

INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

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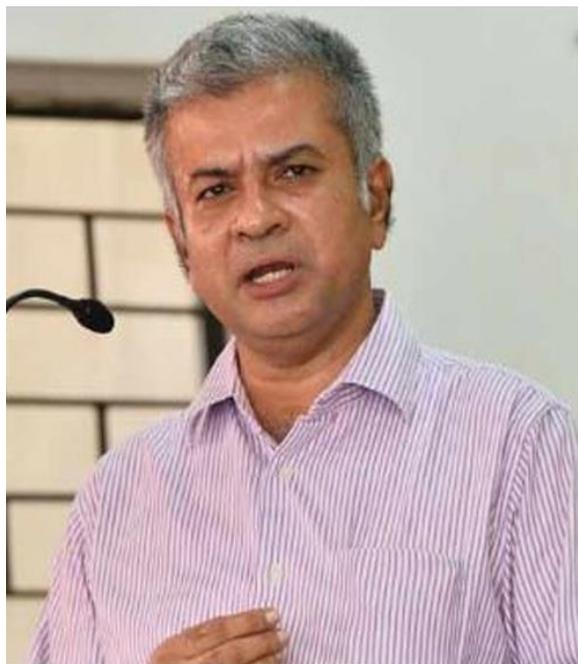
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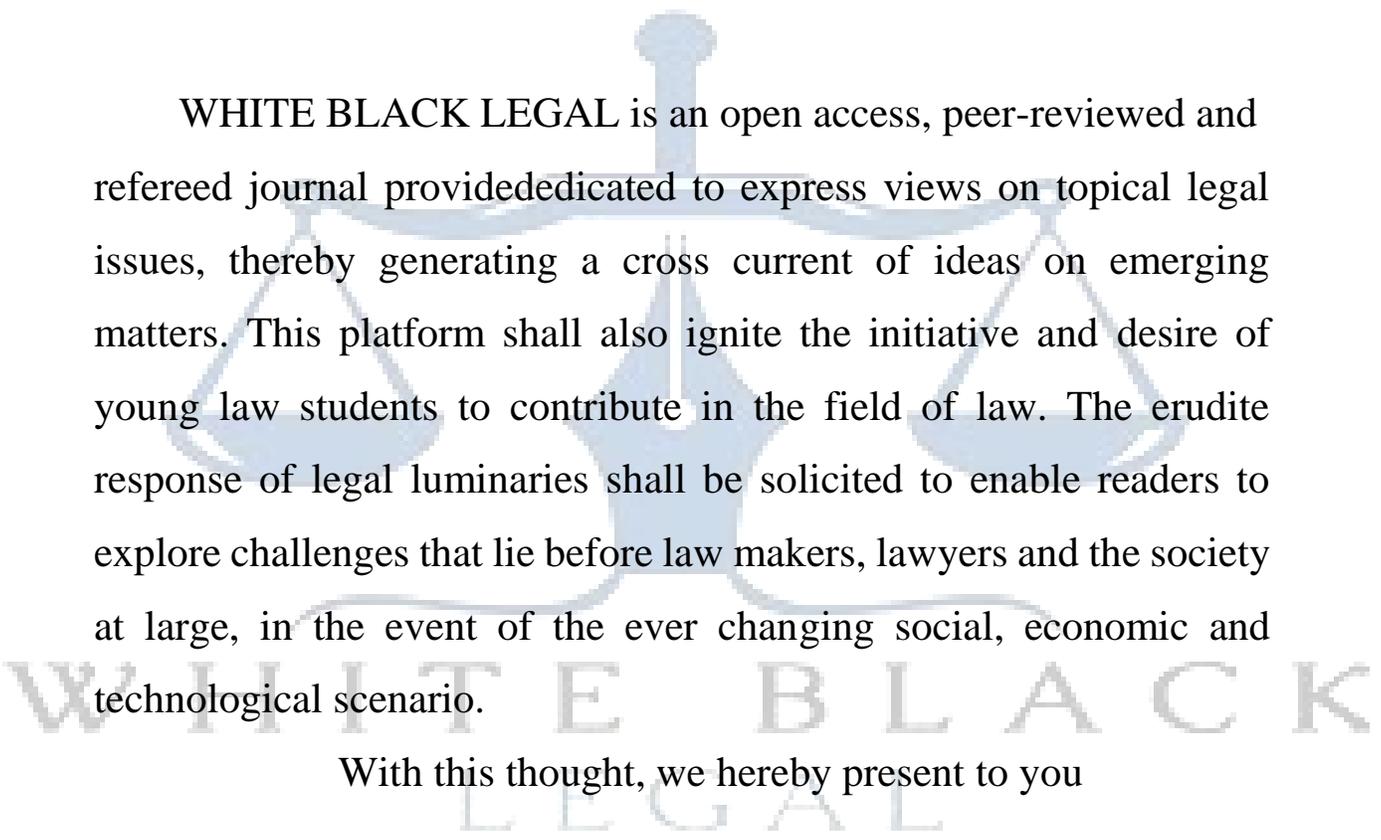
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

