

A Study of Constitutional Protections Against Custodial Violence: A Critical Analysis

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ABSTRACT:

The destruction of India's democracy occurs when a police officer tortures someone while they are in their custody. It is the greatest irony that the nation is currently fighting valiantly to eradicate a crime like "Custodial Violence" yet Mahatma Gandhi was the foremost leader who adhered to the ideal of non-violence in achieving India's freedom. The state has a responsibility to defend society from attack. One has no choice but to be tortured by those who uphold the law and the rule of law. Custodial death is not in accordance with the procedure established by law, at the same time, it is the deprivation of the right to life. Custodial death is the outcome of the brutal action or negligence of the police. It results in an unnatural death. Such a dangerous issue that is threatening the very basic right to life remained unexplored, and no major research has been undertaken to examine the problem from a state-level perspective. Thus, there is depth and intensive literature on the topic. The literature helps to give a comprehensive picture of efforts taken by the judiciary as well as the state government to combat the custodial violence. It deeply analyses the constitutional protections of an Accused and it is concluded by saying numerous suggestions for combating the custodial violence crimes. Therefore, the present study is mainly focused on critical analysis of the adequacy of existing laws relating to prevention of custodial violence. The study also incorporates practical aspects of custodial violence based on the statistics given by the State Human Rights Commission of Tamil Nadu.

Keywords: Custodial Violence, Police brutal action, Rule of law, Criminal Administration law, Prosecution, Judicial Accountability and Human Rights Violation

INTRODUCTION:

Custodial torture and deaths in police custody have emerged as critical concerns within the Indian criminal justice system, highlighting significant challenges related to human rights and law enforcement practices. Despite constitutional guarantees and legal frameworks aimed at safeguarding individual rights, instances of torture and deaths in police custody continue to undermine public trust in law enforcement agencies and the justice system. In India, the issue of custodial torture is rooted in systemic flaws within the criminal justice system, where allegations of abuse and mistreatment often surface. Custodial torture refers to the infliction of physical or psychological pain by police officers or other authorities to extract confessions, intimidate suspects, or enforce compliance. This practice violates fundamental human rights and is prohibited under both domestic and international laws. The Indian Constitution, through Article 21,

guarantees the right to life and personal liberty, which is further reinforced by various Supreme Court judgments emphasizing that torture is incompatible with constitutional norms. Additionally, international conventions such as the United Nations Convention Against Torture (CAT), to which India is a signatory, mandate the prohibition of torture and require effective measures to prevent and address such practices. Despite these legal protections, reports of custodial torture and deaths persist, revealing a disturbing trend of abuse and impunity. The impact of custodial torture and deaths extends beyond the immediate harm inflicted on individuals. It erodes public confidence in the rule of law and the justice system, disproportionately affects marginalized communities, and perpetuates a culture of violence and fear. Addressing these issues requires a multifaceted approach, including legal reforms, improved oversight mechanisms, and enhanced training for law enforcement personnel. In this study, the contemporary issue of custodial torture and deaths in police custody in India underscores the urgent need for comprehensive reforms to uphold human rights, ensure accountability, and restore public trust in the criminal justice system. Criminal law penalizes the wrongdoer, prevents the occurrence of crime, punishes transgressors and criminals, restores them, compensates the victims as much as possible, maintains law and order in the society, and serves to deter offenders from committing further crimes. But now that duty has been placed on someone, that person has turned into a criminal by torturing the detained individuals in their care. Custodial violence is a problem that is not only evident in India but has gained worldwide significance. The world community has been concerned about it for many years. It has been covered by numerous international conventions and treaties.

RESEARCH PROBLEM:

Custodial torture and death represent severe violations of human rights and legal standards. Despite numerous international conventions and constitutional protection aimed at curbing such practices without following the rule of law and procedure established by law. The torture in detention is a flagrant violation of human rights and damages the personality of the victim. It violates people's right to dignity. The awful amount of police brutality practiced in India is demonstrated by the recent deaths underlying factors contributing to custodial torture and death, focusing on systemic, institutional, and individual variables. This study focuses on the conceptual understanding of legal protection and rehabilitation to protect from the custodial torture in the police custody.

OBJECTIVE:

The objective of the study to determine the Constitutional and statutory provisions against custodial torture and conceptual analyze the preventive measures in international instruments on custodial violence. Further this study examines the response of judiciary to custodial violence and analyze the Human rights violations in this regard. The major role to Assess the effectiveness of existing legal and institutional frameworks in preventing abuse and holding perpetrators accountable.

