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CUSTODIAL TORTURE IN INDIA: CONSTITUTIONAL SAFEGUARDS AND POLICE ACCOUNTABILITY.

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Abstract

Custodial torture remains one of the most serious human rights concerns in India and represents a direct challenge to the constitutional promise of dignity, liberty, and rule of law. Despite constitutional safeguards under Articles 20, 21 and 22 of the Constitution of India and repeated judicial interventions, incidents of custodial violence and deaths continue to rise. The issue reflects structural weaknesses in the criminal justice system, including abuse of police powers, lack of transparency, delayed accountability, poor implementation of safeguards, and inadequate institutional reforms.

The present research paper critically examines the concept of custodial torture in India and analyzes the constitutional and statutory safeguards available for protection of individuals in police and judicial custody. The study further evaluates the role of the judiciary in evolving safeguards against torture through landmark judgments and examines the effectiveness of police accountability mechanisms such as the National Human Rights Commission, judicial inquiries, departmental proceedings, and police reforms. The paper also discusses international human rights standards relating to torture and India's position regarding the United Nations Convention Against Torture.

The study adopts doctrinal and analytical research methodology using constitutional provisions, statutes, judicial decisions, committee reports, books, journal articles, and official reports. The research concludes that although India possesses an elaborate legal framework to prevent custodial torture, weak implementation, political interference, lack of independent investigation mechanisms, and institutional resistance continue to obstruct effective accountability. The paper suggests comprehensive reforms including police modernization, independent oversight bodies, mandatory CCTV surveillance, strict enforcement of arrest guidelines, human rights training, and legislative recognition of custodial torture as a specific offence.

Keywords: Custodial torture, police accountability, human rights, Article 21, custodial violence, constitutional safeguards, criminal justice system.

Introduction

1.1 Meaning of Custodial Torture

Custodial torture refers to physical or mental pain inflicted upon a person by law enforcement authorities while the individual is in police or judicial custody. Torture may include physical assault, third-degree methods, mental harassment, sexual abuse, illegal detention, denial of medical treatment, intimidation, and in extreme cases, custodial death. Such acts violate not only statutory protections but also the fundamental principles of human dignity and liberty guaranteed under the Constitution of India.

The practice of custodial torture has historically been associated with coercive methods of investigation adopted to extract confessions or information from accused persons. In many instances, police officials resort to unlawful force due to pressure to solve criminal cases quickly, lack of scientific investigation facilities, and institutional culture that normalizes violence.

1.2 Nature and Extent of Custodial Violence in India

Custodial violence has emerged as a persistent issue within the Indian criminal justice system. Reports by the National Human Rights Commission (NHRC), civil society organizations, and judicial observations reveal that incidents of torture and custodial deaths continue to occur despite constitutional protections.

Custodial violence may take several forms:

1. Physical torture
2. Mental torture
3. Sexual violence
4. Illegal detention
5. Third-degree methods
6. Forced confession
7. Custodial rape
8. Fake encounters
9. Denial of legal representation
10. Death in custody

The prevalence of custodial violence creates fear among citizens and weakens public confidence in the administration of justice. It also undermines the constitutional principle that no person shall be deprived of life or personal liberty except according to procedure established by law.

1.3 Historical Background

The roots of custodial violence in India can be traced to colonial policing practices introduced during British rule. The police system established under the Police Act of 1861 was primarily designed to maintain control over the population rather than protect citizens' rights. Coercive investigation methods became embedded in policing culture and continued even after independence.

Although India adopted a democratic Constitution guaranteeing fundamental rights, custodial torture remained prevalent due to weak accountability mechanisms and absence of effective police reforms. Over time, the judiciary recognized the seriousness of the issue and evolved constitutional protections against torture through various landmark judgments.

1.4 Need and Significance of the Study

The issue of custodial torture deserves serious academic and legal examination because it directly affects constitutional governance, human rights, and criminal justice administration. Torture in custody not only harms victims physically and mentally but also damages the legitimacy of law enforcement institutions.

The study is significant because:

1. It examines violations of fundamental rights.
2. It analyzes constitutional safeguards against torture.
3. It evaluates police accountability mechanisms.
4. It studies judicial responses to custodial violence.
5. It contributes to discussions on criminal justice reforms.

1.5 Objectives of the Study

1. To examine the concept and forms of custodial torture in India.
2. To analyze constitutional and legal safeguards against custodial torture.
3. To study the role of judiciary in protecting prisoners' rights.
4. To evaluate police accountability mechanisms in India.
5. To suggest reforms for prevention of custodial torture.

1.6 Research Questions

1. What constitutes custodial torture under Indian law?
2. What constitutional safeguards are available against custodial violence?
3. How effective are judicial guidelines in preventing torture?
4. Whether existing accountability mechanisms are adequate?
5. What reforms are necessary to eradicate custodial torture?

1.7 Hypothesis

Despite constitutional guarantees and judicial intervention, custodial torture continues in India because of ineffective implementation of safeguards, lack of police accountability, and institutional weaknesses.

1.8 Research Methodology

The present research is doctrinal and analytical in nature. The study relies on both primary and secondary sources.

