

CUSTODIAL VIOLENCE AND LEGISLATIVE POLICY IN INDIA: AN LEGAL OVERVIEW

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Abstract

*Custodial violence includes various kinds of torture that a person in prison, police custody as well as judicial custody undergoes due to various reasons. Violence is an apparatus is used to impose the one will on another and to feels the power and superiority over other. For that reason, the government has set up a way for the poor and **vulnerable** victims to get prompt relief through the National Human Rights Commission. The government has also complied with a number of protective standards set forth by international agreements, constitutional provisions, and statutory laws, but the number of cases of violence against inmates is rising daily.*

The present research seeks to conduct a thorough analysis of understanding the root cause and instances of custodial violence nationwide, also critically examining the underlying causes of custodial deaths in India. And also analyses various ways through which this grave injustice can be prevented and raising the awareness among the humans for the protection of their Constitutional Rights.

Key Words: Human Rights, Constitutional Rights, Custodial Violence, Torture, Police Atrocities & Cruelty.

Introduction

The term violence means to torture, hurt, abuse, use physical force in order to cause or intended to cause injury by police force as judicial custody. As according to dictionary meaning, violence is defined as a behavior which physically harms or damages a person with massive amount of force or energy. Such torture or infliction of immense pain to a body or mind is done in order to extract some information or forcefully make a person confess and an offence or simply to punish the person. Custodial violence violates the inherent dignity of a person. It not only humiliates the victim but reduces him to a sub-human level. Such torture inflicts a deep and often irreparable wound on the spirit, one that is keenly felt yet difficult to heal and it also ruins the victim both physically and mentally. They remain in a state of perpetual fear and horror whenever they remember the atrocities they survived

in the custody of police.¹

Incidents of custodial violence raise serious concerns throughout society and evoke significant concern across society regarding their human rights. Articles 20, 21, and 22 of the Indian Constitution grant specific rights to detainees or individuals in confinement. The Supreme Court of India has recognized certain rights as inherent components of Article 21, including protections against handcuffing, the right to a fair and speedy trial, and access to free legal assistance.

Constitutional Provisions Pertaining To Custodial Violence

- **Article– 14:** Equality before law – Under this article accused shall be treated as equal as other person before law. This is the duty of state i.e. guards of laws, shall not deny to any person equality before the law.
- **Article – 19:** Protection of right regarding to speech and expression etc. Here authorities, guards of laws are suspended their freedom of speech.
- **Article – 20:** It provides protection in respect of conviction for offences under sub- section (1), (2) & (3) of article 20.
- **Article- 21 Right to Life:** Protection from torture is recognized as a fundamental right under article 21. Article 21 of the constitution which reads that; no person should be deprived of his life or personal liberty except according to procedure established by law. This procedure not only refers to the enacted law but also extends to the principles of natural justice.²
- **Article – 22:** Protection against arrest and detention in certain cases – Article – 22(1) No person is arrested shall be detained in custody without being informed as soon as may be of the grounds for such arrest nor shall he be denied the right to consult and to be defended by, a legal practitioner of his choice.

¹ Supriya M.Swami, Custodial Violence: A Growing Abuse of Human Rights in India, JETIR February 2020, Volume 7, Issue 2 www.jetir.org (ISSN-2349-5162).

² D.D. Basu., Constitution of India, 18th ed., Lexis nexis publications, Gurgaon. 1999, P.168.

Legal Measures against Custodial Violence in India

Code of Criminal Procedure, 1973

- i) **Section- 41 of the Criminal Procedure Code (CrPC)** was amended in 2009 to introduce safeguards under sections 41A, 41B, 41C, and 41D. These provisions ensure that arrests and detentions for interrogation are based on reasonable grounds and follow documented procedures.
- ii) **Section– 46 & 49 of code** protect the person who under the custody and not the accused of offence of punishable with life imprisonment and death, from torture.
- iii) **Section- 76 of the Code** of Criminal Procedure (Cr.P.C.)
- iv) **Section- 54 of code**, when an allegation is made by a person on police person or other official in whose custody, its magistrate duty to examine that person 's body and maintain the record of examination.
- v) **Section– 176 of code**, where a mandatory inquiry take place by magistrate on the death of accused in police custody.
- vi) **Section– 167 & 309 of code**, object behind the taking the accused before magistrate, so safeguard the rights and interest of that person.