MAPPING CRITICALITY IN CUSTODIAL JUSTICE

AUTHORED BY - ANURAG YADAV & SAURABH RAJPUT

LLM – National Law University Delhi

Introduction

“Torture is wound in the soul so painful that sometime 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 stone, paralysing 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 justice, encompassing the treatment of individuals by state agencies in police custody, judicial remand, and incarceration, stands as a cornerstone of any democratic society’s criminal justice system. It reflects the state’s commitment to uphold basic human rights while ensuring due process and maintaining the public trust in law enforcement. However, since from the inception, custodial justice system worldwide, face critical challenges, including allegation of torture, custodial violence, and their own biases in which undermine fairness and accountability against the perpetrator. Despite constitutional guarantees under article 21 and article 22 of the Constitution of India, report of custodial death and violence still persist in India. The issues of custodial torture, extrajudicial violence and lack of accountability erode public fair both in law enforcement agencies as well as judicial Institutions.

This research paper aims to critically examine custodial justice in India, focusing criticality whether, under any circumstances, the custodial torture by state agencies be justified? How does State has taken a step with regard to custodial justice in India? Lastly, it explore how the judicial pronouncement critically examine the menace of custodial violence and torture within prison, and provided for a remedy of compensation.

Is Use of Custodial Torture ever be permissible?

Jeremy Bentham's Fragment on Torture, written way back in 18th century but discovered later is an unpublished work which were first brought to the light in 1973¹ where he discusses whether torture can ever be justified under his own utilitarian principles. Bentham has not straightforward justified the torture in all the circumstance but he justified in an exception circumstance, which will be discussed later. Bentham defines torture as: "*Torture is where a person is made to suffer torture, any violent pain of body in order to compel him to do something what or to desist from doing something what or to desist from doing something which done or desisted from the penal application is immediately made to cease.*"² Bentham in his definition go with 'violent pain of body' of a person and not include mental torture. But, his definition suggests that violent bodily pain inflicted can be done by the state as well as by the civil society. In other words, Bentham does not merely write about the use of torture only by the state but he was of the opinion, the torture practiced within the civil society such as in the private sphere such wife beaten by husband or child by her mother.³

Bentham's Utilitarian justification of torture

Bentham was the first scholar to apply principle of Utilitarian on torture. He argue that torture must be determinate that is it must have clear starting and end. If torture is indeterminate (uncertain duration, arbitrary use), cannot be justified. Although, Bentham suggests that while dealing in interrogational and custodial torture by the state agents is not justify in ordinary circumstance but he makes an exception when state justifies the use of custodial torture for extracting the information. These exceptional circumstance are:

a. The clear Power-Interest justification

If the person accused of offense has relevant information that is certainly within his power to reveal, and if there is a public interest in obtaining that knowledge, then custodial torture may be justified for extracting relevant information. Bentham viewed this justification from the lens of utilitarian principle that if the pain inflicted is outweighed by greater good

