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Torture and Police Brutality: An Overview under the Indian Criminal Justice System

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ABSTRACT

India's criminal justice system continues to struggle with rampant torture and police brutality, as evidenced by the widespread reports of custodial violence that have occurred in the post-independence era. These reports reveal that victims of custodial violence have suffered serious bodily harm or, in some instances, have died due to police torture, which stands in sharp contrast to the constitutional assurances of life, liberty and human dignity that exist in India's Constitution. This article considers police brutality and torture as part of a broader systemic problem caused by structural deficiencies in policing systems, the lack of accountability for police officers using their authority to commit torture, and the disconnect between law (written) and practice (applied). The article also examines how constitutional protections against torture and other forms of custodial abuse are ineffective because the laws do not contain sufficient protections to deter police misconduct and further evaluates key pieces of legislation, including the Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita and Bharatiya Sakshya Adhinyam, as well as relevant judicial decisions, that are aimed at preventing custodial abuse. In addition, the article provides an overview of India's obligations under international human rights law, including but not limited to the United Nations Convention Against Torture, and describes the additional consequences that will result from India's failure to ratify the Convention. Finally, the article advances an argument for the need for significant legal reforms to create institutional accountability and to develop rights-based policing as a mechanism to preserve the legitimacy of the rule of law in India through a doctrinal and human right based approach.

Keywords: *Police Brutality, Custodial Torture, Criminal Justice System, Constitutional Safeguards, Judicial Accountability, International Human Rights Law, United Nations Convention Against Torture, Rule of Law.*

I. INTRODUCTION

In a democracy, the foundation of the Criminal Justice System and the legitimacy of a state's actions are grounded in Authority and Accountability. The State has the authority to investigate

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and suppress criminal activity, but the exercise of such authority is constrained by the requirement that the State respect an individual's right to dignity and liberty as protected by the Constitution.² In India, law enforcement plays a vital role in maintaining this dual structure and serves as the primary link between citizens and the State. Yet there is ongoing evidence of torture and abuse of power by law enforcement agencies, indicating a fundamental structural inconsistency in the institutions that have been assigned the responsibility to enforce the law and those that are responsible for the greatest violations of it.

Custodial Torture undermines the rule of law and the fundamental principles of our constitutional democratic system. In that moment of arrest/detention, the State has complete control over every aspect of the arrested/detained person's physical and psychological well-being, and there exists an imbalance of power between the State and the citizen that creates a significant obligation for law enforcement to act with restraint, fairness, and legality in its authority to manage that power. The ongoing use of torture by law enforcement demonstrates that law enforcement agencies have failed to embed the fundamental values of our Constitution into settled law enforcement practice. Torture not only represents a significant breach of the rights of detainees, but it also undermines the integrity of the criminal justice system by tainting the investigation and compromising the integrity of any due process afforded to the accused in this process.

Although there are clear protections for human rights in the Constitution (Art. 20; Art. 21; Art. 22), people are still tortured in custody across India. Statistics from the National Human Rights Commission and civil society groups indicate that people die and are severely injured in police custody, as well as facing systematic abuse. Custodial torture does not occur incidentally it has become entrenched due to continuing colonial legacies, lack of accountability, limited oversight, political interference, and an overall culture of impunity.³ The disconnect between what the Constitution guarantees and what actually occurs raises concerns about the efficacy of current legal protections.

This article seeks to analyze the issues related to torturous and brutal police as structural issues arising from within the Indian criminal justice system. Therefore, we will discuss the conceptual components of custodial violence, including constitutional, statutory, and judicial protections, and we will also explore and outline India's obligations under international human rights law. We will use a rights-based and doctrinal approach to identify issues contributing to the

² *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

³ David H. Bayley, *The Police and Political Development in India* (1969).

continued occurrence of custodial torture despite the existence of legal prohibitions; we will also recommend reforming the system to create greater accountability and rebuild public trust in the police system.

