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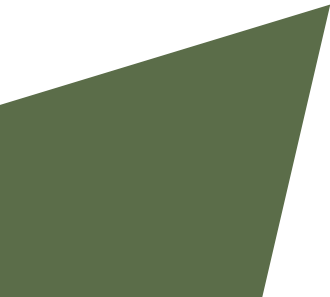
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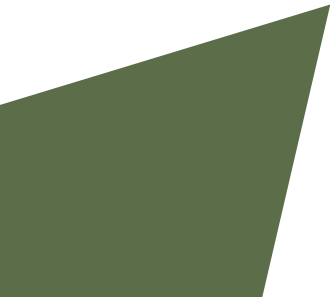
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**Torture as a Means of Obtaining Reliable Information from Crime Suspect:
A Critical Study**

Subhradeep Das

ABSTRACT

Custodial torture ranging from an assault of assorted types to death by the police for extortion of confessions and imputation of evidence doesn't seem to be uncommon. Such a method of investigation and detection of crime, within the backdrop of expanding the idea of 'humane administration of criminal justice, not only disregards human rights of a person and thereby undermines his dignity but also exposes him to unwarranted violence and torture by those who are expected to safeguard him. In this article, I'll try to attempt in detail about police atrocities, the concept of custodial violence, and protection provided under different laws.

Keywords

Torture- Police Atrocities- Custodial Violence- Statutory Safeguard

INTRODUCTION

“Torture is wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone, paralyzing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself”. –Adriana P. Bartow

Custodial violence and abuse of police power have emerged a significant issue of human rights concern and are an obstacle to democracy and the development of human well-being in contemporary societies. Custodial torture starting from an assault of assorted types to deaths by the police for extortion of confessions and imputation of evidence aren't uncommon. Such a method of investigation and detection of crime, within the backdrop of expanding the idea of ‘humane administration of criminal justice, not only disregards human rights of a person and thereby undermines his dignity but also exposes him to unwarranted violence and torture by those who are expected to safeguard him.¹

In India where rule of law is ingrained in each action and right to life and liberty is a fundamental right having the highest place amongst all-important fundamental rights, instances of torture and utilizing third-degree methods on suspects during illegal detention and police remand casts a slur on the very system of administration. Human rights remain dormant in this depressing scenario. Torture in the custody is at present treated as an inevitable part of the investigation. Investigators are in a delusion that if enough pressure is applied then the accused will confess the truth.² The former Supreme Court judge, V.R. Krishna Iyer, has said that since State is behind the torture in custody therefore it is worse than terrorism.

It is absurd that torture continues to exist in India. As India is a democratic country with well-defined constitutional and statutory provisions against torture that are constantly being developed and monitored by an autonomous judiciary. This raises the question of how does torture continues to persist in India?

The harshness of a criminal investigation is often blamed on the unsophisticated resources: the lack of scientific equipment and professionally-trained persons to do the duty properly. Although this is a component in the problem, but not the central one. More important is the sheer immunity enjoyed by law enforcers. This immunity is allowed to flourish for want of laws criminalizing and punishing custodial torture, and also because of corruption and also the wanton degeneration of

¹ K.I Vibhute, *Criminal Justice-A Human Right Perspective of Criminal Justice Process in India* 219 (1 ed. Eastern Book Company 2004)

² *INDIA: Government of Kerala must criminalise torture to prevent custodial deaths*, ASIAN HUMAN RIGHTS COMMISSION (Apr. 11, 2020, 05:24 PM), <http://www.humanrights.asia/news/ahrc-news/AS-191-2006/>

courts and other institutions responsible for the maintenance of law in India. Where a torture victim anticipates for years in the expectation that a judge may take up his/her case someday, while in the meantime the offender is being promoted, and the very concept of justice is compromised.

Custodial torture is universally held as the cruelest sorts of human rights abuse. The Constitution of India, the Supreme Court, the National Human Rights Commission (NHRC), and also the United Nations forbid it. But the police across the country flout these institutions. Therefore, there's a necessity to strike a balance between the individual human rights and societal interests in combating crime by employing a realistic approach.³

POLICE ATROCITIES

Power tends to corrupt a man and policemen are no exception to it. Powers are granted to the police to enable them to enforce the law and protect the citizens effectively. However, they make use of this power illegally due to either the desire to solve a case at the earliest or plain greed. Article 21 of the Constitution lays down that no person shall be deprived of his life and personal liberty except according to the procedure established by law, which is an integral guarantee against torture or assault by the state or its machinery. However, torture and assault have become part of the police and in many cases, custodial deaths are a little short of 'custodial murder'. Custodial violence raises serious questions about the reliability of the Rule of Law and administration of the criminal justice system.