¹ Twining, W.L. & Twining, P.E., Bentham on Torture, *Northern Ireland Legal Quarterly*, 24, 305-356

² William twining, *General Jurisprudence: Understanding Law from a Global Perspective* (Cambridge University Press, 2009)

³ Ibid.

achieved, that is, in order to prevent greater harm to the society, that torture can be rationalized. He takes the example of ticking bomb situations.

b. The High-Risk Justification

In this scenario, Bentham argued that there may be cases, though few, where there is only high probability but no certainty that the tortured person possesses information. In this case, torture might still be justifiable if the public interest is overwhelmingly strong. Bentham, by this fragmentation provides that even an innocent person against whom there is no conclusive proof or proof beyond reasonable doubt that he is in possession of correction information can be tortured where question of endangering the public is concerned.

These two fragmentation of Bentham, later supported by various scholar from all over the world. Twining, W.L. & Twining, P.E in their article⁴ critically examined Bentham's utilitarian philosophy in justifying torture in certain circumstances. They contributed little to the principle of torture by the state. Twining does not goes beyond torture by the state and he does not goes to the matter of torture by civil society. Although, Twining main contribution on Bentham's work in justification of torture in exceptional circumstance and for this idea, Bentham and Twining were on the same page. Although, Twining recognizes the significance of the infringement on autonomy and liberty caused by torture. However, Twining justify the torture on public interest over individual autonomy in cautioned way, otherwise it will lead to overuse and abuse by the state agents.

Alan Dershowitz, an American legal scholar, revived Bentham's justification post 9/11 attack in his work⁵ supported Bentham's idea of torture in exceptional circumstances. He argue that if authorities captures a terrorist who knows the location of bomb set to kill many innocent people, there may be a moral as well as legal justification for using torture to extract information from the person. His idea was to regulate torture rather than eliminating it, he proposes a legal framework where officials must obtain judicial authorization, which he called torture warrant⁶, to ensure accountability. His rationale that if torture is going to occur anyway in exceptional circumstances,

⁴ Supra note 1.

⁵ Alan M. Dershowitz, *Why Terrorism Works - Understanding the Threat, Responding to the Challenge*, (Yale University Press, 2002)

⁶ Ibid.

so it is better to bring it out into open, subject to legal procedure and under judicial supervision, rather than done secretly and unaccountably. By torture warrant, judge required compelling evidence and material on record.

On other hand, Professor Baxi in his article⁷ explores Bentham's view on torture, brought in light by Twining. While, analysing utilitarian argument for justifying torture, he introduced the perspective of 'moral absolutists'⁸ that opposed the torture under all the circumstances, irrespective of the consequences. He suggested several different justification for the absolute prohibition of torture in interrogation or custodial, these are breaches of personal and bodily integrity or violation of human rights and the violation of constitutional provisions such as Article 21⁹ of Indian constitution that provides right to life and personal liberty. The expression "right to life and personal liberty" has been held to include the right to live with human dignity and thus also include right against torture and assault by the state agents and officials.¹⁰ Bob Brecher provides justification for the an absolute prohibition of torture based on the premise of bodily integrity.¹¹ The wrong of torture lies in the destruction of the victim's integrity and personhood, the whole process of torture as treating the individual as 'not a person'.¹² Torture made his personhood against him, that is to say, potentially transforming him into someone else as means of survival.

The deontological view deems torture morally impermissible based on inherent rule respecting dignity and autonomy, regardless of positive consequences even to the most heinous individual persons.¹³ Further, looking from the *Kantian view*, instrumentalization of the torture victim using him purely as a means to an end is inherently immoral and should be permissible. *Neo-Kantian* extended the argument of Kantian and goes on to say, torture not on violates bodily integrity and

⁷ Upendra Baxi, Re-situating Twining's Discovery of Bentham's Fragment on 'torture' amidst the twenty-first-century CE 'Terror Wars', *Cambridge University Press*, 2015

⁸ Oren Gross, 'The Prohibition of torture and the Limits of Law' in S. Levinson, ed., *Torture: A Collection*, Chapter 13, Oxford University Press, 2004

⁹ Constitution of India, art. 21.