Primary Sources

1. Constitution of India
2. Bharatiya Nagarik Suraksha Sanhita, 2023
3. Bharatiya Sakshya Adhinyam, 2023
4. Protection of Human Rights Act, 1993
5. Judicial decisions
6. NHRC guidelines

Secondary Sources

1. Books
2. Research papers
3. Journal articles
4. Law Commission Reports
5. Government reports
6. Online legal databases

1.9 Scope and Limitations

The study focuses mainly on custodial torture in India from constitutional and human rights perspectives. It examines police accountability mechanisms and judicial responses. Comparative international analysis is limited to major international standards relating to

torture.

Constitutional and Legal Safeguards Against Custodial Torture

2.1 Constitutional Framework

The Constitution of India provides strong safeguards against arbitrary arrest, detention, and torture. The protection of life and liberty is central to constitutional governance.

Article 20

Article 20 protects persons accused of offences from retrospective criminal laws, double jeopardy, and self-incrimination. Article 20(3) specifically states that no person accused of an offence shall be compelled to be a witness against himself. Torture for extracting confessions directly violates this provision.

Article 21

Article 21 guarantees protection of life and personal liberty. The Supreme Court has interpreted Article 21 broadly to include the right to live with dignity, protection from torture, legal aid, speedy trial, and humane treatment of prisoners.

Custodial torture is a direct violation of Article 21 because torture destroys human dignity and personal liberty.

Article 22

Article 22 provides safeguards against arbitrary arrest and detention. It guarantees:

1. Right to be informed of grounds of arrest
2. Right to consult a lawyer
3. Production before magistrate within twenty-four hours
4. Protection against illegal detention

These safeguards are intended to prevent abuse of police powers.

2.2 Statutory Safeguards

Bharatiya Nagarik Suraksha Sanhita, 2023

The BNSS contains procedural safeguards relating to arrest, detention, medical examination, and production before magistrates. Police officers are required to follow lawful procedures during arrest and investigation.

Important safeguards include:

1. Arrest memo
2. Medical examination of accused

3. Right to legal representation
4. Information to relatives
5. Production before magistrate

Bharatiya Sakshya Adhiniyam, 2023

The Bharatiya Sakshya Adhiniyam excludes involuntary confessions obtained through coercion. Confessions caused by threat, inducement, or promise are inadmissible.

Protection of Human Rights Act, 1993

The Act established the National Human Rights Commission and State Human Rights Commissions for protection and promotion of human rights.

The NHRC investigates complaints relating to custodial violence and issues recommendations to governments and police authorities.

2.3 International Human Rights Framework

India is influenced by international human rights principles prohibiting torture.

Universal Declaration of Human Rights (UDHR)

Article 5 of the UDHR states that no person shall be subjected to torture or cruel, inhuman, or degrading treatment.

International Covenant on Civil and Political Rights (ICCPR)

Article 7 of the ICCPR prohibits torture and cruel treatment.

United Nations Convention Against Torture (UNCAT)

UNCAT specifically prohibits torture by public officials. India signed the Convention in 1997 but has not yet ratified it.

Ratification of UNCAT would strengthen India's anti-torture framework and impose international obligations regarding prevention and punishment of torture.

2.4 NHRC Guidelines

The National Human Rights Commission has issued several guidelines regarding arrest, detention, and custodial deaths.

Important guidelines include:

1. Mandatory reporting of custodial deaths within twenty-four hours
2. Medical examination of detainees
3. Videography of post-mortem
4. Independent investigation
5. Compensation to victims' families

However, implementation of these guidelines remains inconsistent.

Custodial Torture and Human Rights Violations

3.1 Forms of Custodial Torture

Custodial torture may be physical, mental, or psychological.

Physical Torture

Physical torture includes:

1. Beating
2. Electric shocks
3. Suspension from ceiling
4. Sleep deprivation
5. Burning injuries
6. Assault with objects

Such acts often result in permanent disability or death.

Mental Torture

Mental torture includes:

1. Threats
2. Humiliation
3. Verbal abuse
4. Solitary confinement
5. Fear and intimidation

Mental torture affects psychological well-being and may cause long-term trauma.

Sexual Violence

Women and vulnerable persons in custody are often exposed to sexual harassment and custodial rape. Such violence violates constitutional guarantees and human dignity.

Illegal Detention

Illegal detention occurs when a person is detained without lawful authority or beyond the prescribed period.

3.2 Causes of Custodial Torture

Several factors contribute to custodial torture in India:

Pressure to Solve Crimes

Police officers are often under pressure to solve cases quickly, leading to coercive investigation

practices.

Lack of Scientific Investigation

Inadequate forensic infrastructure encourages reliance on forced confessions.

Colonial Policing Culture

The policing system continues to reflect colonial attitudes emphasizing force and control.

Political Interference

Political pressure and corruption weaken police independence and accountability.

Weak Accountability Mechanisms

Departmental inquiries are often delayed or ineffective.

