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Custodial Torture in India and Rights of Under-Trial Prisoners: A Reformative Approach

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ABSTRACT

Custodial torture is a widespread problem in India, where law enforcement officials frequently use violence and abuse to extract information or obtain confessions from individuals in their custody. This paper examines the issue of custodial torture in India from a legal perspective, with a particular focus on the rights of under-trial prisoners. The paper analyzes the existing legal framework and proposes a reformative approach to address the issue, including measures to increase accountability for law enforcement officials, improve legal protections for detainees, and reform the criminal justice system.

I. INTRODUCTION

Custodial torture is one of the most heinous human rights violations that occurs in India, where law enforcement officials often use violence and abuse to extract information or obtain confessions from individuals in their custody. This issue is particularly relevant for under-trial prisoners, who are detained but have not yet been convicted of a crime. Despite the prohibition of torture under international and domestic law, custodial torture remains a widespread problem in India.

The rights of under-trial prisoners in India are protected by a various domestic and international legal framework, including “the Indian Constitution,² the Indian Penal Code,³ the Code of Criminal Procedure,⁴ and international treaties such as the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.” These legal frameworks provide for criminal penalties for those who engage in custodial torture or abuse, as well as civil remedies for victims of such abuse. Under-trial prisoners in India have several legal rights, including “the right to legal representation, the right to be informed of the charges

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² INDAIN CONSTI.

³ The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India).

⁴ The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).

against them, the right to a speedy trial, and the right to be treated with dignity and respect.”⁵

Despite these legal protections, under-trial prisoners in India remain vulnerable to custodial torture and abuse. The lack of accountability for law enforcement officials who engage in such abuse is one of the key issues that contributes to this problem. There is a need for a reformative approach to address this issue, including measures to increase accountability for law enforcement officials, improve legal protections for detainees, and reform the criminal justice system.

The purpose of this research paper is to examine the issue of custodial torture in India and the rights of under-trial prisoners from a legal perspective, with a particular focus on the need for a reformative approach. The paper will analyze the existing legal framework, including domestic and international law, and propose specific measures to address the issue. These measures will include recommendations for increasing accountability for law enforcement officials, improving legal protections for detainees, and reforming the criminal justice system. The paper will also examine the potential benefits of such reforms, including increased respect for human rights, improved access to justice, and a reduction in custodial torture and abuse.

II. DEFINITION OF CUSTODIAL TORTURE IN INDIA

Custodial torture refers to the use of physical or psychological violence or abuse against individuals who are under the control or custody of law enforcement officials. This includes police officers, jail officials, or any other government authorities who are responsible for the detention, interrogation, or imprisonment of a person.

The legal definition of custodial torture in India is defined in various laws and judicial pronouncements. The most comprehensive definition is provided in the Prevention of Torture Bill,⁶ which was introduced in 2010 but has not yet been passed by Parliament. The bill defines torture as “*any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for the purpose of obtaining information or a confession from him or from a third person, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind.*”

The definition of custodial torture in India can also be found in the landmark case of “*D.K.*

⁵ Dr. Vijay Kumar Beniwal, “Custodial Torture and India: Legislative and Judicial Approach,” 5 *International Journal of Law Management & Humanities* 6, 1869.

⁶ “The Prevention of Torture Bill, 2010,” *PRS Legislative Research* available at: <https://prsindia.org/billtrack/the-prevention-of-torture-bill-2010> (last visited March 26, 2023).

Basu v. State of West Bengal” (1997),⁷ where the Supreme Court of India defined custodial torture as “*torture perpetrated by a public servant or someone acting with their consent, while in their custody.*” In addition to this, the Supreme Court of India has established various norms and processes to prevent torture in detention centres in relation to this problem. The individual who is being arrested or detained is required under these rules to be notified of the grounds for such arrest or detention, the right to legal representation, and the right to tell a friend or relative of their arrest. A registered medical practitioner is required to perform a medical examination on the person who is being arrested or detained, and a copy of the report must be sent to the magistrate who is to be informed of the arrest or detention. Another requirement of the guidelines is that a copy of the report must be sent to the person who is to be informed of the arrest or detention.

