democracies across the world. However, the world's largest democracy – India, is yet to ratify this convention. India has not yet enacted local legislation that would allow it to ratify the UN Convention against Torture, despite having signed it in 1997.

Inconsistency between local laws and UNCAT clauses may be the primary reason for non-fulfilment.

However, there are a few legal loopholes, which are covered below:

1.1 Domestic Laws Addressing the Convention's Core

In addition, the Bharatiya Nyaya Sanhita, 2023 (BNS) contains sections 120(1), 120(2), 127(2), and 127(8) that punish specific behaviors that could be considered torture. While Section 120(2) deals with voluntarily causing grievous damage for the purpose of extorting a confession and prescribes higher punishment, Section 120(1) makes it illegal to intentionally cause harm in order to obtain a confession. Similarly, wrongful detention is punishable under Section 127(2), while wrongful confinement to get a confession or information is expressly addressed by Section 127(8).

Torture is defined by the UN Convention Against Torture (UNCAT) as the deliberate infliction of severe physical or mental pain, the involvement of a public authority, or punishment for reasons like coercion or intimidation. However, acts of torture committed by public officials or those acting in their official position are not expressly or solely targeted by these laws. Therefore, even though Sections 127(2) and 127(8) penalize coercive confinement practices and Sections 120(1) and 120(2) indirectly aim to discourage the use of third-degree methods during interrogation, these provisions are fragmentary and insufficient to fulfill India's obligations under UNCAT because there is no separate offense of torture.

¹² Article 19.

¹³ Article 21.

There has been a claim that the country's current criminal laws cover the main elements of UNCAT. The BNS provides definitive definitions for "hurt" and "grievous hurt" but it makes no mention of torture. Nonetheless, courts classified emotional abuse, exhausting interrogation techniques, etc. as forms of torture.

Numerous CrPC laws have been re-enacted with structural changes with the passage of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). Arrest and detention are fully governed by Sections 35 to 51 of the BNSS, which roughly equate to the former Sections 41 to 60A of the CrPC. Notably, Section 35 BNSS requires that arrests be performed only when absolutely required and that written justifications for such arrests be documented, so introducing increased openness and court control. The principle of proportionality in law enforcement is reaffirmed by Section 43 BNSS, which governs the use of force during an arrest and expressly forbids the use of lethal force unless the accused actively resists arrest or makes an attempt to escape and the offense carries a death or life sentence.

Section 51 BNSS grants the detained person the right to a medical examination by a licensed medical professional in order to compile a medico-legal record that may be crucial evidence in cases of torture or abuse while in prison.

In order to prevent impunity and improve judicial control in custodial situations, Section 198 BNSS also requires a court investigation in cases of death, disappearance, or alleged rape that occurs while a person is in custody. However, there are still concerns regarding the impartiality, promptness, and effectiveness of these probes, particularly since the state police apparatus itself keeps conducting preliminary investigations.

Additionally, there is a gap in the law. Due to a lack of legal measures, courts have given torture victims' compensation very little consideration. In other words, there is no legal requirement for compensation even if the act of torture is proven. Although the court has granted compensation to victims in a number of cases, such as *Nilabati Behera v. State of Orissa*, the specific legal structure is still lacking.¹⁴

2.1 Incapable or unwilling?

Prior to ratifying an international agreement, India has a custom of enacting local law. Even though India is required under Articles 51C and 253 of the Constitution to promote settlements and uphold its duties under international treaties, the development of anti-torture legislation has not yet occurred after 23 years. But as was already indicated, the Prevention of Torture Bill

¹⁴ (1993) 2 S.C.C. 746.

was passed by the Lok Sabha in 2010, 2017, and 2018. Because of the Lok Sabha's dissolution, the bill continues to expire. However, in its report on the 2010 Bill, the Rajya Sabha Select Committee pointed out some shortcomings and recommended more stringent measures to stop torture in detention.