3.3 Human Rights Implications

Custodial torture violates:

1. Right to life
2. Right to dignity
3. Right against self-incrimination
4. Right to fair trial
5. Right to equality

The practice also damages public trust in democratic institutions.

3.4 Custodial Deaths

Custodial deaths represent the gravest consequence of torture. Deaths may occur due to:

1. Excessive force
2. Denial of medical care
3. Suicide due to harassment
4. Fake encounters

Many custodial deaths are disguised as suicide or accidental injuries.

3.5 Impact on Society

Custodial violence undermines the rule of law and weakens citizens' confidence in the justice system. Fear of police abuse discourages victims and witnesses from approaching law enforcement authorities.

Judicial Response and Police Accountability

4.1 Role of Judiciary

The Indian judiciary has played a significant role in developing safeguards against custodial torture. The Supreme Court has interpreted fundamental rights expansively to protect prisoners and detainees.

4.2 Landmark Judgments

D.K. Basu v. State of West Bengal (1997)

This is one of the most significant judgments on custodial violence. The Supreme Court laid down detailed guidelines regarding arrest and detention.

Important guidelines include:

1. Identification of police officers
2. Preparation of arrest memo
3. Informing relatives of arrest
4. Medical examination
5. Right to legal consultation
6. Entry in police diary

The Court held that custodial torture is a direct attack on human dignity.

Joginder Kumar v. State of U.P. (1994)

The Supreme Court held that arrest should not be routine and police must justify the necessity of arrest.

Nilabati Behera v. State of Orissa (1993)

The Court recognized compensation for custodial death as a constitutional remedy under Article 21.

Sheela Barse v. State of Maharashtra (1983)

The Court emphasized protection of women prisoners and directed legal aid and humane treatment.

Sunil Batra v. Delhi Administration (1978)

The Court recognized prisoners' rights and held that prisoners do not lose their fundamental rights upon imprisonment.

Prakash Singh v. Union of India (2006)

The Supreme Court directed police reforms to improve accountability and reduce political interference.

4.3 Compensation Jurisprudence

The judiciary evolved the principle of compensation for custodial violence under public law remedy.

Compensation serves:

1. Recognition of rights violation
2. State accountability
3. Relief to victims' families

However, compensation alone cannot replace criminal accountability.

4.4 Police Accountability Mechanisms

Departmental Proceedings

Police officials accused of torture may face disciplinary action. However, departmental inquiries often lack independence.

Judicial Inquiry

Magisterial inquiries are conducted in custodial death cases. Their effectiveness depends upon impartial investigation.

National Human Rights Commission

The NHRC monitors custodial violence and issues recommendations.

Police Complaints Authorities

The Supreme Court in Prakash Singh directed establishment of Police Complaints Authorities at state and district levels.

However, many states have inadequately implemented these directions.

4.5 Challenges in Accountability

1. Delayed investigations
2. Lack of independent inquiry
3. Witness intimidation
4. Political interference
5. Institutional bias
6. Fear among victims
7. Poor conviction rates

These challenges continue to obstruct effective justice.

Findings, Suggestions and Conclusion

5.1 Findings

The research reveals the following:

1. Custodial torture remains widespread despite constitutional safeguards.
2. Existing laws prohibit torture indirectly but India lacks a specific anti-torture legislation.
3. Judicial guidelines have significantly strengthened protections.
4. Police accountability mechanisms suffer from weak implementation.
5. Political interference and institutional culture contribute to continued abuse.
6. Victims often face barriers in accessing justice.

5.2 Suggestions and Recommendations

Enactment of Anti-Torture Law

India should enact a comprehensive anti-torture legislation defining torture as a specific criminal offence.

Ratification of UNCAT

India should ratify the United Nations Convention Against Torture.

Independent Investigation Mechanism

Allegations of custodial torture should be investigated by independent agencies rather than local police.

CCTV Surveillance

CCTV cameras should be installed in all police stations and interrogation rooms.

Police Reforms

Comprehensive police reforms are necessary to reduce political interference and improve professionalism.

Human Rights Training

Police officials should receive regular training regarding constitutional rights and humane investigation methods.

Strengthening Forensic Infrastructure

Scientific investigation techniques should replace dependence on confessions.

Fast-Track Courts

Special courts should be established for speedy trial of custodial violence cases.

Legal Aid and Awareness

Accused persons should receive immediate legal assistance upon arrest.

5.3 Conclusion

Custodial torture represents one of the gravest threats to constitutional democracy and human rights in India. The persistence of torture in police and judicial custody reflects structural deficiencies in the criminal justice system and failure of accountability mechanisms.

The Constitution of India guarantees protection of life, dignity, and personal liberty. Judicial decisions have significantly strengthened safeguards against torture and emphasized humane treatment of detainees. Nevertheless, implementation gaps continue to weaken the effectiveness of these protections.

Police accountability cannot be achieved merely through judicial pronouncements. It requires institutional reforms, independent oversight, transparent investigations, scientific policing, and strong political commitment toward human rights protection.

A democratic society governed by rule of law cannot permit torture in any form. Effective prevention of custodial violence is essential not only for protection of individual rights but also for maintaining public confidence in the criminal justice system.

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