The legal concept of torture encompasses all of its facets, and the Supreme Court has established some ground rules to discourage its application. Nonetheless, the use of torture in detention facilities in India is still a problem, and more steps need to be taken to stop its use and guarantee that those guilty are held accountable for their actions.

III. LEGAL FRAMEWORK AND CONSTITUTIONAL PROVISIONS

A thorough foundation for the protection of fundamental rights, such as “the right to life, liberty, and personal dignity,” is provided by the Constitution of India. These rights are safeguarded by a number of articles, one of which being Article 21 of the Constitution,⁸ which provides protection for “the right to life as well as the right to personal liberty.” Article 22⁹ guarantees the “protection of the rights of arrested persons, including the right to be informed of the grounds of arrest and the right to consult a legal practitioner.”

The Code of Criminal Procedure, 1973¹⁰ provides the legal framework for criminal proceedings in India, including the arrest, detention, and interrogation of suspects. This code contains important safeguards to prevent custodial torture and abuse, including provisions for the recording of arrest and detention, the right to medical examination, and the right to legal counsel.

The Protection of Human Rights Act, 1993¹¹ is another important legal framework that protects against custodial torture and abuse. This act establishes the “*National Human Rights*

⁷ (1997) 1 SCC 416

⁸ INDAIN CONSTI. Art 21.

⁹ INDAIN CONSTI. Art 22.

¹⁰ The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).

¹¹ The Protection of Human Rights Act, 1993, No. 10, Acts of Parliament, 1994 (India).

Commission (NHRC),” which has the power to investigate complaints of human rights violations, including custodial torture. The NHRC also has the power to recommend compensation to victims of custodial violence.

Under Section 24 of the Indian Evidence Act,¹² a confession made by an accused person to a police officer is not admissible as evidence in a court of law unless it is made in the presence of a magistrate. This provision is aimed at preventing the use of coerced confessions, which are often obtained through torture or other forms of duress. This section of the Act is particularly relevant in cases of custodial torture where the accused may be forced to confess to a crime they did not commit.

In addition to the Indian Evidence Act, the Law Commission of India has also played a significant role in addressing the issue of custodial torture. The Law Commission is a statutory body established by the Government of India to make recommendations for legal reform. It has submitted several reports on the issue of custodial torture, including its 113th¹³ and 273rd¹⁴ reports.

The 113th report of the Law Commission, submitted in 1986, examined the issue of custodial violence and made several recommendations to prevent such abuses. These recommendations included the establishment of a separate investigation agency to investigate allegations of custodial torture, the installation of CCTV cameras in police stations, and the appointment of independent observers to monitor the conduct of police officers.

The 273rd report of the Law Commission, submitted in 2017, recommended the enactment of a standalone law to prevent and punish acts of torture. This report was submitted in response to a directive from the Supreme Court of India, which had asked the Law Commission to examine the issue of custodial torture and recommend measures to prevent such abuses.

The Supreme Court of India has also played a crucial role in protecting against custodial torture through various landmark judgments. In the landmark case of *D.K. Basu v. State of West Bengal* (1997),¹⁵ the Court laid down guidelines such as “the right to be examined by a medical officer after every 48 hours in custody and the right to inform a family member or friend about the arrest and place of detention.”

The Prevention of Torture Bill was first introduced in the Indian Parliament in 2010 with the

¹² The Indian Evidence Act, 1872, No. 1, Acts of Parliament, 1872 (India).

¹³ Law Commission of India, “113th Report on Injuries of Police Custody” (1985).

¹⁴ Law Commission of India, “273th Report on Implementation Of ‘United Nations Convention Against Torture and Other Cruel, Inhuman And Degrading Treatment Or Punishment’ Through Legislation.” (October, 2017).