Manoj Kumar Jha, a member of parliament, reintroduced the Prevention of Custodial Torture Bill as a Private Member's Bill in 2023 with the goal of making prison torture illegal and bringing Indian domestic law more closely in line with its duties under the UN Convention Against Torture (UNCAT). Nevertheless, the Bill is still awaiting significant parliamentary discussion and has not yet been passed.

3.1 Concern over international monitoring of police and military actions (such as in Kashmir and regions under the Armed Forces (Special Powers) Act - AFSPA)¹⁵

The most significant worry involves the possibility of international supervision over the conduct of police and armed forces in regions experiencing internal conflict, like Jammu and Kashmir, and areas governed by AFSPA. This law grants extensive powers to the military, including warrantless arrests and use of force, which have often led to accusations of human rights abuses, including torture and extrajudicial killings. The government fears that ratifying UNCAT would allow international bodies, such as the UN Committee Against Torture, to demand explanations, carry out investigations, or issue recommendations concerning alleged misconduct by security personnel in these sensitive zones. This is seen as an infringement on national sovereignty and a threat to operational independence, posing significant political challenges. The government is also concerned that ratification might result in a surge of complaints to international organizations, potentially damaging India's global reputation and inviting unwanted foreign intervention in its domestic matters.¹⁶

4.1 Law enforcement authorities oppose fearing greater accountability

Police departments and paramilitary groups frequently voice worries that ratifying UNCAT will greatly enhance their accountability and subject their personnel to more scrutiny on a national and international level. They worry that a strict anti-torture law will make their jobs more difficult, especially in investigations where the use of conventional, frequently unlawful

¹⁵ Haq, M. A., Nayeem, Z., Zakaria, S. M., & Alam, S. S. (2012). Exploring Strengths and Loopholes of National Laws and Policies on Child Protection for the Purpose of Harmonizing those with the United Nation's Convention Against Torture (UNCAT) and United Nation's Convention on the Rights of the Child (UNCRC).

¹⁶ Cheah, W. L. (2021). Some views on torture from Asia. *Journal of International Criminal Justice*, 19(2), 447-453.

questioning techniques is still common. There is concern that it would result in more bogus complaints against officers, which would affect operational effectiveness and morale. This opposition frequently stems from a pervasive culture of impunity, in which police officers who are accused of abusing detainees are seldom charged or found guilty.

A stronger framework for independent investigations, required reporting, and possibly international monitoring would be introduced by UNCAT ratification, which may put these organizations' current power structures and unofficial procedures to the test. Because of the current lack of transparency and the "esprit de corps" among officers, abusers are frequently shielded and reporting of abuses is discouraged.¹⁷

CHAPTER 5

JUDICIAL RESPONSE TO CUSTODIAL VIOLENCE

In *T.V. Vatheeshwaran v. State of Tamil Nadu*, the Supreme Court brought attention to prisoner rights for the first time in 1983. The court ruled that inmates are always entitled to the same fundamental rights as freemen under Articles 14, 19, and 21.¹⁸ As it decided the various instances, the Supreme Court broadened the application of Article 21. It established a number of additional rights to safeguard inmates throughout their detention.

The right against torture and death in police custody was acknowledged in *DK Basu v. State of West Bengal*, which also established rules to be adhered to in all arrest and detention situations in order to promote accountability and transparency.¹⁹

The Supreme Court summarizes their grief concerns about the problem of torture by the police in prisons in the case of *Munshi Singh Gautam v. State of Madhya Pradesh*²⁰. The Supreme Court ruled that:

"The widespread occurrence of dehumanizing torture, assault, and deaths in custody raises serious doubts about the integrity of the rule of law and the functioning of the criminal justice system. Despite concerns raised over two decades ago in the case of Raghbir Singh, these issues appear to have been largely ignored, with little significant improvement since then. The distress highlighted in cases such as *Bhagwan Singh v State of Punjab*, *Pratul Kumar Sinha v State of*

¹⁷ Kihara-Hunt, A. (2017). Holding UNPOL to account: individual criminal accountability of United Nations police personnel (Vol. 50). Brill.

¹⁸ *T.V. Vatheeswaran v State of Tamil Nadu* [1983] AIR 1983, SC 361.

