

Torture and Custodial Violence in India: A Critical Legal Study

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Abstract -- Custodial violence remains one of the most serious violations of human rights within criminal justice systems across the world. In India, despite constitutional guarantees, statutory safeguards, and judicial interventions, incidents of custodial torture and deaths continue to be reported. Such incidents undermine the rule of law, violate human dignity, and erode public confidence in law enforcement institutions. Custodial violence includes physical torture, psychological abuse, forced confessions, sexual assault, and custodial deaths inflicted upon individuals detained by police or prison authorities. The persistence of such practices reveals structural deficiencies in policing systems and accountability mechanisms. This paper critically examines the concept of torture and custodial violence within the Indian legal framework. It analyses constitutional protections under Articles 20, 21, and 22, statutory safeguards under the Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhinyam, and the role of the judiciary in preventing custodial abuse through landmark judgments. The paper also explores the causes and consequences of custodial violence and highlights institutional challenges in preventing such violations. Further, it evaluates the role of institutions such as the National Human Rights Commission in monitoring custodial deaths and ensuring accountability. Finally, the paper proposes comprehensive reforms including police modernization, independent investigation mechanisms, installation of CCTV cameras in police stations, human rights training for law enforcement officers, and ratification of the United Nations Convention Against Torture. The study concludes that eliminating custodial violence requires not only strong legal safeguards but also structural reforms, institutional accountability, and a shift toward rights-based policing practices.

Keywords -- Custodial violence, torture, human rights, police accountability, criminal justice system.

I. INTRODUCTION

The protection of human dignity is one of the fundamental principles of democratic governance. In any constitutional democracy, the State possesses the authority to enforce law and order, but this power must be exercised in accordance with constitutional guarantees and the rule of law.

Law enforcement agencies are entrusted with the responsibility of investigating crimes, maintaining public order, and protecting citizens. However, when authorities misuse their power and subject individuals to torture or violence while in custody, it constitutes a serious violation of human rights and constitutional protections.

Custodial violence refers to abuse or torture inflicted upon individuals who are detained by police or prison authorities. The term includes physical assault, psychological harassment, sexual abuse, and even death while in custody. These acts are particularly concerning because they occur within institutions that are expected to uphold justice and protect citizens. When individuals who are responsible for enforcing the law become perpetrators of abuse, the legitimacy of the criminal justice system is undermined.

In India, custodial violence has been a persistent problem despite constitutional safeguards and judicial guidelines. Reports from institutions such as the National Crime Records Bureau (NCRB) and the National Human Rights Commission (NHRC) indicate that custodial deaths and cases of torture continue to occur across different states. Many of these cases arise during police interrogations where officers attempt to extract confessions or information from suspects.

The prevalence of custodial violence can be attributed to several structural and institutional factors. These include colonial policing practices, pressure on police officers to solve cases quickly, inadequate training in scientific investigation methods, lack of independent oversight, and a culture of impunity within law enforcement agencies. The persistence of these factors highlights the gap between legal safeguards and their practical implementation.

This paper seeks to critically examine the issue of torture and custodial violence in India. It analyses the constitutional and statutory framework designed to prevent such abuses and evaluates the role of the judiciary in strengthening protections against custodial torture. The study also identifies the major causes and consequences of custodial violence and proposes reforms necessary to ensure accountability and prevent future violations.



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II. CONCEPT OF TORTURE AND CUSTODIAL VIOLENCE

A. Meaning of Torture

Torture refers to the deliberate infliction of severe physical or mental pain upon an individual by a public official for purposes such as obtaining information, punishment, intimidation, or coercion. Torture is universally condemned as a violation of human dignity and is prohibited under international human rights law. International instruments such as the United Nations Convention Against Torture define torture as any act by which severe pain or suffering is intentionally inflicted on a person by or with the consent of a public official.

Torture may take various forms including physical violence, electric shocks, burning, prolonged stress positions, sleep deprivation, and psychological abuse. In many cases, torture is used during police interrogation to extract confessions or information from suspects. Such practices not only violate human rights but also undermine the integrity of the criminal justice system.

B. Meaning of Custodial Violence

Custodial violence occurs when a person suffers abuse while under the control or supervision of law enforcement authorities. Custody may arise in different contexts such as police detention during investigation or imprisonment following a court order. In both situations, the individual is under the authority of the State and is therefore entitled to protection from abuse.

Custodial violence may include physical assault, psychological torture, sexual abuse, forced confession, custodial rape, and custodial death. Custodial death represents the most extreme form of abuse and raises serious concerns about misuse of authority by law enforcement officials.

C. Historical Background

The roots of custodial violence in India can be traced to the colonial period. After the revolt of 1857, the British colonial administration introduced the Police Act of 1861 to establish a centralized police system aimed primarily at maintaining control over the population. The colonial police system emphasized authority and control rather than protection of citizens' rights.

Under this system, confession-based investigation methods became common, and coercive interrogation techniques were frequently used to obtain information from suspects. Although India adopted a democratic Constitution after independence, many aspects of the colonial policing structure continued to influence modern law enforcement practices.

Over time, increasing awareness of human rights and judicial activism led to the expansion of constitutional protections and the development of safeguards against custodial violence.

III. CONSTITUTIONAL SAFEGUARDS AGAINST CUSTODIAL VIOLENCE

The Constitution of India provides several fundamental rights that protect individuals from custodial torture and abuse.

A. Article 20(3): Protection Against Self-Incrimination

Article 20(3) of the Constitution states that no person accused of an offence shall be compelled to be a witness against himself. This provision protects individuals from forced confessions obtained through coercion or torture. Any confession extracted through physical violence or intimidation violates this constitutional guarantee.