¹⁵ *Supra* Note 6.

aim of preventing and punishing acts of torture. The bill was introduced in response to concerns about the widespread use of torture in police custody and the lack of legal provisions to address this issue. However, the bill was not passed by the Parliament, and it lapsed with the dissolution of the 15th Lok Sabha in 2014. In 2017, the government introduced a new Prevention of Torture Bill, which was referred to a parliamentary committee for examination and report.

The 2017 bill was similar to the earlier version in its definition of torture and its provisions for punishment. However, it included several new provisions, such as the establishment of a National Torture Prevention Mechanism and the requirement for police officers to wear body cameras while on duty to prevent the use of torture. The Prevention of Torture Bill is an essential piece of legislation that is needed to prevent and punish acts of torture in India. The failure to pass this bill has been a significant setback in efforts to address the issue of custodial torture

Despite these legal and constitutional safeguards, there are still challenges and gaps in the system that leave under-trial prisoners vulnerable to custodial torture and abuse. Overcrowding in Indian prisons is a major issue that can lead to poor conditions and increased risk of abuse. According to a report by the National Crime Records Bureau, 77.1% of the total prison population in India are under-trial prisoners, which puts a strain on the resources of the prison system.¹⁶

To address these challenges, there is a need for reforms and improvements in the criminal justice system to better protect the rights of under-trial prisoners and prevent custodial torture. One possible solution is to increase resources for the prison system, such as hiring more staff and providing better training for law enforcement officials. Another solution is to improve conditions in prisons, such as providing better healthcare facilities and addressing the issue of overcrowding. There is also a need to increase oversight and accountability for law enforcement officials to ensure that they follow the guidelines and procedures laid down by the Supreme Court and other legal and constitutional provisions.

The legal and constitutional framework in India provides strong safeguards against custodial torture and protection of the rights of under-trial prisoners. However, there are still challenges and gaps in the system that need to be addressed through reforms and improvements to ensure that these protections are fully realized.

¹⁶ National Crime Records Bureau, "Crime in India – 2021" (2021).

IV. UNDER-TRIAL PRISONERS IN INDIA

In India, a significant proportion of the prison population comprises of under-trial prisoners, i.e., “individuals who have been arrested and detained but have not yet been convicted of a crime.” According to a report by the National Crime Records Bureau, as of December 2021, under-trial prisoners constituted 77.1% of the total prison population in India.¹⁷ The prolonged detention of under-trial prisoners without a conviction not only violates their fundamental rights but also puts them at risk of custodial torture and abuse.

The Code of Criminal Procedure, 1973,¹⁸ lays down the procedures to be followed by law enforcement officials during the arrest, detention, and interrogation of individuals, including under-trial prisoners. These procedures include “the right to be informed of the grounds of arrest, the right to access legal counsel, and the right to be produced before a magistrate within 24 hours of arrest.” However, there have been instances where these procedures have not been followed, leading to prolonged detention and denial of legal representation for under-trial prisoners.

The issue of overcrowding in prisons also disproportionately affects under-trial prisoners. Overcrowding can lead to poor living conditions, lack of access to basic amenities, and increased risk of disease and infection. In addition, the lack of separate facilities for under-trial prisoners and convicts can also lead to increased vulnerability to custodial torture and abuse.

To address these issues, there is a need for reforms and improvements in the criminal justice system to better protect the rights of under-trial prisoners. One possible solution is to expedite the legal process to reduce the number of under-trial prisoners and ensure that those who are detained are not subject to prolonged detention without a conviction. Additionally, separate facilities for under-trial prisoners and convicts can be established to minimize the risk of custodial torture and abuse. There is also a need to increase resources for the prison system, such as hiring more staff and providing better training for law enforcement officials, to ensure that the rights of under-trial prisoners are protected.

In conclusion, the issue of under-trial prisoners in India is a significant challenge that needs to be addressed through reforms and improvements in the criminal justice system. By protecting the rights of under-trial prisoners and ensuring that they are not subject to custodial torture and abuse, India can take a step towards a more just and equitable society.