¹⁹ *D.K. Basu v. State of West Bengal*, AIR1997 SC 610.

²⁰ *Munshi Signh Gautam v. State of Madhya Pradesh*, AIR 2005 SC 402.

Bihar, Kewal Pati v State of UP, Inder Singh v State of Punjab, State of MP v Shyamsunder Trivedi, and the landmark ruling in *D K Basu v State of West Bengal*, seems to have failed to soften the harsh and inhumane treatment of individuals in custody”.

In 2011, Supreme Court with reference to *D.K. Basu v. State of West Bengal*, summed up with most obvious discontent “Policemen must learn how to behave as public servant in a democratic country and not as oppressors of the people”.²¹

In 2006, the Supreme Court, in the landmark case *Prakash Singh v. Union of India*, issued seven directives aimed at police reform. These directives include: (i) the formation of a State Security Commission, (ii) a fixed two-year tenure for the Director General of Police (DGP), (iii) a two-year term for Superintendents of Police (SP) and Station House Officers (SHOs), (iv) the separation of investigation and law enforcement functions, (v) the establishment of a Police Establishment Board, (vi) the creation of Police Complaint Authorities at both the State and District levels, and (vii) the establishment of a National Security Commission at the Central level.²²

In the case of *People’s Union for Civil Liberties v. Union of India & Another*, the Court noted: “There is no doubt that this Court has been hearing numerous petitions alleging fake encounters and rapes committed by police officers from various States, and in many instances, the investigation has been transferred to other agencies, especially the CBI.”²³

In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, the Supreme Court stated: “Any form of torture or cruel, inhuman, or degrading treatment is an affront to human dignity and infringes upon the right to life. Such treatment is prohibited under Article 21 unless it follows a procedure established by law. However, no law or procedure that permits or results in torture or cruel, inhuman, or degrading treatment can be considered reasonable or non-arbitrary; it would clearly be unconstitutional and invalid as it violates Articles 14 and 21.”²⁴

²¹ Mehboob Batcha v. State (2011) 7 SCC 45 (53).

²² Prakash Singh & Ors v. Union of India on 22 September, 2006, Civil Writ Petition no. 310 of 1996

²³ AIR 2005 SC 2419.

²⁴ AIR 1981 SC 746.

In the case of *Gauri Shanker Sharma and others versus the State of Uttar Pradesh*, the Supreme Court stated:

“It is generally challenging to obtain evidence against police officers responsible for using third-degree methods in cases of deaths occurring in police custody, as they control the police station records, which they can easily manipulate, as happened in this case. The offense is very serious, made worse by the fact that it was committed by someone who is meant to protect citizens, not abuse their uniform and authority to violently assault them while in custody. Deaths in police custody must be taken very seriously; otherwise, we risk moving towards a police dictatorship. Such actions must be strictly punished. The penalty should be severe enough to discourage others from engaging in similar conduct. There is no place for leniency in these matters.”²⁵

CHAPTER 6

INVESTIGATION OF MATTERS CONCERNING TORTURE BY DIFFERENT COMMISSION REPORTS

Torture is not limited to physical harm; it can also involve mental and psychological torment intended to instil fear and force compliance with certain demands or orders.²⁶

In its 1975 Tokyo Declaration, the World Medical Association defined “torture” as the intentional, systematic, or reckless causing of physical or mental pain by one or more individuals, either acting independently or under orders from an authority, with the purpose of compelling someone to provide information, confess, or for any other reason.²⁷

6.1 113th Law Commission Report

In its 113th Report²⁸, the Law Commission recommended amending the Indian Evidence Act, 1872, by adding Section 114B. This section states that in cases involving injuries sustained while in custody, if there is evidence, the court may presume that the injury was inflicted by the police who had custody of the individual during that time. The burden of proving otherwise lies with the police authorities. The law calls for a practical approach rather than a narrow, technical one in cases of custodial offenses. The proposed amendment by the Commission is as follows:

²⁵ AIR 1990 SC 709.

²⁶ Arvinder Singh Bagga v. State of U.P, AIR 1995 SC 117.