¹⁰ D.K. Basu v. State of West Bengal, (1997) 1 SCC 416

¹¹ Bob Brecher, *Torture, Death and Philosophy*, (London: Blackbell, 2007)

¹² Ibid.

¹³ Leo Barnes, *Is the Use of Torture Ever Morally Permissible*, 2020

dignity but forcing the victim to become complicit in their own violation, that is, self-betrayal of oneself.¹⁴

In all custodial crime, the true concern is not only infliction of body injury or pain to an individual but the mental agony which a individual undergoes within the four walls of police station or lock-up.¹⁵ The Universal Declaration of Human Rights (UDHR)¹⁶ provides protection and guarantee of certain basic human right. Article 5 provides that, “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Further, Article 3 of the European Convention on Human Rights states that: “no one shall be subjected torture or to inhuman or degrading treatment or punishment.”¹⁷ There are no exception circumstances for this right. This provision not only applies to torture but also for cruel violence and poor conditions in detention. It is an unqualified right and under no circumstances can curtailed and made the torture justifiable.¹⁸

In March 2025 the recent study on ‘*Status of Policing in India Report 2025*’¹⁹ conducted by Lokniti in association with Common Cause. The report analysis around 8000 police personnel from all over the country. The report analysis is as follows with regard to justification of torture:

1. Custodial violence be justify, if it is for greater good?²⁰

For the greater good of the society at large, is it correct to use custodial violence against the person accused of serious offences	%
Fully agree	22
Somewhat agree	41
Somewhat disagree	13
fully disagree	22

¹⁴ Ibid.

¹⁵ Supra note 10.

¹⁶ Universal Declaration of Human Rights, 1948

¹⁷ European Convention on Human Rights, art. 3

¹⁸ 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)

¹⁹ Lokniti-Centre for Study of Developing Societies, “Status of Policing in India Report 2025: Police Torture and Unaccountability” (March, 2025)

²⁰ Ibid at p. 103.

Report suggests that 22% of police strongly agree to use torture and violence against the person suspect of serious crime, 41% partial agree to use torture, 13% partial disagree to use torture and 22% disagree to use any force.

2. Justification of torture in different Category of offences for extracting information.²¹

Category of crime	Strongly agree	Somewhat agree	Somewhat disagree	Strongly disagree
Crime against national security	42	26	12	17
Rape or sexual offence	34	30	15	20
Serious violent crime like murder	34	30	13	20
Cases against history sheeter	28	29	16	22
Major theft cases	20	35	15	27

Report suggest that more heinous crime support torture by the police in extracting information from the suspect of crime. With respect to crime against the state 42%, in sexual offence and violent crime 34%, crime by history sheeter 28% and for theft 20% of police officer strongly supported the uses of torture for extraction of information.

Development in Custodial Justice in India

In the case *State of UP v. Ram Sagar Yadav*²², the Supreme Court dealing with the case highly shocked by the incident, where the suspect was died by custodial torture while within 6 hours of his arrest by the officials. The court suggested amendment in evidence act regarding the burden of proof in cases of custodial deaths. The court has observed:

“Police officers alone, and none else, can give evidence as regards the circumstances in which a person in their custody comes to receive injuries while in their custody. Bound by

²¹ Ibid at p. 111.

²² (1985) 1 SCC 552

ties of a kind of brotherhood, they often prefer to remain silent in such situations and when they choose to speak, they put their own gloss upon facts and pervert the truth. The result is that, persons on whom atrocities are perpetuated by the police in the sanctum sanctorum of the police station, are left without any evidence to prove who the offenders are".²³

Taking the note for aforesaid judgment, the Law Commission of India setup commission to examine whether there is need for the laws to deal with custodial injuries in police custody. The commission in their 113rd report²⁴ recommended necessary amendment in Evidence Act, 1872 and inserting the new provision section 114B²⁵ that to draw presumption against the police officer having custody of person who found to be injured while he was in police custody. The 'may presumption' was provided by the proposed section. Despite decades have passed since then, section 114B has not been incorporated yet in the Indian Evidence Act, 1872 or in the new criminal laws of 2023.