An offender has every right to be tried and punished under the law and any punitive action taken outside the ambit of law is unlawful, regardless of how heinous the crime be, and howsoever dangerous the criminal be, he or she has every right to be treated with human dignity. The courts have even discouraged the practice of handcuffing the accused unless it is necessary. Several international conventions universally acknowledged human rights as sacrosanct.⁴

There are ample allegations of increasing police deviation in India. Incidents of brutality, extortion, and other crimes are reported in Indian newspapers to be committed by police officers in different parts of the country. The National Human Rights Commission's data shows that the number of complaints relating to 'deaths in police custody' reported to them increased from 136 in 1995-96 to 183 in 2002-03.

³ Joginder Kumar v. State of Uttar Pradesh, (1994) 4 SCC 260.

⁴ Abhiyaa R., *Custodial Violence-Indian Perspective*, Legal Service India, (April 30, 2020, at 12:42 PM), <https://legalserviceindia.com/legal/article-55-custodial-violence-indian-perspective.html>

CUSTODIAL VIOLENCE

3.1 Definition:

Custodial violence and abuse of police power have emerged a significant issue of human rights concern and are an obstacle to democracy and the development of human well-being in contemporary societies. The term 'custodial violence' comprises all types of physical and mental torture inflicted upon a person in police custody. It is a crime against humanity and a breach of human rights. The practice of custodial violence is more difficult and complex in the developing countries like India. A huge number of cases of police brutality takes place not due to individual irregularity, but because of systematic compulsions. The nature of custody may be judicial, police, or under any institution responsible for the care of the inmates like hospitals, correctional homes, etc. or maybe in the hands of terrorist organizations or armed groups or insurgents, etc. The practice is widespread and gone unchecked since British days if there was no silent support of senior police officials, bureaucrats, politicians, and the judiciary. In recent years, Public, Media, Legislature, Judiciary, and even the Human Rights Commission has shifted their attention to custodial crimes. Nevertheless, judicial activism, widespread media coverage, initiatives taken by the National Human Rights Commission as well as Civil Society Intervention have shown their responsibility to put a check on torture and upholding human dignity.

3.2 Types of Custodial Violence:

There are different methods to bring or commit custodial violence which is applied to bring the desired results by law enforcement agencies.⁵

Physiological Violence:

The following method is used to break the confidence and morale of the victim:

- Communication techniques in which the victim is given false information and is tortured mentally.
- By compelling or coercing the victim to perform activities or to witness actions that torture him mentally which in a way forces the victim to violate social taboos.
- By denying the victim from the basic needs like water, food, sleep, and toilet facilities which results in disorientation and confusion.

⁵ Abhiyaa R., *Custodial Violence-Indian Perspective*, Legal Service India, (April 30, 2020, at 12:42 PM), <https://legalserviceindia.com/legal/article-55-custodial-violence-indian-perspective.html>

- Pharmacological techniques like using various drugs to facilitate torture of the victim to conceal the effect of torture.
- Threatening and humiliating the person in custody or his family members or friends.

Physical Violence:

The following methods are generally adopted to cause physical violence or torture on the victims:

- By disfiguring and exhausting the person.
- By torturing to such an extent that the victim feels fear of immediate death.
- By forcing the victims to sleep on a damp floor.
- By making the children stay naked in extremely cold weather or under the sun in temperature for more than 30 degrees.
- By scratching and cutting on different parts of the body with sharp objects.
- By using irritants like chili powder, table salts, etc. on delicate parts or open wounds.

Rajiv Rattan was confined at Kharar police station in Punjab for two weeks. While in custody, he was tortured and sustained grave injuries that resulted in the fracture of the neck of his femur bone, making him permanently disabled.⁶

M. Sengupta was picked up by police on 4th December 1999 and was detained at Sadar police station in Patna in the state of Bihar. The police beat him up mercilessly in custody which resulted in a bone fracture on his left leg.⁷

Sexual Violence:

Sexual violence has a great social and psychological impact on the minds of its victims. It may start with verbal sexual assault and humiliation targeting victims' dignity. It results in rape or sodomy. The violators or the perpetrators of this crime keep devising new means and methods consistent with their mental aptitude and imagination to interrupt the resistance of the topic quickly as well as to satiate his/her urges.