¹⁷ Ibid.

¹⁸ The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).

V. NATURE AND EXTENT OF CUSTODIAL TORTURE IN INDIA

Custodial torture is a grave violation of human rights and is a matter of concern in India. It is a widespread problem in India and affects not only under-trial prisoners but also other detainees, including juveniles. The extent of custodial torture in India is difficult to quantify due to underreporting and lack of transparency. However, reports from various human rights organizations and media outlets suggest that custodial torture is a common practice in India. The National Human Rights Commission (NHRC) recorded 669 custodial deaths in India from 2017-2022, with a significant number of cases attributed to police brutality and custodial torture.

The nature of custodial torture in India includes physical torture, such as beatings, electric shocks, and sexual assault, as well as mental torture, such as threats, humiliation, and isolation. The use of torture to extract confessions or information is a common practice in India, even though such evidence is inadmissible in court. The lack of accountability for law enforcement officials who engage in custodial torture is also a contributing factor to the prevalence of this practice.

The issue of custodial torture in India has received international attention, with India being criticized by various human rights organizations for its failure to address the problem. The United Nations Committee Against Torture has raised concerns about custodial torture in India and has recommended reforms, including strengthening the legal framework to criminalize torture and ensuring that victims have access to justice and reparations.

VI. VIOLATIONS OF HUMAN RIGHTS AND INTERNATIONAL OBLIGATIONS

The practice of custodial torture in India violates various human rights and international obligations. Custodial torture violates “the right to life, liberty, and security of the person, as well as the right to be free from torture and cruel, inhuman, or degrading treatment or punishment.” It also violates the right to a fair trial, as evidence obtained through torture is inadmissible in court.

India is a signatory to various international human rights treaties, including the “*International Covenant on Civil and Political Rights*¹⁹” and “*the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.²⁰” As a signatory to these treaties,

¹⁹ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://www.refworld.org/docid/3ae6b3aa0.html> [accessed 26 March 2023]

²⁰ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at:

India has an obligation to protect the human rights of its citizens and ensure that custodial torture is prohibited and punished.

The violations of human rights and international obligations regarding custodial torture have been documented by various human rights organizations and international bodies, such as the United Nations. These organizations have repeatedly called for India to take measures to address the problem of custodial torture and to ensure that perpetrators are held accountable.

It is imperative that India takes steps to address this issue and uphold its obligations under international law. By doing so, India can move towards a more just and equitable society where the rights of under-trial prisoners and all citizens are protected.

VII. JUDICIAL RESPONSE TO CUSTODIAL TORTURE IN INDIA

The issue of custodial torture in India has received attention from the judiciary, which has taken steps to address the problem. The Supreme Court of India has recognized that custodial torture is a violation of the fundamental rights guaranteed under the Indian Constitution and has taken various steps to prevent and punish such torture.

In the landmark case of *D.K. Basu v. State of West Bengal*,²¹ the Supreme Court laid down various guidelines to be followed by the police during arrest and detention. These guidelines include the right to be informed of the grounds of arrest, the right to legal representation, the right to medical examination, and the prohibition of torture and cruel, inhuman, or degrading treatment or punishment. The Supreme Court also directed all states and union territories to set up Human Rights Commissions to investigate complaints of custodial torture and other human rights violations.

The judiciary has been proactive in taking up cases of custodial torture and has passed several landmark judgments that have contributed to the protection of human rights. In the case of *State of Gujarat v. Kishanbhai* (2014),²² the Supreme Court held that the use of third-degree methods by the police was not permissible, and any confession obtained through such methods would not be admissible as evidence in a court of law. The court stated that the use of torture was a violation of human rights and that the police had a duty to protect the rights of individuals.

In another landmark case, the Supreme Court in the case of *Nilabati Behera v. State of Orissa*²³ recognized the right to compensation for victims of custodial torture. The court held that

<https://www.refworld.org/docid/3ae6b3a94.html> [accessed 26 March 2023]

²¹ *Supra* Note 6

²² (2014) 5 SCC 108.