II. CONCEPT AND FORMS OF TORTURE AND POLICE BRUTALITY

Torture is characterized by the willful infliction of extreme levels of physical or psychological suffering on another person by a government authority for purposes like obtaining information, punishment, or intimidation and has a legal and human rights meaning.⁴ Police brutality is a broader concept that refers to any type of excessive, arbitrary, or illegal use of force against individuals by law enforcement during the course of an arrest, interrogation, or detention. All torture is a form of police brutality; however, not all police brutality is torture; both are forms of abuse of State Power.

In India, custodial violence often involves acts of physical torture, including physical abuse such as beatings, suspended methods of torture, electric shocks, and deprivation of food, water or sleep. Law enforcement officials often justify these forms of torture by saying they are required for investigation, especially in serious or high-profile cases. This type of rationale indicates a grossly misguided conception of how to investigate a crime, where coercion becomes a substitute for police work based on evidence.

Psychological and mental torture is considered an equally damaging form of abuse. Long-term interrogation techniques, false implications and threats, humiliation, and verbal abuse are some of the commonly used means of breaking a detainee's will. These techniques leave long-term psychological injuries affecting the victim's ability to reintegrate into society and pursue legal remedies. Mental Torture is also harder to account for because of its invisibility, making it more difficult to provide evidence of injury in traditional evidentiary systems.⁵

The use of Sexual Violence in Custody is the most serious example of police brutality. Rape and sexual assault in custody breach the body and violate dignity and are disproportionately committed against females, children, and transgender individuals.⁶ These acts are not merely individual crimes but rather a symptom of systemic failures, demonstrating inadequacy in the areas of oversight, gender-specific policing, and victim-centred mechanisms within Custody.

III. CONSTITUTIONAL AND LEGAL SAFEGUARDS AGAINST CUSTODIAL TORTURE

The Indian Constitution has laid out a complete normative framework to stop custodial abuse

⁴ United Nations Convention Against Torture art. 1, Dec. 10, 1984.

⁵ Law Commission of India, 273rd Report on Implementation of UNCAT (2017).

⁶ *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384.

of individuals. Article 21 grants the right to life and personal liberty, with the Supreme Court interpreting this right to include the right to live with dignity, the right to not be tortured, the right to have access to legal aid, and the right to humane detention conditions.⁷ As such, custodial violence is not just a breach of an administrative duty but rather a violative act of a constitution.

According to Article 20(3), there is further protection against self-incrimination through this constitutional provision. The limitation of using torture to extract confessions directly undermines the legitimacy of torture as an investigative method. Article 22 also establishes procedural safeguards against arbitrary arrest, including the right to be informed of the reason for arrest, the right to be able to obtain a lawyer, and the right to appear before a magistrate within 24 hours of being arrested. All of these provisions form the basis of a constitutional shield to protect against the abuse of custodial authority.

Additional legal protections are provided for law enforcement by the Bharatiya Nagarik Suraksha Sanhita, which incorporates procedural safeguards designed to limit the number of unnecessary arrests, require the medical examination of detainees and create a mechanism for judicial oversight of the detention process. The Bharatiya Nyaya Sanhita includes legal penalties for wrongful imprisonment, unlawful exercise of authority by public officials, and acts of custodial violence that cause bodily injury or death. Such provisions explicitly state that law enforcement's abuse of power should not be viewed solely as misconduct, but as subject to criminal prosecution.

Evidentiary safeguards provided under the Bharatiya Sakshya Adhiniyam build on this and include provisions for excluding confessions obtained through coercion; but stress the need for use of forensic as well as medical evidence in proving custodial violence. However, even though the protections of the various forms of statutory law exist, the protections remain ineffective to deter such conduct, as a result of lack of enforcement, delays in investigation and lack of an institutional will to prosecute officers who have acted improperly.