Several police officials on the night of 13th July 1996 picked up Nisha Devi and detained her in police custody in the Etawah district of Uttar Pradesh. The same night, while in custody, she was being raped by more than one police officer to disclose the whereabouts

⁶ Times of India, December 5, 1999.

⁷ Times of India, December 11, 1999.

of her brother-in-law to whom the police suspected of a robbery that took place two days ago.

Devika Rani, a 45-year-old female resident of Ludhiana, in the state of Punjab, was taken from the Civil Hospital by police on 5th May 1995; she was visiting her husband who was undergoing treatment at the hospital. Her son, Rajesh Kumar of 18-years age had been earlier arrested and was in police custody at the Atam Park police post. Mrs. Rani was taken to the same police station. In the custody, Asst. Sub-Inspector, the Head Constable, and two other men tortured and molested her in the presence of her son; she was kept in the wrongful confinement for six days and was finally released from the police post on May 11 at 9:00 pm.

Various Methods of Torture:

Following are the methods of torture still applied by police and other agencies in India:

- Beating on the spine.
- Beating with canes on the bare soles of the feet.
- Beating with rifle butts.
- Burning with lighted cigarettes and candle flames.
- Denial of medical treatment.
- Forcible extraction of teeth.
- Forcibly lying the victim nude on ice slabs.
- Hauling the victim on an 'airplane' position.
- Inserting live electric wires into body crevices.
- Insertion of metal nails under toenails.
- Public flogging.
- Submersion in water.
- Suffocation.
- The victim is crushed under heavy rollers.
- The victim is stabbed with sharp instruments.

Different Forms of Ill-Treatment:

- Burning alive

- Electric shocks
- Falanga
- Mock amputations
- Mock executions
- Rape and molestation
- Severe beating
- Suspension by arms while these are tied behind the back.

3.3 Elements of Custodial Violence:

1. The infliction of severe mental or physical pain or suffering,
2. By or with the consent of the state authorities.
3. For a specific purpose such as gaining information, punishment, or intimidation.

3.4 Suggestions to Curb Custodial Violence:

Suggestions to curb custodial violence are as follows:⁸

- CCTVs should be mandatorily installed & should be in working condition inside the lock-ups.
- Independent and non-official persons should be appointed to conduct regular and random inspections of police stations and prisons.
- New laws should be made by legislatures for the prisoners.
- Open prisons should be increased and encouraged.
- Training institutes are required to be opened in every state, which would train prison officials especially on how to deal with high-risk offenders. Currently, there are only three dedicated prison training institutes, which are in Chandigarh, Kolkata, and Vellore respectively.
- Effective implementation of accepted recommendations from the committees appointed.

3.5 Case Laws:

- D.K. Basu v. State of West Bengal⁹

⁸ Vikrant Deshpande, *Custodial Violence in India*, Lex-Warrier, (May 04, 2020, at 05:46 PM), <http://www.lex-warrier.in/wp-content/uploads/2019/10/Custodial-violance-in-India.pdf>

⁹ (1997) 1 SCC 416.

D.K. Basu, the Executive Chairman, Legal Aid Services in West Bengal, a non-political organization on 26.08.1986 addressed a letter to the Chief Justice of India drawing his attention to certain news published in the Telegraph Newspaper regarding deaths in police lock-up and custody. He requested that the letter be considered as a Writ Petition within the “Public Interest Litigation” category. Considering the importance of the issues in this letter, it was considered as a Writ Petition by the court, and notice was served to the Respondents.

While the writ petition was under consideration, Mr. Ashok Kumar Johri addressed a letter to the Chief Justice drawing his attention to the death of one Mahesh Bihari of Pilkhana, Aligarh in Police Custody. The same letter was also treated as a writ petition and was listed along with the writ petition of D.K. Basu. On 14th August in 1987, the Court made the order issuing notices to all the State Govt. and notices were also issued to the Law Commission of India requesting suitable suggestions within two months.

In response to the notice, affidavits were filed by several states including West Bengal, Orissa, Assam, Himachal Pradesh, Haryana, Tamil Nadu, Meghalaya, Maharashtra, and Manipur. Further, Dr. Abhishek Manu Singhvi, a senior advocate was appointed as Amicus Curiae to assist the court. Finally, the court issued a list of eleven guidelines in addition to the Constitutional and Statutory Safeguards which should be followed in all cases of arrest and detention.

- Bhim Singh v. State of Jammu and Kashmir¹⁰

An MLA in Jammu & Kashmir was arrested and illegally detained by the police. The Court after examination of all the facts ordered for payment of Rs. 50,000 as compensation.