B. Article 21: Right to Life and Personal Liberty

Article 21 guarantees that no person shall be deprived of life or personal liberty except according to procedure established by law. The Supreme Court has interpreted this provision broadly to include the right to live with dignity, protection from torture, and protection from cruel or degrading treatment.

Custodial torture directly violates Article 21 because it destroys human dignity and threatens the fundamental right to life and personal liberty.

C. Article 22: Protection Against Arbitrary Arrest

Article 22 provides procedural safeguards for individuals who are arrested. These include the right to be informed of the grounds of arrest, the right to consult a legal practitioner, and the requirement that the arrested person must be produced before a magistrate within twenty-four hours.

These safeguards are designed to prevent illegal detention and protect individuals from abuse by law enforcement authorities.

IV. STATUTORY SAFEGUARDS UNDER CRIMINAL LAW

Indian criminal law contains several provisions aimed at preventing custodial torture and abuse.

A. Bharatiya Nyaya Sanhita, 2023

The Bharatiya Nyaya Sanhita criminalizes acts of violence by public officials to extract confessions or information. The law provides punishment for causing hurt or grievous hurt to obtain a confession.

In cases where torture results in death, provisions relating to murder or culpable homicide may apply.

B. Bharatiya Nagarik Suraksha Sanhita, 2023

The Bharatiya Nagarik Suraksha Sanhita provides procedural safeguards relating to arrest, detention, and investigation. These safeguards include recording reasons for arrest, informing relatives or friends of the arrested person, and producing the arrested individual before a magistrate within twenty-four hours.

These procedural requirements promote transparency and accountability in the arrest process.

C. Bharatiya Sakshya Adhiniyam, 2023

The Bharatiya Sakshya Adhiniyam contains evidentiary safeguards aimed at preventing forced confessions. Confessions obtained through threat, inducement, or promise are considered irrelevant in criminal proceedings. Additionally, confessions made to police officers are generally not admissible in evidence.

These provisions reduce the incentive for law enforcement authorities to rely on coercive interrogation methods.

V. ROLE OF JUDICIARY IN PREVENTING CUSTODIAL VIOLENCE

The judiciary has played a crucial role in protecting individuals from custodial torture through progressive interpretation of fundamental rights.

In D.K. Basu v. State of West Bengal (1997) the Supreme Court issued detailed guidelines to prevent custodial violence. These guidelines require police officers to prepare an arrest memo, inform relatives of the arrested person, conduct medical examinations, and maintain proper records of detention.

In Nilabati Behera v. State of Orissa (1993), the Supreme Court held that compensation may be awarded for custodial death resulting from violation of fundamental rights. This case established the principle of constitutional tort liability.

In Joginder Kumar v. State of Uttar Pradesh (1994), the Court emphasized that arrest should not be made routinely and must be justified by necessity.

In Prakash Singh v. Union of India (2006), the Supreme Court introduced significant police reforms including the establishment of Police Complaints Authorities to investigate misconduct by police officials.

These judicial interventions have significantly strengthened safeguards against custodial violence.

VI. CAUSES OF CUSTODIAL VIOLENCE

Several systemic factors contribute to the persistence of custodial violence in India.

One major factor is the pressure on police officers to quickly solve criminal cases. In many situations, officers resort to coercive interrogation techniques to extract confessions from suspects.

Another factor is the colonial legacy of policing in India. The police system was originally designed to maintain control rather than protect citizens' rights, and some of these practices continue to influence modern policing.

Lack of professional training in scientific investigation methods also contributes to the problem. When investigators lack access to modern forensic tools, they may rely on physical force to obtain information.

Weak accountability mechanisms and institutional protection for police officers further encourage impunity.

VII. IMPACT OF CUSTODIAL VIOLENCE

Custodial violence has severe consequences for both individuals and society. Victims often suffer physical injuries, psychological trauma, and long-term health problems. Families of victims may face social stigma and emotional distress.

At a broader level, custodial violence undermines public trust in law enforcement institutions and damages the credibility of the criminal justice system. When citizens lose confidence in the fairness of the justice system, the legitimacy of democratic governance is weakened.

VIII. CHALLENGES IN PREVENTING CUSTODIAL VIOLENCE

Several challenges hinder effective prevention of custodial torture. These include lack of independent investigation mechanisms, delays in judicial proceedings, fear of retaliation among victims and witnesses, and inadequate medical documentation of injuries sustained during custody.

Weak implementation of judicial guidelines and lack of transparency in police investigations also contribute to the persistence of custodial abuse.

IX. SUGGESTIONS

Effective prevention of custodial violence requires comprehensive legal and institutional reforms.

India should ratify the United Nations Convention Against Torture and enact specific anti-torture legislation. Independent investigation mechanisms should be established to examine complaints against police officers.



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Installation of CCTV cameras in police stations and interrogation rooms can help improve transparency and accountability. Law enforcement officers should receive training in human rights and ethical interrogation practices.

Scientific investigation techniques such as forensic analysis should replace confession-based investigations. Special courts may also be established to ensure speedy trial of custodial death cases.

X. CONCLUSION

Custodial violence represents a serious challenge to constitutional governance and the rule of law in India. Although constitutional provisions, statutory safeguards, and judicial guidelines exist to prevent torture, incidents of custodial abuse continue due to weaknesses in implementation and institutional accountability.

Addressing this issue requires comprehensive reforms including modernization of policing, independent oversight mechanisms, human rights training for law enforcement officers, and effective enforcement of legal safeguards.

Ultimately, the protection of individuals in custody reflects the strength of a democratic society. A justice system that respects human dignity and upholds the rule of law strengthens public trust and reinforces the foundations of constitutional governance.

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