



Constitutional Provisions Regarding Custodial Torture in India

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Introduction

Custodial torture remains a grave human rights violation plaguing India's legal landscape, challenging its democratic ethos and legal frameworks. This study delves into the intricate nexus of political, legal, and societal factors contributing to the persistence of custodial torture in India. It analyzes the power dynamics, institutional deficiencies, and societal attitudes that eternalize such abuses within law enforcement agencies.

Furthermore, the study scrutinizes the legal framework governing custodial torture, including constitutional provisions, and statutory laws. It critically assesses the efficacy of existing legal mechanisms, implementation challenges, and the role of the judiciary in interpreting and enforcing anti-torture laws.

It emphasizes the imperative of political commitment, judicial independence, and public participation in upholding the rule of law and protecting human dignity. The article deals with a holistic approach related to custodial torture, its types, constitutional provisions, and other major aspects.

CUSTODIAL TORTURE: AN OVERVIEW

Custodial violence refers to the occurrence of violence within judicial and police custody, where individuals accused of crimes are subjected to mental or physical torture. While some custodial deaths are officially attributed to causes such as suicide or deaths in hospitals during treatment, the underlying issue often involves the use of violence against detainees. This practice poses a significant threat to human rights, undermining the principles of democracy in a nation. Despite conditions such as overcrowding, malnutrition, poor hygiene, and inadequate medical attention contributing to fatalities in police and judicial custody, it is custodial violence that often emerges as the leading cause of deaths in prisons and detention centers. is one of the most serious crimes in a civilized society. It is governed by the rule of law and poses a serious threat to an orderly civilized society. Torture in custody violates the basic rights of citizens and is an insult to human dignity¹.

Criminals have always been severely punished, but the crime rate has not decreased. The state regularly seeks to maintain social cohesion and social peace. The arrest of criminals and the consequent attempt to reform the judicial system are some of the ways that the State party has tried to reduce the crime rate. In legal language, detention is defined as any time when law enforcement deprives a person of freedom of movement, such as during the transportation period before booking, or arrest, prosecution, sentence, and detention, punishable by imprisonment. However, detained criminals are sometimes severely beaten by the police and even die. These are called custodial deaths. As one of the most prominent clauses of the Indian Constitution, **Article 21** also emphasizes the fact that no one shall be deprived of life and personal freedom except by the procedures prescribed by the law. Even prisoners who have been convicted, prosecuted, detained, and otherwise in custody cannot be deprived of this precious right.

TYPES OF CUSTODIAL TORTURE

Considered a brutal and forceful act Custodial torture surrounds a range of physical, psychological, and emotional abuses inflicted upon individuals detained or held in custody by law enforcement agencies. These tortures can vary in their methods and severity, but they all share the common characteristic of causing immense suffering and violating the fundamental human rights of the victims.

Here are some major types of custodial tortures:

Physical Torture:

Beatings and Assaults: This includes punching, kicking, slapping, and striking the victim with objects such as batons or belts.

Electric Shocks: The use of electric shocks, often administered through devices such as tasers or wires attached to the body, to inflict pain and induce compliance.

Burns: Deliberate burning of the victim's skin with cigarettes, lighters, or heated objects.

Suspension: Hanging the victim by their limbs or other body parts, causes excruciating pain and often leads to long-term physical injuries.

Psychological Torture:

Threats and Intimidation: Verbal threats of violence, harm to family members, or false promises to induce fear and compliance.

Sleep Deprivation: Forcing the victim to stay awake for prolonged periods, often through loud noises, bright lights, or physical discomfort.

Isolation and Solitary Confinement: Keeping the victim in isolation for extended periods, depriving them of human contact and sensory stimulation.

Mock Executions: Simulating executions or other forms of imminent harm to instill terror and psychological trauma.

Sexual Torture:

Sexual Assault and Rape: Forcing the victim to engage in sexual acts against their will, often accompanied by threats or coercion.

Sexual Humiliation: Subjecting the victim to degrading and humiliating sexual acts or comments, aimed at breaking their spirit and sense of dignity.

Medical Torture:

Denial of Medical Care: Withholding necessary medical treatment or medication, exacerbating existing health conditions or injuries.

Forced Medical Procedures: Conducting invasive medical procedures, such as forced injections or surgeries, without the victim's consent

Environmental Torture:

Extreme Temperatures: Exposing the victim to extreme heat or cold, either through environmental conditions or deliberate actions.

Unsanitary Conditions: Keeping the victim in filthy, overcrowded, or otherwise unsanitary conditions, leads to physical discomfort and health hazards.

These are just a few examples of the types of custodial tortures that individuals may endure. It's important to recognize that custodial torture can take various forms and may involve a combination of physical, psychological, sexual, and environmental abuses, all of which are designed to inflict pain, instill fear, and exert control over the victim.

INDIAN PENAL CODE

Custodial torture is a severe violation of human rights and is expressly prohibited under the Indian Constitution. Considering the seriousness of the crime, The Constitution of India guarantees certain fundamental rights to all individuals, including those in custody, to ensure their dignity, safety, and protection from torture or ill-treatment.