- PUDR (People’s Union for Democratic Rights) v. Police Commissioner¹¹

It’s a case of laborers who were forced to work in a police station without any wages. When laborers demanded the wages, they were beaten up and the women laborers were stripped of their clothes and thrash in the police station. In this atrocity, one of the laborers by name Rana Swarup succumbed to the injuries. On these facts, the SC ordered the payment of Rs. 50,000 to the dependents of the deceased and the women whose clothes were stripped off were awarded compensation of Rs. 5,000. Eight other laborers who were forced to work were paid Rs. 25 per day as wages.

¹⁰ (1985) 4 SCC 677.

¹¹ (1989) 4 SCC 730.

- Gauri Shankar Sharma v. State of UP¹²

Two police officers were sentenced by the SC for severely beating a suspect for extracting a confessional statement and his deliberate torture on non-payment of bribe which resulted in custodial death. Expressing their deep concern on custody deaths the Court observed: “Deaths in police custody must be seriously viewed for otherwise, we will help take a stride in the direction of police raj.

- Arvinder Singh Bagga v. State of UP¹³

The SC ordered that compensation of 10,000 each to be paid to the lady and her husband be recovered from the concerned police officers and the SHO, SI and the 10 to be prosecuted for illegal arrest causing humiliation and torture of the petitioners in a police station for no fault of theirs.

PROTECTION UNDER INDIAN LAW

There are various laws in India which protect from torture in custody, these are hereby briefly discussed below:¹⁴

Constitutional Safeguards:

It has been held in several judgments that just because a person is in police custody or detained or under arrest, does not deprive of him of his basic fundamental rights and its violation empowers the person to move the SC under Article 32 of the Constitution of India.¹⁵ Detention doesn't deprive any of his fundamental rights guaranteed to him.¹⁶ They don't flee the persons as he enters the prison although they might suffer shrinkage necessitated by detention.¹⁷ However, the extent of shrinkage won't reach the stage of torture in custody of such a nature that the persons are reduced to a mere animal existence.

¹² (1990) AIR 709.

¹³ (1994) 6 SCC 565.

¹⁴ Rukmani Seth, *Custodial Torture*, Legal Service India, (May 11, 2020, 10:59 AM), <http://www.legalservicesindia.com/article/297/Custodial-Torture.html>

¹⁵ V.N. Paranjape, *Criminology and Penology*, 381 (12 ed. Central Law Publishing 2005).

¹⁶ Prabhakar Pandurang v. State of Maharashtra, AIR 1966 SC 424; D.B. Mohan Patnaik v. State of A.P, AIR 1971 SC 2092.

¹⁷ Sunil Batra (II) v. Delhi Adm., (1980) 2 SCR 557.

Article 20 of the Constitution of India (1950)

Article 20 primarily provides a person the rights against the conviction of offenses. Due to the principle of non-retroactivity of penal laws (Nullum crimen sine lege¹⁸). Article 20 also protects an individual against double jeopardy (Nemo debet pro eadem causa bis vexari¹⁹). Most importantly this article protects an individual from self-incrimination. The police subject an individual to brutal and continuous torture so that he confesses to a criminal offense even if he has not committed the same.

Article 21 of the Constitution of India (1950)

The Indian judiciary has understood this article to protect the right to be free from torture. This view is held because the right to life is more than a simple right to live a life of mere animal existence.²⁰ The expression "life or personal liberty" in Article 21 includes a guarantee against torture and assault even by the State and its machinery to an individual who is taken in custody and no sovereign immunity can be pleaded against the liability of the State arising due to such criminal use of force over the captive person.²¹

Article 22 of the Constitution of India (1950)

Article 22 provides four basic fundamental rights with regards to conviction by ensuring that the accused is informed of the grounds of arrest, to be defended by a counsel of his own choice, preventive detention laws, and production before the nearest Magistrate within 24 hours of the arrest of the person. Thus, these provisions are designed to make sure that an individual is not subjected to any ill-treatment that is lacking statutory backing or surpasses prescribed excesses.

Other Statutory Safeguards

Indian Evidence Act (1872)

A confession to policemen can't be proved against an individual accused of any offense (Sec. 25 Evidence Act) and confession caused by threats from an individual in authority to avoid any evil of a temporal nature would be irrelevant in criminal proceedings as, inter-alia, provided in Sec. 24.

¹⁸ "No crime, no punishment without a previous penal law", Article 22 of the Rome Statute of the International Criminal Court.

¹⁹ "No one ought to be twice troubled or harassed (if it appear to the court that it is) for one and same cause", (May 12, 2020 at 10:59 AM), <https://wordinfo.info/unit/3475>.