Despite statutory as well as constitutional provision in safeguarding the life and liberty of the person, there have been increase of custodial torture and death by the police in the police custody.

In 1994, the Law Commission of India in their 152nd report²⁶ recommendation certain amendments in Indian Penal Code, 1860, Criminal Procedure, 1973, and the Evidence Act, 1872 to rule out torture in police custody by police and to protect the interest of victims of custodial torture. The commission proposed section 166A in IPC to punish public servant, who knowingly disobeys any direction of the law prohibiting him for the purpose of investigation. In CrPC, new section 41(1A) provides police officer arresting the person must be reasonably satisfied and must record for such

²³ Ibid.

²⁴ Law Commission of India, "113rd Report on Injuries in police Custody", (1985)

²⁵ In the circumstances, the Law Commission recommends the insertion of a new section, say, as section 114B, in the Indian Evidence Act, 1872, as under:-

"114B. (1) In a prosecution (of a police officer) for an offence constituted by an act alleged to have caused bodily injury to a person, if there is evidence that the injury was caused during a period when that person was in the custody of the police, the court may presume that the injury was caused by the police officer having custody of that person during that period.

(2) The court, in deciding whether or not it should draw a presumption under sub-section (1), shall have regard to all the relevant circumstances, including, in particular, (a) the period of custody, (b) any statement made by the victim as to how the injuries were received, being a statement admissible in evidence, (c) the evidence of any medical practitioner who might have examined the victim, and (d) evidence of any magistrate who might have recorded the victim's statement or attempted to record it".

²⁶ Law Commission India, "152nd Report on Custodial Crime", (1994)

satisfaction. Further, recommended insertion of a new section 357A²⁷ in the Criminal Procedure Code to provide compensation to the victim of custodial crimes. The word 'police officer' in section 25 and 26 in Indian Evidence Act to be extended to all the public servants, who has power to arrest the person was recommended by the commission. Although, government had not accepted all recommendation the commission.

In 2010, Prevention of Torture Bill²⁸ was introduced by P. Chidambaram Lok Sabha to view of the convention²⁹ to which India was signatory. The bill was passed in Lok Sabha and Rajya Sabha referred the bill to Committee for the proposed amendment in compliance with convention. However, the Bill lapsed on the dissolution of 15th Lok Sabha. The proposed bill have object to provide punishment to the public servant or any person with the consent of public servant inflicting torture. The section 3³⁰ of the Bill provides the definition of the torture. The section 4 provides for the punishment to the public servant or any person abetted by or consent of such public servant for torture any person to extract information which may be extended to 10 years along with fine. To safeguard the interest of the public servant bill provides that no cognizance shall be taken by the court unless the complaint of alleged offence is made within 6 months. Further, it provides for the previous sanction from the Central Government, State Government or the Competent Authority to remove him from the office, as the case may be. This was the first time that the government taken step to regulate torture however, the bill lapsed and not became the law of the land.

²⁷ Section 357A, Cr. P.C. compensation in custodial offences.-(1) Notwithstanding the provisions of section 357, where the court convicts a public servant of an offence resulting in death or bodily injury being an offence constituted by an act of such public servant against a person in his custody, the provisions of this section shall apply.

²⁸ The Prevention of Torture Bill, 2010

²⁹ The United Nations Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, 1984

³⁰ Section 3. Whoever, being a public servant or being abetted by a public servant or with the consent or acquiescence of a public servant, intentionally does any act for the purposes to obtain from him or a third person such information or a confession which causes,—

(i) grievous hurt to any person; or

(ii) danger to life, limb or health (whether mental or physical) of any person, is said to inflict torture:

Provided that nothing contained in this section shall apply to any pain, hurt or danger as aforementioned caused by any act, which is inflicted in accordance with any procedure established by law or justified by law.