Here follows an overview of each section of the Indian penal code against custodial torture -

Sections 330, 331, and 348 address various aspects related to custodial torture and the abuse of power by public servants. Here's an overview of each section:

Section 330 - Voluntarily causing hurt to extort confession, or to compel restoration of property:

This section deals with the offense of voluntarily causing hurt to a person extracting a confession from them or compelling the restoration of property.

It states that whoever voluntarily causes hurt for these purposes shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.²

Section 331C - Voluntarily causing grievous hurt to extort confession, or to compel restoration of property:

Section 331 the IPC addresses the more severe offense of voluntarily causing grievous hurt to a person to extract a confession or compel the restoration of property.

It stipulates that whoever commits this offense shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 348 - Wrongful confinement to extort confession, or compel restoration of property:

Section 348 pertains to the offense of wrongfully confining a person to extort completion from them or compelling the restoration of property.

It states that whoever wrongfully confines a person for such purposes shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

These sections of the IPC are relevant in cases of custodial torture where individuals are subjected to physical or psychological harm by public servants to force compliance. They aim to deter such abuses of power and ensure accountability for those responsible for perpetrating custodial violence.

INDIAN EVIDENCE ACT

Sections **25 and 26 of the** Indian Evidence Act are relevant in cases of custodial torture as they address the admissibility of confessions made by individuals in police custody. Here's an overview of each section:

Section 25 - Confession to police officer not to be proved:

Section 25 prohibits the admissibility of confessions made to a police officer. It states that no confession made to a police officer shall be proved as against a person accused of any offense.

The rationale behind this provision is to prevent the possibility of coercion, torture, or undue influence by law enforcement officials in obtaining confessions from individuals in their custody.

Therefore, any confession made to a police officer, whether voluntarily or under duress, is deemed inadmissible as evidence in court.

Section 26 of the Indian Evidence Act - Confession by accused while in custody of police not to be proved against him:

Section 26 extends the prohibition on the admissibility of confessions made to the police to situations where the accused is in police custody at the time of confessing.

It stipulates that no confession made by any person while they are in the custody of a police officer unless it is made in the immediate presence of a magistrate, shall be proved as against them in a criminal proceeding.

This provision aims to safeguard the rights of the accused and prevent the use of coerced or involuntary confessions obtained during police custody from being used against them in court.

These sections of the Indian Evidence Act are crucial in safeguarding against custodial torture and ensuring that confessions obtained under duress or coercion are not admitted as evidence in criminal proceedings. They reinforce the principle of fair trial and protect the rights of individuals detained by law enforcement authorities.

CODE OF CRIMINAL PROCEDURE (CRPC)

Section 76 of the Code of Criminal Procedure (CrPC) pertains to the protection of persons acting under lawful authority from legal liabilities for acts done in good faith. While it doesn't specifically address custodial torture, it is relevant in cases where law enforcement officials may be accused of using excessive force or committing abuses while carrying out their duties, including during custodial interrogation or detention.

Section 76 - Protection of persons acting under authority, from arrest and imprisonment

Section 76 provides immunity from arrest and imprisonment to persons acting under lawful authority who, in good faith, exercise powers conferred upon them by law.

It states that no person acting in good faith under the authority of a warrant or order issued by a competent authority shall be liable to arrest or imprisonment, notwithstanding any defect in the warrant or order.

This section serves to protect law enforcement officials, such as police officers, from legal liabilities for actions taken in the course of their official duties, provided that they act in good faith and within the scope of their authority.

However, it is essential to note that this immunity is not absolute and does not shield individuals from liability for acts done with malicious intentions or in violation of the law.

In cases of custodial torture, Section 76 may be invoked as a defense by law enforcement officials who claim to have acted in good faith and within the scope of their lawful authority.

Any allegations of custodial torture must be thoroughly investigated, and those found responsible should be held accountable under the law.

POLICE ACT,1861

Section 29, outlines the powers of a police officer regarding the arrest of individuals without a warrant. While it doesn't explicitly address custodial torture, it is relevant in the context of police actions leading to custody and interrogation, where custodial torture may occur. Here's an overview of Section 29:

Section 29 - Arrest by Police Officer without Warrant

Section 29 empowers a police officer to arrest without a warrant any person who has been concerned in any cognizable offense, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists of their having been so concerned.

It authorizes a police officer to arrest such a person and take them into custody for investigation or inquiry.

However, the section also stipulates that the person arrested without a warrant shall not be detained in custody for a period exceeding twenty-four hours without the authority of a magistrate.

The section also provides guidance on the procedures to be followed when making such arrests, including informing the person being arrested of the grounds for their arrest and ensuring that they are treated with humanity and due regard for their dignity.