Indian Penal Code, 1860

- **Section– 330, 331,342 & 348** these sections designed to deter the police officer, those who have power to arrest a person and investigate him and during investigation of offence prevents any kind of third degree method which causing torture.

Indian Evidence Act, 1872

- **Section – 24**, confession made by threat or inducement from a person in authority to avoid any kind of gain and evil of temporal nature to accused would be irrelevant in criminal proceeding.
- **Section – 25**, provides that confession made by an accused person to police officer shall not take as evidence against that accused person.
- **Section – 26**, provides that confession made by accused person in police custody, shall not to be proved against him, unless confession is made in presence of magistrate.

Indian Police Act, 1861

➤ **Section-7 & 29** provide if any police officer who are negligent in performing his duty and unfit for perform, is liable to dismissal, penalty, suspension.

Protection of Human Rights Act, 1993

This Act was passed by parliament to meet the demand of national and international to protect the human rights by a law. Changing in society needs and nature of crime, demands the effective and efficient method for dealing with this issue and provides the justice through transparency and greater accountability.

Royal Commission

The commission recommended the basis necessary principle of arrest and restriction on arrest. This commission said detention should be and to be continuous for following criteria:

- i) On summon served, person intentionally un-identify himself.
- ii) To prevent the continuation and repetition of offence.
- iii) Need to protect the other person or property or himself.
- iv) Protect the evidence relating offence and need to questioning to him for getting evidences.

When there are chances to escape of person and failing to appear in police station if any charge made against him.

National Human Right Commission

Guidelines of National Human Rights Commission, New Delhi, 2000 provides detailed guideline regarding to pre-arrest, arrest and post-arrest and also provides principle to enforcement of guidelines. These National Human Rights Commission's guidelines are requested to all State to adopt them.

Role of Judiciary

Judiciary through various pronouncements played pivotal role in dealing with custodial crimes in police custody. In state of **Maharashtra v/s. Prabhakar Pandurang Sanjgiri**³, aid of Article 21 was made available perhaps for the first time to a prisoner while dealing with the question of his right of reading and writing books in jail.

Joginder Singh v. State of UP 1994⁴ Supreme Court held that if any arrest is made without any

³ AIR 1966 SC 424.

⁴ Joginder Singh v. State of UP 1994 AIR 1349 SCC (4) 260.

justification then it will be an illegal act, there must be reasonable justification for arrest.

In **Hussainara Khatoon v/s. State of Bihar**⁵, it is possible to reach the benefits of the legal process to the poor to protect them against injustice and to secure them their constitutional and statutory rights unless there is a nation-wide legal service Programme to provide free legal service to them.

In the historic judgment in **D.K. Basu v/s. State of W.B.**⁶, the Hon`ble Supreme Court initiated the development of ‘Custodial Jurisprudence’ including torture to arrestee, infringement of fundamental rights, citizens entitled to receive compensation from State, quantum of compensation would depend on peculiar fact of each case.

Conclusion

Article 21 of the constitution guarantees personal liberty and prohibits cruel or degrading treatment to individuals, regardless of nationality or nationality. Violations of this right are punishable under Article 14, which ensures equal protection of laws. Custodial violence must be made a punishable offense through a special law. Public awareness and constant monitoring of police atrocities are necessary to enforce constitutional and statutory provisions protecting prisoners' rights, as per Supreme Court rules.

⁵ AIR 1979 SC 1371.

⁶ AIR 1997 SC 610.