IV. JUDICIAL INTERVENTIONS AND CUSTODIAL SAFEGUARDS

Judicial decisions have taken a lead role to articulate standards intended to prevent custodial torture. The Supreme Court in *D.K. Basu v. State of West Bengal* found that custodial violence represents a serious violation of human rights and imposed mandatory guidelines on police officers when making arrests. The guidelines require police officers to prepare an arrest memo,

⁷ Francis Coralie Mullin v. Administrator, UT of Delhi, (1981) 1 SCC 608.

conduct a medical examination, and notify a relative of the arresting officer. These guidelines were meant to promote transparency and accountability in the conduct of custodial policing.⁸

The Supreme Court also confirmed in *Joginder Kumar v. State of Uttar Pradesh* the need to ensure that arrest is not automatic or mechanical, but must be based on a valid reason. This ruling is meant to establish a policing culture away from arbitrary detention toward reasoned decision-making by law enforcement agencies.⁹ In *Prakash Singh v. Union of India*, the Supreme Court examined the need for systemic reforms to the police system, including the creation of independent oversight agencies and the guarantee of tenure for senior police management.¹⁰

Judicial intervention has not only established the procedural framework regarding Custodial Proceedings, but it has also provided signals that reaffirm constitutional morality in custodial settings. By repeatedly denouncing custodial abuse, The Supreme Court has attempted to shift the perception of torture as a necessary investigative method to one that constitutes an unconstitutional act. Judicial requirements for transparency, records keeping, and accountability also demonstrate an effort to infuse due process into the day-to-day operations of police agencies. Collectively, these decisions emphasise that the legitimacy of criminal investigations does not derive from the use of coercive measures and torture, but rather from legality, fairness, and due process.

Judicial protections remain largely reactive; courts only intervene after a violation has occurred; and when irreversible damage has occurred. The lack of continuous judicial oversight, and institutional compliance mechanisms, severely limits the transformative power of these decisions. Therefore, although judicial opinions provide very high normative standards, the deterrent effect of these opinions may be reduced unless they are supported by ongoing enforcement, punishment of officers who engage in misconduct, and systemic reform of law enforcement institutions.

V. INTERNATIONAL HUMAN RIGHTS PERSPECTIVE

International law prohibits the practice of torture as an absolute and non-derogable prohibition on human rights. The United Nations Convention Against Torture (CAT) requires that all states criminalize acts of torture, investigate any allegations of torture, and provide effective remedies for victims of torture. In the same way, the International Covenant on Civil and Political Rights

⁸ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

⁹ *Joginder Kumar v. State of Uttar Pradesh*, (1994) 4 SCC 260.

¹⁰ *Prakash Singh v. Union of India*, (2006) 8 SCC 1.

requires that all detainees be treated humanely and receive protection from cruel, inhuman or degrading treatment.¹¹

India's failure to ratify CAT (i.e. one of the primary treaties establishing an international human rights framework) significantly weakens India's human rights framework.¹² Although there is some use of domestic legislation to address specific forms of violence that occur in custody (i.e. custodial violence) there are no effective mechanisms to hold perpetrators accountable since there is no anti-torture statute in India. Ratifying the CAT would create legally binding obligations for India to change its domestic laws to conform to international standards and provide a stronger indication of India's commitment to protecting the basic rights of its citizens.

Torture cannot be justified under any circumstances, including national security or public order, according to international human rights bodies. Specialized oversight bodies, independent complaint mechanisms, and clear statutory definitions of torture have been shown by comparative jurisprudence in jurisdictions that have ratified the Convention Against Torture to be effective. The failure of India to adopt these measures places it at odds with evolving global standards for custodial accountability and undermines its position as a constitutional democracy that is committed to human rights.

In addition, the non-ratification of the Convention Against Torture limits the ability of victims to invoke international accountability mechanisms and deprives domestic courts of persuasive interpretative tools. Incorporating international standards into domestic law would strengthen legal remedies and contribute to a rights-based policing culture. Aligning Indian practices in the criminal justice system with international standards is thus necessary to enhance transparency, credibility, and public trust in law enforcement agencies.

VI. SYSTEMIC CAUSES AND ACCOUNTABILITY GAPS

Custodial torture in India is best viewed as a systemic failure, rather than simply an isolated misconduct by individual officers. The colonial structure of policing served to establish control rather than to offer service, and this legacy has continued, informing the culture of institutions today. Furthermore, political interference, performance pressures, workforce shortages and a lack of training create an environment in which coercive practices are facilitated and encouraged.¹³

Another significant contributor to custodial torture is the lack of an independent and adequately

¹¹ International Covenant on Civil and Political Rights art. 7, 1966.