²⁷ See: Speech by Dr. Justice A S Anand, former Chief Justice of India, in VIIIth International Symposium on Torture, (1999) 7 SCC 10 (J).

²⁸ Law Commission of India, One Hundred Thirteenth Report on Injuries in Police Custody (1985).

“Section 114-B.

1. In a prosecution against a police officer for an offense involving bodily injury to a person, if there is evidence that the injury occurred while the person was in police custody, the court may presume that the injury was caused by the police officer responsible for that custody during that period.
2. When deciding whether to draw such a presumption under subsection (1), the court shall consider all relevant circumstances, including, in particular:
 - 1.1 the duration of custody,
 - 2.1 any statement made by the victim regarding how the injuries were sustained, provided the statement is admissible as evidence,
 - 3.1 the testimony of any medical practitioner who examined the victim, and
 - 4.1 evidence from any magistrate who recorded or attempted to record the victim’s statement.”

6.2 152nd Law Commission Report

In 152nd Report (1994)²⁹, the Commission examined issues concerning arrests and the abuse of power by officials, referencing all pertinent Constitutional and legal provisions, including Articles 20, 21, and 22, which must be strictly upheld as they safeguard individuals’ life and liberty. It also analyzed sections of the Indian Penal Code, 1860, particularly sections 166 and 167 (disobedience of lawful orders by public officers), 220 (wrongful confinement for corrupt or malicious reasons), 330 and 331 (illegal restraint and causing bodily harm), sections 340-348 (wrongful restraint and confinement), section 376(2) (aggravated rape by police officers), sections 376B to 376D (custodial sexual offenses), and sections 503 and 506 (criminal intimidation).

The Commission further reviewed provisions of the Criminal Procedure Code (Cr.PC), including section 41 (arrest), section 49 (restraints), section 50 (grounds for arrest), section 53 (medical examination of the accused), section 54 (medical examination upon the arrested person's request), sections 56-58 (procedures following arrest), sections 75-76 (arrest under warrant), section 154 (information in cognizable cases), section 163 (prohibition of inducements), section 164 (confession before magistrate), section 313 (examination of the accused in court), and section 357 (compensation).

Additionally, the Commission considered relevant sections of the Indian Evidence Act, 1872,

²⁹ Law Commission of India, One Hundred Fifty-Second Report on Custodial Crimes (1994).

especially sections 24-27.

Major recommendations included amending the IPC to introduce a new provision penalizing violations of section 160 of the Cr.PC. It also proposed amending the Cr.PC by adding section 41(1A) to require that reasons for arrest be recorded and introducing section 50A to mandate informing the arrested person's relatives. Regarding the Indian Evidence Act, the Commission reiterated its earlier recommendation from the 113th Report to add a new provision, section 114B.

6.3 177th Law Commission Report

The 177th Report of the Law Commission of India (2001)³⁰, recommended that the Criminal Procedure Code (Cr.PC) be amended by adding a new section 55A, which would state the following:

“Health and Safety of Arrested Persons: The individual responsible for the custody of an accused must take reasonable care to ensure the health and safety of that person.”

In its 185th Report³¹, the Commission noted that the Supreme Court had referred to the 113th Report of the Law Commission in the case of *State of MP v. Shyam Sunder Trivedi*.³² It highlighted that in instances of custodial death or police torture, obtaining direct eyewitness evidence implicating the police is challenging. Due to strong bonds of solidarity, police personnel often hesitate to testify, and frequently, officers may pretend to be completely unaware of the incident, as occurred in that case. The courts should not rigidly insist on proof beyond a reasonable doubt in such situations. Typically, the prosecution will have little evidence to directly implicate the police. The Court described deaths in police custody as among the gravest crimes in a civilized society governed by the rule of law, emphasizing that law enforcement officers are not above the law. Sections 330 and 331 of the Penal Code criminalize causing hurt to extract confessions, with penalties of up to 10 years imprisonment. However, convictions in these cases are rare due to the difficulty of proving evidence. The Court remarked:

Concerned by this issue, the Law Commission, in its 113th Report, suggested changes to the Indian Evidence Act. These changes would state that in cases where a police officer is prosecuted for allegedly causing bodily harm to a person while in police custody, if there is proof that the injury occurred during the time the person was in custody, the Court may assume

³⁰ Law Commission of India, One Hundred Seventy-Seventh Report on Law Relating to Arrest (2001).