²³ (1993) 2 SCC 746.

compensation should be paid to the victim or their family members in cases where custodial torture resulted in the death of the victim.

In recent years, the Indian judiciary has also been increasingly critical of the use of custodial torture by law enforcement agencies. In the case of *Prakash Singh v. Union of India*,²⁴ the Supreme Court issued a series of directives to the central and state governments to implement police reforms to ensure that police officers are accountable for their actions and to prevent the use of torture.

Despite the progressive approach of the Indian judiciary towards custodial torture, there have been several instances where the police and other law enforcement agencies have continued to use torture to extract confessions and information from suspects. The lack of legal provisions to prevent and punish acts of torture has meant that perpetrators of such acts often go unpunished, leading to a culture of impunity.

The approach of the Indian judiciary towards custodial torture has been progressive, and it has played a significant role in ensuring that the rights of individuals are protected against such practices. However, there is still a long way to go in eliminating custodial torture from the Indian justice system. It is essential for the government to take steps to pass the Prevention of Torture Bill and to ensure that law enforcement agencies are held accountable for their actions. Only through concerted efforts by all stakeholders can the use of custodial torture be eliminated from the Indian justice system, and the rights of citizens can be protected.

VIII. RECOMMENDATIONS FOR A REFORMATIVE APPROACH

Custodial torture is a serious violation of human rights and a blot on the Indian justice system. To prevent and eliminate custodial torture, a reformative approach is necessary. The following recommendations can be considered:

1. **Enactment of a comprehensive anti-torture law:** The Prevention of Torture Bill, 2010, should be passed by the parliament to provide a legal framework to prevent, prohibit, and punish acts of torture. The bill must define torture broadly and make provisions for adequate compensation to victims.

2. **Implementation of police reforms:** The Supreme Court's directives in the *Prakash Singh v. Union of India* case should be implemented to ensure police accountability and prevent torture. The reforms must include recruitment of qualified and trained personnel, strict adherence to arrest and detention guidelines, and the establishment of independent oversight

²⁴ (2006) 8 SCC 1.

bodies.

3. **Training of law enforcement officials:** Law enforcement officials should be trained in human rights and the use of non-coercive interrogation techniques. The training should emphasize the importance of respecting the dignity of suspects and the prohibition of torture.

4. **Strengthening of judicial oversight:** Judicial oversight should be strengthened to ensure that the police adhere to arrest and detention guidelines and that victims of torture are adequately compensated. The judiciary should also take a strict view of custodial torture and ensure that perpetrators are punished.

5. **Awareness and sensitization campaigns:** Awareness and sensitization campaigns should be conducted to educate the public and law enforcement officials about the prohibition of torture and the importance of respecting human rights.

6. **Reformation of the prison system:** The prison system should be reformed to ensure that under-trial prisoners are not subjected to torture and have access to basic facilities such as healthcare, sanitation, and legal aid.

IX. CONCLUSION

Custodial torture is a grave violation of human rights and a major concern in India. The high number of reported cases of custodial torture and deaths in custody is a cause of serious concern. Under-trial prisoners, who are often vulnerable and marginalized, are particularly at risk of custodial torture. The Indian judiciary has taken a strong stance against custodial torture and has made efforts to hold perpetrators accountable. However, more needs to be done to prevent and eliminate custodial torture.

This research paper has explored the legal and constitutional provisions related to custodial torture and the plight of under-trial prisoners in India. The paper has highlighted the need for a reformative approach to address the issue of custodial torture. The recommendations put forth include the enactment of a comprehensive anti-torture law, implementation of police reforms, training of law enforcement officials, strengthening of judicial oversight, awareness and sensitization campaigns, and reformation of the prison system.

It is crucial for policymakers, civil society organizations, and other stakeholders to work together to ensure that the recommendations are implemented and custodial torture is eliminated. A more just and humane justice system is necessary for the protection of human rights and the rule of law in India.