¹² Law Commission of India, 273rd Report (2017).

¹³ National Police Commission, 8th Report (1981).

empowered investigative framework. In many instances, allegations of custodial violence are subject to internal investigation or investigation by an agency that is closely linked to the police hierarchy, thereby raising serious questions regarding naked impartiality. As such, the structural conflict of interest severely compromises the integrity of the investigation process and creates uncertainty for victims seeking to pursue civil action through the courts.¹⁴ Consequently, a culture of impunity has developed, whereby repeat violations occur, reinforcing the perception that law enforcement personnel operate above the law.

In addition, socioeconomic factors further compound the vulnerability of certain communities to custodial violence. For instance, low-income individuals who belong to marginalised communities may be unable to obtain legal representation, medical documentation or access to public advocacy due to their lack of means. Moreover, their social invisibility also creates an environment where the abuse can occur without being reported or punished. Because of the absence of strong institutional safeguards, accountability is uneven and selective, thereby further entrenching the various inequalities that exist within the criminal justice system.

Weak accountability mechanisms persist in the investigation of custodial abuse are delayed, compromised and/or inconclusive. Human rights institutions do not have the legal authority to prosecute; furthermore, victims and witnesses are often subjected to intimidation and procedural barriers. The result of these factors together is little or no consequences for torture to continue.

VII. CONCLUSION

The practice of police brutality and torture in India has been a challenge to the criminal justice system, while there are multiple constitutional protections, anti-brutality statutory measures, and court guidelines against violation, there remains a gap between constitutional principles and the everyday practice of law enforcement. The fact that custodial violence still exists today is because it has become structural/institutional rather than an exception; its persistence shows that implementation has failed due to a lack of legislative or institutional will, rather than the absence of law. When police exercise their authority without restraint, it diminishes the legitimacy of the criminal justice system and undermines the public's faith in the rule of law.

Overall, the analyses suggest that there are several factors contributing to custodial torture in India: legacies of colonial use of force by police; political interference; lack of adequate training; investigative pressures; and lack of effective oversight mechanisms. Court interventions have made some headway in addressing the inherent flaws in the policing system;

¹⁴ Vineet Narain v. Union of India, (1998) 1 SCC 226.

however, the failure to enforce progressive changes through judicial intervention has led to infrequent enforcement. Additionally, although the criminal justice system in India does provide several protections against the use of excessive force through the use of the Indian Penal Code, the ongoing and systematic use of excessive force by police insulates them from accountability for abusing their authority because police are responsible for investigating their own abusive conduct. Finally, the absence of a national anti-torture statute creates a splintered framework of accountability for violators, while also reducing deterrence.

The failure to ratify the UN Convention Against Torture (Convention) is indicative of India's challenges with respect to implementing and enforcing adequate protections within its borders, as well as the inability to meet international standards. Ratifying the Convention would not only place India under a legally binding obligation to prevent, punish and provide redress to victims of torture, but also strengthen the constitutional commitment to human dignity and humane treatment.¹⁵ By incorporating international norms into domestic law, a more transparent mechanism for independent investigations and effective remedies for victims will ensue. Thus, a rights-based policing framework must be established to transform custodial spaces from places of coercion to institutions that operate under the rule of law and accountability.

Achieving an end to torture and police brutality will require more than legal reform; it requires a complete transformation of the institutional culture. Policing should be reformed from an institution that utilizes fear, coercion and impunity to one that utilizes professionalism, restraint and respect for human rights. Independent oversight bodies, mandatory judicial oversight, human-rights-focused training and political non-interference are all necessary components to achieve such a transformation.¹⁶ A criminal justice system that ensures the protection of the most powerless individual is the ultimate measure of a constitutional democracy, thus until the eradication of custodial torture is achieved, India's promise of justice will never be fulfilled.

¹⁵ Justice J.S. Verma Committee Report on Custodial Crimes (2013).

¹⁶ UNODC, Handbook on Police Accountability, Oversight and Integrity (2011).