³¹ Law Commission of India, One Hundred Eighty-Fifth Report on Review of the Indian Evidence Act, 1872 (2003).

³² 1995(4) SCC 262.

that the injury was inflicted by the police officer responsible for that custody during that period, unless the officer can prove otherwise. The responsibility to prove otherwise lies with the police officer involved.

6.4 268th Law Commission Report

In 268th Report (2017)³³, the Commission suggested adding section 41(1A) and modifying section 41B of the Cr. PC to mandate that police officers inform arrested individuals of their bail rights and to make the bail process more accessible.

The Court also noted: “Considering the degrading nature of this crime, the blatant violation of the victim’s fundamental rights, and the increasing number of such offenses—many of which remain undisclosed—we hope that the Government and legislature will seriously consider the Law Commission’s recommendation and implement suitable legal reforms.”

6.5 273rd Law Commission Report

The 273rd Report of the Law Commission of India³⁴, published in October 2017, represented a significant effort to tackle India’s ongoing failure to enact domestic legislation against torture, despite being a party to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) since 1997. The Report pointed out that the absence of a specific anti-torture law had resulted in widespread custodial violence, weak accountability, and non-adherence to international human rights obligations.

The Need for Anti-Torture Laws

The Commission observed that current laws—such as Sections 330 and 331 of the Indian Penal Code, along with procedural protections under the Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872—were fragmented, inadequate, and ineffective in addressing custodial torture. These laws lacked a comprehensive definition of torture, did not recognize mental or psychological abuse, and failed to establish a victim-focused framework. The Report highlighted that torture cases were frequently under-reported and seldom prosecuted due to fear of retaliation, lack of independent investigations, and challenges in collecting evidence.

³³ Law Commission of India, Two Hundred Sixty-Eighth Report on Amendments to the Code of Criminal Procedure, 1973—Provisions Relating to Bail (2017).

³⁴ Law Commission of India 273rd Report on Implementation of “United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment” through Legislation (October 2017).

<https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081620.pdf>

Separate Legislation: The Prevention of Torture Bill, 2017

To remedy these issues, the Commission proposed a standalone law titled “The Prevention of Torture Bill, 2017.” This bill aimed to:

- Provide a legal definition of torture consistent with Article 1 of UNCAT, encompassing both physical and mental suffering inflicted by public officials or with their consent.
- Establish torture as a distinct criminal offense, including acts committed during investigation, interrogation, or detention.
- Implement graduated penalties based on the severity of harm, with stricter punishments if torture results in serious injury or death.
- Hold superior officers vicariously responsible if torture occurs with their knowledge or due to their negligence.

Protection and Compensation for Victims

The Report emphasized a victim-centered approach, recommending:

- Mandatory medical examinations for individuals in custody.
- Measures to protect witnesses, recognizing that fear of retaliation often deters victims and witnesses from coming forward.
- Legal acknowledgment of victims’ rights to compensation and rehabilitation, in line with international human rights standards.
- Shifting the burden of proof in certain custodial cases, particularly when injuries occur during detention.

Procedural and Evidentiary Reforms

The Commission also proposed amendments to the Code of Criminal Procedure and the Indian Evidence Act to enhance investigation and prosecution, including:

- Independent and prompt investigations of custodial torture cases.
- Permitting medical and forensic evidence to challenge coerced confessions.
- Excluding evidence obtained through torture, reinforcing constitutional protections under Articles 20(3) and 21.

International Commitments and Constitutional Principles

The Report stressed that India’s ratification of UNCAT was crucial for its standing in international human rights forums and aligned with constitutional values of human dignity, rule of law, and due process. It underscored that torture is not merely a law enforcement matter but

a grave violation of fundamental rights, incompatible with a democratic constitutional framework.