RESEARCH QUESTIONS:

1. How far does the existing legal framework, in India, address the issues of custodial violence and the lacunae that exist in the legislative provisions?
2. How does custodial violence affect the life and dignity and basic human rights of the arrestees?
3. Whether the international instruments protecting the victims from custodial torture?

LITERATURE REVIEW: - INTERNATIONAL STATUS:**Books:****"Human Rights and Custodial Violence: an overview" by Prince Khatri**

This paper had given a clear data of torture and death in police custody from 2011 to 2018 the report was extracted from the National Human Rights Commission. It emphasized the various legislation and Universal conventions relating to accused rights and punishments for custodial violence cases. But it fails to give alternative remedies to protect the accused/suspects from the custodial abuse.

"Torture: A Collection" by Sanford Levinson This book compiles various perspectives on torture, including legal, ethical, and practical considerations. It discusses both historical and contemporary instances of torture in the custodial by the police officials.

"Torture and the Law of Evidence" by Craig Scott and Susan Batmanghelidj

This book provides an analysis of how evidence obtained through torture is treated under various legal systems and human rights frameworks provided by the international standards including Universal Declaration of Human Rights – 1948 and International Covenants on Civil and Political Rights – 1966.

"The United Nations and Torture: An Analytical Study" by Paul T. Nolan

This book examines the role of the United Nations in combating torture, including the mechanisms and protocols in place for monitoring and addressing human rights abuses included the custodial torture by the authorities.

Journal Articles

"Custodial Deaths and the International Human Rights Framework" – International Journal of Human Rights - This article explores how international human rights laws address custodial deaths, focusing on compliance and enforcement challenges.

"The Impact of Torture on Mental Health: An International Perspective" – The Lancet Psychiatry Provides a global overview of the psychological effects of torture on survivors and discusses implications for mental health treatment and support.

"Legal Responses to Torture: Comparative Perspectives" – Harvard International Law Journal Analyzes how different countries' legal systems address torture, including case law and legislative measures.

"The Role of the UN in Preventing Torture: Successes and Challenges" – Human Rights Quarterly Examines the effectiveness of UN initiatives and mechanisms in preventing and addressing torture globally in the Human Rights and Criminal law jurisprudence.

Organizations and Reports

Amnesty International and **Human Rights Watch** regularly publish reports and articles on torture and custodial deaths. Their publications often include case studies, statistical analyses, and policy recommendations.

The UN Committee Against Torture (CAT) publishes periodic reports on member states' compliance with the Convention Against Torture, which often include detailed discussions of torture practices and custodial deaths.

The International Committee of the Red Cross (ICRC) provides resources and reports on the treatment of detainees and issues related to torture and ill-treatment.

LITERATURE REVIEW: - NATIONAL STATUS:**“Defense against arrest with relevant statutory forms” By Ramachandran:**

This book critically examined the provisions relating to arrest, how the arrest has to be made more particularly discussed about the rights of the arrested person who was in the police custody. It emphasized the differentiation between two words arrest and custody. The Author clearly narrated the procedure for medical examination of the arrested person as well as the circumstance for arresting a person by without warrant. These are the main concepts and causes for the custodial violence and death. Because the reason for the custodial violence in most of the case, is to arrest the accused/suspect without following the rules as well as the rights enshrined in Criminal Procedure Code and The Indian constitution.

“Law on Custodial Death and Torture” by R. Chakraborty:

This book covers all aspects of custodial violence and given wide view starting from the general introduction. This has very significantly brought out the concerns of some of the agonies and ecstasies of law-enforcement officers the police working in regard to human rights in the society. He also observed that our country witnessed an unfortunate decline in the quality of policing and law-enforcement, coupled with blatant misuse of power by the police and the politicians while violating human rights of the people.

“Torure in police custody: an Analysis” by S.k.Ghosh:

The author of the book writes that torture at the hands of the police, para-military forces or army is all pervasive and a daily routine in all the states, in India, despite repeated reports by journalists and human rights organizations and interventions by judicial courts. It is irrespective of political dispensation belief of the party in power. In this book made exhaustive references of various reports while highlighting the grim situation with regard to human rights violations all over India.

“Commentary on the Indian Penal Code” by K.d. Gaur:

This book explained the concept in connecting various provisions of IPC relating to custodial torture. torture committed to extract confession or to compel restoration of property. It also detailed on the section where a public officer does any act in breach of the rules established, he may be punished for the same.

“Custodial violence: Causes, consequences and preventive measures” by V.Sorna Lakshmi:

This article examines the where the custodial offences are done, what are the causes of custodial violations based on the data's given by the NHRC. This paper also gave the preventive measures for the custodial violence.