Explanation.—For the purposes of this section, 'public servant' shall, without prejudice to section 21 of the Indian Penal Code, also include any person acting in his official capacity under the Central Government or the State Government.

In a Writ Petition³¹ filed by Dr. Ashwani Kumar, the petitioner had filed application for an effective legislative framework in compliance with the convention against torture (CAT) to prevent torture and inhuman or degrading treatment to person in jail or in custody. The Supreme Court in *Ashwani Kumar v. Union of India*³² while dismissing the writ petition and rejected the contention of the petitioner that this Court must direct the Parliament to enact appropriate and comprehensive legislation based on convention and provision of the constitution on the ground separation of power and held that it is within the power of legislature to legislate.

However, in 2022³³ and 2023³⁴ Bills was introduced in Lok Sabha and Rajya Sabha respectively to provide a framework for the prevention of custodial torture in police custody by police officials, punishment and compensation to the victim of custodial torture, rehabilitation and protection of victims and incidental matters thereof. The 2023 Bill provide under section 4 that where custodial torture is inflicted on the person while he was in the custody, the burden of proof shall be shifted to such public servant to prove that the torture was not intentionally caused or abetted by, was on with consent or acquiescence of such public servant.³⁵ But, these bills has not became law for some concerns about its adequacy.

Long back in 1982, Prof. Upendra Baxi observed: “*What is truly striking in India is the lack of respect to rule of law, not just by the people but those who make and enforce them*”³⁶. Prof. Srikrishna Deva Rao also emphasised that police brutality which has deeply ingrained in police culture that normalises violence against individuals perceived as problematic. He argues that the absence of adequate legal checks and mechanism on the police authority enables abuse, making it difficult to hold police officials accountable for custodial crimes. Furthermore, he highlighted that such crimes directly violates right and personal liberty guaranteed under article 21 of the Constitution³⁷. Now, it is high time to address the custodial crime through proper and effective

³¹ W.P. (Civil) No. 738 of 2016

³² (2020) 13 SCC 585

³³ The Prevention of Torture Bill, 2022

³⁴ The Prevention of Custodial Torture Bill, 2023

³⁵ Ibid.

³⁶ Professor Upendra Baxi, *The Crisis of Indian Legal System*, Vikas Publishing House, 1982

³⁷ PS Krishna Deva Rao, *Custodial Deaths*, NLSJ, Vol. 6 Issue 1, pp.42, 1994

legislative framework to eradicate the menace of police excesses abuse of power and to remove such cruel and inhuman practice in custody.

Court's role in addressing Custodial Justice

The court plays a vital role in upholding custodial justice, serving as a guardian of fairness, protects the basic human rights of individuals even while he is in custody for the alleged offence and act like *sentinel on qui vive*³⁸ to protect the fundamental rights of person. The court while dealing with the issues of lawfulness of arrests, the conditions of detention or the treatment of person in police custody, ensures that those deprived of liberty are not stripped of their fundamental protection. This role of judicial system in safeguarding due process, redressing violations of individual fundamental rights or maintaining the public trust in the justice system. The courts balance the state's authority to enforce law and order with imperative to prevent abuse and injustice.

In Francis Coralie Mullin v. Administrator, U.T of Delhi³⁹, the Supreme Court held any form of cruel and inhuman treatment cannot be reasonably justified and non-arbitrariness and is in violation of human dignity provided in Article 21 of Constitution and observed:

“Every act which offends against or impairs human dignity would constitute deprivation of this right to live and it would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights. Now obviously, any form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity and constitute an inroad into this right to live and it would, on this view, be prohibited by [Article 21](#) unless it is in accordance with procedure prescribed by law, but no law which authorises and no procedure which leads to such torture or cruel, inhuman or degrading treatment can ever stand the test of reasonableness and non-arbitrariness”⁴⁰