While Section 29 of the Police Act, of 1861, primarily deals with the powers of police officers to arrest individuals without a warrant, it sets out procedural safeguards aimed at protecting the rights of the arrested person. However, it does not explicitly address custodial torture. Any allegations of custodial torture would need to be examined in light of relevant legal provisions, including those under the Indian Penal Code, the Indian Evidence Act, and other applicable laws and regulations.

OTHER CONSTITUTIONAL PROVISIONS AND THEIR SIGNIFICANCE.

As custodial torture continued to be prevalent, constitutional and legislative measures always stood in front with a vision of protecting human rights.

Similar to how an umpire protects the integrity of the game, the judiciary protects the fundamental rights of individuals, including the right to life and personal liberty, which are enshrined in the Indian Constitution.

Article 20(1) of the Constitution of India safeguards individuals against self-incrimination, stating that no person shall be compelled to be a witness against themselves. It's a fundamental right aimed at protecting individuals from being forced to provide evidence that could incriminate them in criminal proceedings.

"**Custodial torture**" refers to the use of physical or psychological violence by law enforcement or other authorities against individuals who are in custody, whether it be in police stations, prisons, or other detention centers. This practice is a serious violation of human rights and is often associated with coercion, intimidation, and abuse of power.

While Article 20(1) protects against self-incrimination, custodial torture violates not only this provision but also various other fundamental rights guaranteed by the Constitution of India, including the right to life and personal liberty (**Article 21**) and the right to equality and protection against discrimination (**Article 14**).

Despite legal provisions and international conventions prohibiting custodial torture, it continues to occur in various parts of the world, including India. Efforts to address this issue include legislative measures, such as the enactment of laws like the Prevention of Torture Bill, of 2010, which seeks to criminalize torture and provide redress for victims. Additionally, awareness campaigns, training programs for law enforcement personnel, and the strengthening of oversight mechanisms can help prevent and combat custodial torture.

Article 22(1) of the Constitution of India is a fundamental right that provides certain safeguards to individuals who are arrested or detained. It states that a person who is arrested and detained must be informed as soon as possible of the grounds for such arrest, must be allowed to consult and be defended by a legal practitioner of their choice, and shall be produced before the nearest magistrate within 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the magistrate.³

While Article 22(1) primarily focuses on procedural safeguards to prevent arbitrary arrest and detention, it indirectly addresses the issue of custodial torture by ensuring that individuals who are detained have the right to legal representation and must be promptly brought before a magistrate. These provisions serve to protect individuals from potential abuse and ensure that their rights are respected even while in custody.

However, custodial torture remains a serious issue in India despite constitutional protections. Cases of abuse and torture in police custody continue to be reported, highlighting the need for greater awareness, enforcement of existing laws, and accountability mechanisms to prevent such violations of human rights. While Article 22(1) provides important procedural safeguards, addressing custodial torture requires a comprehensive approach involving legislative reforms, effective oversight mechanisms, and awareness campaigns to promote human rights and accountability in law enforcement.

Section 49 of the CrPC: This section deals with the power of arrest by a police officer. It outlines the conditions under which a police officer may arrest a person without a warrant. However, it's important to note that arrest powers must be exercised lawfully and by the procedures established by law to prevent abuses such as custodial torture.

Section 50(a) of the CrPC: Section 50 deals with the procedure for arrest in cases where the arrest is made without a warrant. Subsection (a) specifically requires the police officer making such an arrest to inform the person being arrested of the grounds for their arrest and of their right to bail. This provision aims to ensure transparency and accountability in the arrest process and to protect individuals from arbitrary detention and potential abuses.

Section 55A of the CrPC: Section 55A was introduced to the CrPC through an amendment in 2005. It empowers a magistrate to examine the accused at the time of arrest. The magistrate must inform the accused of their rights, including the right to be medically examined if they allege custodial violence.

Section 75 of the CrPC: Section 75 pertains to compensation for victims of malicious prosecution, including false arrest or imprisonment. While not directly addressing custodial torture, this section provides a legal mechanism for victims to seek compensation for wrongful arrest or detention.

While the Indian Constitution provides these fundamental rights, the challenge lies in ensuring their effective implementation and enforcement, especially in cases of custodial torture. Despite constitutional safeguards, instances of torture continue to occur due to various factors such as weak implementation of laws, lack of accountability, and inadequate training of law enforcement personnel.

CONCLUSION

The issue of custodial torture in India underlines various challenges in the legal and judicial frameworks. Despite constitutional protections and international obligations, instances of torture persist, violating human rights and eroding principles of justice. Judicial intervention is crucial, but its effectiveness depends on factors like judicial independence and institutional capacity. India's Constitution and international commitments prohibit torture, yet implementation gaps remain. Oversight bodies may lack resources or independence, leading to delays and impunity. Victims often face hurdles in accessing justice, and perpetrators may escape accountability due to various factors, including political influence and corruption. Addressing these challenges demands comprehensive reforms to ensure the rule of law and protect human dignity.

Torture remains torture be it with a victim or perpetrator. Will violation of basic dignity be the solution for justice? It erodes the moral framework of society and the police system. ...