Status and Importance

Although the 273rd Report provided detailed recommendations, the proposed Prevention of Torture Bill, 2017 has yet to be passed, and India continues to be a signatory to UNCAT without ratification. However, the Report continues to serve as a key reference in academic, judicial, and policy discussions on custodial violence in India, often cited by courts and human rights organizations.

CHAPTER 7

RECOMMENDATIONS

Eliminating custodial torture in India requires a comprehensive strategy that tackles gaps in legislation, enhances institutional responsibility, and promotes a human rights culture among law enforcement agencies. The following recommendations highlight essential measures to accomplish this important goal:

1. Prioritize Ratification of UNCAT

India should promptly ratify the United Nations Convention Against Torture to affirm its dedication to global human rights standards and to establish binding commitments for reforming domestic laws.

2. Enact a Dedicated Anti-Torture Law

Following ratification, India must pass a comprehensive anti-torture statute that aligns with UNCAT definitions, criminalizes torture as a separate offense—including both physical and psychological forms—and holds all public officials accountable.

3. Include Command Responsibility

The legislation should explicitly incorporate the principle of command responsibility, making senior officials liable if they knew or should have known about torture incidents and failed to prevent or punish them.

4. Ensure Independent Investigations of Custodial Violence

Allegations of torture and deaths in custody must be probed by genuinely independent bodies or specialized agencies to avoid the institutional bias common in police-led investigations.

5. Mandate FIR Registration and Judicial Oversight

First Information Reports (FIRs) should be registered immediately in all cases of

custodial torture, with swift and thorough inquiries conducted by independent judicial magistrates.

6. Strengthen Prosecution and Conviction Processes

To improve low conviction rates and encourage reporting without fear, fast-track courts, specialized prosecutors, and robust witness and victim protection systems are necessary.

7. Empower Human Rights Institutions

The National Human Rights Commission and State Human Rights Commissions should be granted enforcement and prosecutorial authority, along with sufficient funding and staffing to ensure effective monitoring.

8. Implement Police Reforms, Training, and Technology

Comprehensive reforms in policing, ongoing human rights and forensic training, and mandatory CCTV installation in police stations and detention facilities should be institutionalized to boost accountability and transparency.

9. Provide Victim-Centred Remedies and Enhance International Cooperation

Victims of custodial torture must have guaranteed legal rights to compensation, rehabilitation, legal assistance, and psychological care. Additionally, India should increase transparency by voluntarily reporting and collaborating with UN human rights bodies.

CONCLUSION

Torture in custody is a serious violation of human dignity and highlights ongoing problems within India's criminal justice system. Although the Constitution guarantees fundamental rights and the judiciary has strongly condemned such acts, the lack of a specific, comprehensive anti-torture law and a widespread culture of impunity allow these abuses to continue. India's failure to ratify the UN Convention Against Torture (UNCAT), even 28 years after signing it, reveals a significant shortfall in its commitment to global human rights standards. The reasons given for not ratifying—mainly concerns about sovereignty and legal challenges—are increasingly hard to justify in today's interconnected world, where human rights are recognized as universal rather than purely domestic issues. As an emerging democracy, India's hesitation to align its laws with international anti-torture norms damages its global reputation and sustains a system that fails its citizens. Ratifying UNCAT would be more than symbolic; it would require India to clearly define and criminalize torture, set up strong accountability measures, offer real remedies to victims, and promote international cooperation to fight this crime. It

would reinforce the existing D.K. Basu guidelines by turning them into legally binding rules enforceable through dedicated legislation. Moreover, it would affirm India's firm commitment to the rule of law and its role as a responsible, compassionate member of the global community. The time to delay is over. The pain suffered by many in custody calls for urgent and decisive measures. By ratifying the UN Convention Against Torture, India can close a troubling chapter in its human rights history, protect the dignity of every person, and create a fairer, more accountable society where abuse of state power is clearly rejected. This is a crucial step toward making the promise of "justice for all" a reality in every police station and detention center across the country.