The human dignity is now inherently recognised and inalienable and inviolable rights of the person. If the basic fundamental protection are violated by the state, court should stand against

³⁸ State of Madras v. VG Row, AIR 1952 SC 1952

³⁹ (1981) 1 SCC 608

⁴⁰ Ibid.

such violation of such protection by exercising its majestic judicial authority.⁴¹ There must be balance of *salus populi est suprema lex* and *salus reipublicae suprema lex*, that they co-exist. In *D.K Basu v. State of West Bengal*⁴² held that custodial crime including death and torture in police custody or in jail against the rule of law which demands no one is above the law including the government but should be limited by law. The court issued certain guidelines that to be followed by police personnel while arresting and detaining any person. Further, provided that failure to comply with the guideline, liable the concerned official for departmental inquiry and also punished for contempt of court. The Apex Court time and again reiterated that right to life and personal liberty under Article 21 includes right to live with human dignity. Therefore, it also includes within itself guarantee against the torture and assault by the states and its officials.⁴³

Looking several custodial death and torture in police custody, the Supreme Court in *Paramvir Singh Saini v. Baljit Singh and others*⁴⁴ to curb out the custodial torture the court issued direction for the installation of CCTV cameras equipped with audio and video footage with night vision at all the entry and exit point, in lock-ups and each part of the station in each police station of the country. The Committees at both state and district level to monitor the CCTV and take the report for SHO of each station on the monthly basis. Further, Court held these directions are in accordance with the right guaranteed under Article 21 of Constitution of person.

As speedy trial is an essential ingredient of reasonable, fair and just procedure guaranteed under Article 21 of the Constitution.⁴⁵ The Supreme Court for expeditious disposal of criminal case in *Hussain and Another v. Union of India*⁴⁶ observed that in order to give effect to Article 21 with regard to person in police custody, this court issued directions that it desirable for the Chief Justice of all the High Courts to take steps for speedy disposal of criminal appeals pending High Courts where persons are in custody by fixing time period of detention in custody. The court have given discretion to the High Courts to issue direction to subordinate courts in the jurisdiction to do

⁴¹ *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569

⁴² *Supra* note 10.

⁴³ *Haricharan v. State of M.P.*, (2011) 4 SCC 159

⁴⁴ (2021) 1 SCC 184

⁴⁵ *Hussainara Khatoun v. Home Secretary, State of Bihar*, (1980) 1 SCC 98

⁴⁶ (2017) 5 SCC 702

disposal of matter regarding bail, magisterial trials where accused is in custody within certain specified period. The High Court also may monitor the action plan of the Subordinate Courts.⁴⁷

The Supreme Court has taken cognizance⁴⁸ by the letter written by former Chief Justice Lahoti. He draw the attention of this court regarding four issues:

1. Overcrowding in prisons
2. Unnatural deaths of prisoners
3. Inadequate staff, and
4. Problem of untrained and inadequately trained.

To deal with these issue, the Supreme Court in its various order addressed them and gave direct to state government to provide adequate facility and proper arrangement in prisons. Furthermore, the court has direct to amend their state prison manuals. In its *recent order*⁴⁹ on August 23, 2024, the Court drawn its attention to first proviso⁵⁰ to section 479 of Bharatiya Nagarik Suraksha Sanhita, 2023. This court directed the superintendents of jails to immediately implement section 479 of the Sanhita so as to curb out overcrowding in the jail of the undertrial prisoners.