IMPLICATION:

The criminal process is restricted by Article 20 of the constitution. According to this article, no one shall face a punishment that is more severe than what may have been prescribed in accordance with the legislation that was in effect at the time the offence was committed. Parliament and state legislatures can pass any kind of legislation they like, however they are not allowed to pass any laws that are retroactive in nature according to Articles 245, 246, and 248.

Section 20(2): Preventing Double Jeopardy Nobody may receive two punishments for the same transgression. provision 20(3), Right not to be a witness against oneself, is the most significant provision in relation to this matter. It states that criminal laws should not be draughted in a way that undermines the fundamental moral principles of the justice system. The prohibition on self-incrimination found in Article 20(3) means that an accused person cannot testify in a criminal trial regarding an offence he may or may not have committed. The case of M.P. Sharma It is a person's right when they are charged with a crime, Being a witness provides protection from coercion, even coercion related to the witness's own testimony.

PREVENTION OF CUSTODIAL VIOLENCE UNDER CRIMINAL PROCEDURE CODE:

The Criminal Procedure Code has numerous rules that protect the rights of the accused. The criminal procedural code explains what procedure must be followed when an offence is committed, what approach police should use when a person is arrested, and how to preserve the rights of the arrested individual. There are a number of sections that punish crimes committed while in detention or arbitrary arrests, as well as requiring victims to be compensated.

Section 163: As stated in Section 24 of the Indian Evidence Act, 1872, no police officer or other official may provide, make, or cause to be made any kind of incentive, threat, or promise. However, no police officer or other person may, by warning or otherwise, prevent any person from making any statement that they may feel inclined to make on their own during an investigation conducted under this Chapter; provided, however, that nothing in this subsection shall impair the provisions of Section 164's subsection (4).

Section 49: the person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

Section 50: This section states that person must be informed about the ground of arrest and he also has a right to bail. Arrested person must be informed the reason of his arrest, if he is arrest without warrant, accused person must be informed that he can get a bail and he may arrange sureties. The Court held that unlawful detention results when an arrest is undertaken without a warrant and the subject of the arrest is not informed.

Section 55(A): According to this Section, a person in custody must receive the appropriate care for their health and safety.

Section 56: This section that arrested person should be send officer in charge of police station or to the concerned Magistrate within 24 hours.

Section 57: The purpose of the section is to guarantee that the accused is brought before a magistrate as soon as practicable.

Section 58: According to this clause, all individuals detained without a warrant within the boundaries of their respective police stations must have their cases reported to the District or Sub-Divisional magistrate by the authorities in charge of the stations, regardless of whether the detainees were granted bail or not.

FURTHER IMPLEMENTATION AND CHALLENGES:

The major implementation in the regulation of laws from custodial torture and death has been still inadequacy. The following various law commission reports and Acts suggested effective implementation of laws against the police apprehension to the victims, but the challenges have followed the same to implement.

LAW COMMISSION REPORTS ON CUSTODIAL VIOLENCE:

The first Law Commission of India (LCI) was appointed in August 1955 and since then twenty one Law Commissions have been appointed and altogether, two seventy seven reports have submitted to the Government of India till date. While dealing with normative law reform, the Law Commission of India had, on a number of occasions, examined the powers and functions, the emerging role and the operational problems of police, and made numerous valuable observations and recommendations, many of these suggestions, however, did not see the light of day. In view of the importance of criminal investigation for law enforcement, the Law Commission of India could not limit itself to reforming legislation relating to

investigative procedure; it also had to deal with multi- dimensional and even non- legislative concerns relating to police criminal investigation. For the first time in its **14th Report on Judicial Administration Reform (1958)**, the Law Commission looked into the problem of defective or sloppy police investigation. The Commission had highlighted the major flaws in the investigation process and recommended a number of critical non- legislative actions to guarantee that police investigations are conducted efficiently. These measures include the investigation of an offence should be performed by a single police officer, ideally a senior officer, with the cooperation of subordinate officers as much as practicable.

135th Law Commission Report (1989):

It talks about the women's custody. The Minister of Law and Justice has forwarded a copy of the National Expert Committee's Report on Women Prisoners, which was filed on behalf of the state ministry. The following are the suggestions provided by the Law Commission:

1. Only the lady constable should make the arrests of the women. The male policeman is not allowed to touch the female suspect.
2. The Law Commission looked at the time of arrest and concluded that no woman should be arrested before sunrise or after sunset.
3. The Commission suggested that the accused be examined medically in order to get evidence of the crime. And it has to be done by a licensed medical professional.
4. A woman under the age of 15 must be checked in her residence for the purpose of investigation.