²⁰ Sarah Smith, The Right to Life in India: Is It Really the 'Law of the Land', (May 13, 2020 at 1:12 PM), <http://www.hrsolidarity.net/mainfile.php/2005vol15no05/2446>

²¹ D.K. Basu v. State of W.B, (1997) 1 SCC 416.

Thus, although custodial torture isn't expressly prohibited by law in India, the evidence collected by illegal means, including torture isn't accepted in courts.

Code of Criminal Procedure (1973)

Sec. 46 and 49 of CrPC protect an individual under custody from torture who are not accused of an offense punishable with death or imprisonment for life and also during an escape. Sec. 50-56 are in consonance with Article 22. Sec. 54 of CrPC to a major extent corresponds to any infliction of custodial torture and violence. According to it, when an allegation of ill-treatment is complained by an individual in custody, the Magistrate is then required to examine his body and shall place on record the results of his examination and reasons, therefore.²² It gives them the right to bring to the Court's notice any torture or assault inflicted upon them and have themselves examined by a medical professional on their request.²³ A compensatory mechanism has also been used by courts when the Magistrate doesn't follow the procedure concerning the entertaining complaint of custodial torture, it requires interference by the high court under Sec. 482 of CrPC.²⁴

Another significant provision concerning custodial torture resulting in deaths is Sec. 176 of CrPC where a compulsory magisterial inquiry is to take place on account of the death of an accused in police custody. The object of Sections 167 and 309 of CrPC is to bring the accused person before the court and so safeguard his rights and interests because the detention is under their authorization.²⁵

The Police Act (1861)

The Police Act provides for dismissal, penalty or suspension of law enforcement officials who are negligent in the discharge of their duties or are unfit to perform their duties under section 7 and 29. This can be seen in the light of the law enforcement officials violating various constitutional and statutory safeguards besides guidelines as provided in the famous case of D.K Basu v. State of West Bengal.²⁶

Indian Penal Code (1860)

²² A.K Sahdev v. Ramesh Nanji Shah, 1998 CrLJ 1923 at 1925.

²³ Shakila Abdul Gafar Khan v. Vasanttraghunath Dhoble, 2004 (1) GCD 812 at 823 (SC).

²⁴ J. Y.V Chandrachud & V.R Manohar, The Code of Criminal Procedure, 114 (18 ed. Wadhwa Nagpur 2006); Mukesh Kumar v. State, 1990 CrLJ 1923 at 1925.

²⁵ Bhai Jasbir Singh v. State of Punjab, 1995 CrLJ 285 (P&H) cf. P.C Banerjee, Criminal Trial and Investigation, 222 (3 ed. Orient Publishing Co, Allahabad 2003).

²⁶ AIR 1997 SC 610.

After the controversial Mathura Rape case²⁷, an amendment was brought in Sec. 376 of IPC. Sec. 376(1)(b) penalizes for custodial rape committed by law enforcement officers. This was a welcome change made to the section in question because it finally condemns the acts of law enforcement officials who take the edge of their authority.

Sections 330, 331, 342 and 348 of the IPC have ostensibly been designed to discourage a law enforcement official, who is empowered to arrest an individual and to interrogate him during the investigation of an offense from resorting to 3rd-degree methods causing 'torture'.²⁸

CONCLUSION

The very ideas of a human being in custody save for protection and nurturing is a curse to human existence. The word custody generally refers to guardianship and protective care. It does not carry any evil symptoms of violence during custody even when we apply to indicate arrest or confinement.

The cases discussed above reflect the cruelty with which human beings were brought in custody are treated by their fellow human beings i.e. by the police. Custodial death is one of the worst crimes in India as these crimes are being committed by the people who are considered to be for the protection of the public at large and also, they are being given the responsibility of law enforcement.

Supreme Court rightly held, "custodial torture" to be a naked violation of human dignity and degradation which destroys, to a very large extent personality of a human.

Police are the machinery that is responsible for controlling crime but if a crime takes place in its custody, then we must lean towards some other machinery which will aid in keeping a check on it. Despite, we have numerous provisions in our Indian laws, custodial violence continues to exist. The prison administration must provide proper facilities of medical, sanitation, food, security to the inmates and there must be a monitory body to not only review the custody but also to keep an eye on the other activities going on inside the prison.

²⁷ (1979) 2 SCC 143.

²⁸ State of Madhya Pradesh v. Shyamsunder Tviwedi, (1995) 4 SCC 262 at 273