Compensation for Custodial Torture/Death

Earlier, the doctrine of sovereign immunity- a common law principle followed in English jurisprudence that means “a King can do no wrong” and therefore state and its servants are not hold guilty of misconduct or negligence by his servant. The doctrine of sovereignty holds that State cannot be sued in its own court. However, in *Rudal Shah v. State of Bihar*⁵¹, the Apex court rejected the plea of sovereign and hold the State responsible and directed the State give compensation to the petitioner for illegal detention in jail even after his acquittal. In *State of Andhra Pradesh v.*

⁴⁷ Ibid. at para 29

⁴⁸ Inhuman Conditions in 1382 Prisons, In Re, (2016) 3 SCC 700

⁴⁹ In Re, Inhuman Conditions in 1382 prisons, 2024 SCC 3596

⁵⁰ Bharatiya Nagarik Suraksha Sanhita, 2023, s.479

Section 479: Maximum period for which under trial prisoner can be detained- ****

Provided that where such person is a first-time offender (who has never been convicted of any offence in the past) shall be released on bond by the court, if he has undergone detention for the period extending up to 1/3 of the maximum period of imprisonment specified for such offence under that law.

⁵¹ (1993) 4 SCC 141

*Challa Ramkrishna Reddy*⁵², the court held where the fundamental right of the citizen is violated by the State, the defence of sovereign immunity cannot be available. The court observed:

*“The maxim that King can do no wrong or that the Crown is not answerable in tort has no place in Indian jurisprudence where the power vests, not in the Crown, but in the people who elect their representatives to run the Government, which has to act in accordance with the provisions of the Constitution and would be answerable to the people for any violation thereof.”*⁵³

In *Amol Vitthalrao Kadu v. State of Maharashtra and others*⁵⁴, the Court held the State is under duty to pay compensation for unnatural death in police custody. However, the State shall be liberty to recover the amount of compensation from the concerned erring police officer. It is now well settled that for the violation of fundamental right to life and liberty of a citizen by the authorities of state, the State would be vicariously liable to pay monetary compensation. The citizen must receive the compensation from the state and it is for the State to indemnify later from the wrongdoer. The object of the compensation was to apply balm to the wounds of the victim and not to punish the wrongdoer, for punishing the wrongdoer it is always open to victim or State to prosecute him in criminal court.⁵⁵

Conclusion

Despite of constitutional protection under Articles 21 and 22, and international commitment such as UDHR and the Convention Against Torture, the recurring cases of custodial torture, deaths, and abuse of authority by police and other law enforcement agencies still exists in daily life. This discord has reinforced a culture of impunity, under which the responsibility of state actors tends to take a backseat to institutional bias and systemic inertia.

The utilitarian arguments advanced by philosophers such as Bentham, and their contemporary advocates such as Alan Dershowitz, provide a disturbing justification for authorizing torture in extreme situations. These arguments are strongly opposed by Kantian ethics that emphasize the inherent dignity of all human beings and the sanctity of bodily integrity and dignity. The Indian

⁵² AIR 2000 SC 1960

⁵³ Ibid.

⁵⁴ (2019) 13 SCC 595

⁵⁵ Supra note at 10, para 54

judiciary has consistently held that the right to liberty and life under Article 21 includes protection against torture and cruel treatment, requiring procedural fairness and humane treatment even in the custody of the police.

However, as exemplified by recent report⁵⁶ and path-breaking judgments, judicial activism alone cannot replace the imperative of a strong legislative framework. While suggestions from the Law Commission and bills introduced such as the Prevention of Torture Bill, 2010, 2022 Bill, and the 2023 Bill aimed to protect the individual from torture in prisons, their inability to become law has resulted in a strategic lacuna or void in law. The judiciary has provided interim relief in the form of compensation, codes of conduct for the police, and oversight mechanisms such as CCTV cameras in police stations, but these cannot eliminate the structural causes of custodial abuse in their entirety.

It is necessary that India should enact proactive legislation to curb the custodial violence. This will involve enacting evidentiary presumptions against police in custodial injury cases, ensuring independent watchdog bodies, imposing transparency in custodial processes, criminalising torture in unambiguous language and to have accountability. The custodial justice should not only be perceived just as a part of criminal procedure, but reflection of nation's commitment to human rights and democratic values.

NOTE – Any inadvertent omission in citation is unintentional. The author welcomes communication from rightful claimants for due acknowledgement.

⁵⁶ Supra note 19.