NATIONAL HUMAN RIGHTS COMMISSION IN INDIA:

National Human Rights Commission came into effect on 12th October 1993 by the establishment of the Protection of Human Rights Act 1993. Other states have established human rights commissions in their own states to defend human rights and investigate violations. Human rights refer to a person's right to life, liberty, equality, and dignity, which is guaranteed by the Indian constitution as a basic right stated in Part 3 of the constitution. The commission has all of the powers of a civil court, including summoning and enforcing the attendance of witnesses and interrogating them under oath, discovery and production of any document, receiving evidence on affidavits, requisitioning any public record or copy thereof from any Court or office, issuing commissions for the examination of witnesses and documents, and having jurisdiction to try the same. For the year 2016-17 and 2021-22 the National Human Rights Commission has recommended monetary compensation for 1184 Custodial Death Cases. During this period there are 11,419 Custodial Deaths has been occurred¹⁵⁰. Only 21 Custodial deaths cases were recommended for disciplinary action by the NHRC¹⁵¹. This shows disciplinary action was recommended only 0.2% cases.

Shortcomings in Investigations:

The NHRC must direct such requests to the Central or State Governments so they can appoint an Officer to carry out such an investigation because it lacks the capacity to conduct such investigations according to its own agenda and method. Furthermore, the investigation's time limit makes it difficult for the organization to function, because the NHRC can only look into a case for a year after it is admitted to the Commission. This has an impact on the NHRC's work and the caliber of its investigations, and many complaints may go unresolved as a result.

CONCLUSION:

Torture undermines not only the dignity of human rights but also the victim's capacity to live their lives and engage in other activities. Human rights violations and torture are widespread worldwide, not just in

India. Women, men, children, seniors, wealthy people, and people from all racial and religious backgrounds are all victims of torture, as are other violations of human rights. It asserts that the foundation of freedom, justice, and peace in the world is recognition of the inherent dignity and other equal and inalienable rights of every member of the human family. Currently, the police system and policing are developing very slowly, which is causing injustice. The Supreme Court has expanded the purview of Article 21 of the Constitution and added the rights of accused and suspect in order to safeguard the interests of the innocent and prevent the abuse and misuse of police powers. Even yet, situations of third-degree torture committed while a defendant is being tried and in custody are essential to the investigation. The Supreme Court ruled that Article 21 of the constitution's notable exemption from torture and fatalities in police detention to the status of fundamental rights. The NHRC also lacks the authority to impose decisions; it can only issue recommendations. Because it lacks the power to enforce compliance, its ruling may also be flatly rejected. It lacks independent investigating equipment. Human rights commissioners are prohibited by the Protection of Human Rights Act of 1993 from looking into an occurrence if the complaint was filed more than a year after the incidence. As a result, many legitimate complaints go unresolved.

SUGGESTIONS:

1. HRC have to maintain record transparently regarding the cases of custodial torture.
2. Installing CCTV cameras ensures a location is safe and secure and serves as the finest watchdog. It must be installed in every police station in order to track and monitor police actions. It will lessen the possibility of abuse and torture while in detention. Police stations, courts, and hospitals must all have internet access via the state wide area network, making it simple to communicate with other departments.
3. Supervise visit of higher officials: The surprise visit by higher authorities is necessary to check the violent police activities. Jails should have medical facilities so that in an emergency, the people under the custody of the jail can receive proper and prompt medical care.
4. To ensure that the investigating officer is not abusing the detainee, a lawyer should be permitted to be present throughout the interview.
5. More often scheduled police training seminars should focus on educating officers about their moral and ethical obligations. The outright ban on torture and other cruel treatment must be incorporated into police official training, and they must be sure to refuse to carry out any orders to participate in torture.
6. Police officers who may have participated in torture or other cruel treatment shouldn't be allowed to participate in the investigation. The instructors should be qualified and enthusiastic to deliver appropriate instruction. They must receive the necessary training to instill in the populace a sense of duty to uphold the rule of law. So that they can comprehend and respect human rights, they should be taught about them during their training.
7. Police corruption: The usual correction ought to be left alone. In this and related cases, the head should be held accountable for the misdeeds of his subordinate and may face punishment for negligence. Checks on such abnormalities ought to be made. Promotion in government work, as well as in any other employment, is a crucial reward for good behavior.
8. Proper definition of torture: Adopting specific law that clearly defines torture, provides punishment, compensates victims, and holds officials accountable is what India needs today.
9. Incorporation of Guidelines: All of the instructions provided by the court in D.

K. Basu v. State of West Bengal should be incorporated to the applicable legal provision and the police manual. Everybody must be informed of the rights available to them while in detention, hence it must be published in all languages.

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