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REVIEW ARTICLE

**CUSTODIAL TORTURE AND PROTECTION
AGAINST CUSTODIAL TORTURE – AN OVERVIEW**

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Custodial Torture and Protection against Custodial Torture – An Overview

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INTRODUCTION

“Torture is anguish queering in your chest, cold as ice and heavy as a stone, paralyzing 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. Bartow¹

The word “torture” has become synonymous with the darker side of human civilization. Torture is a wound, so painful either in a form of physical injury or mental agony. Torture in custody takes the basic rights of the citizens and it outrage the human dignity².

Custodial torture itself is a negative statement which reflects the violation of human rights. In most part of the world, it is prohibited. Human rights violation specifically torture takes place during execution of law and order, by the police. Even after more than 65 years of independence, India is facing this problem, where the police remains the terror to people and were unaccountable for the violation of human rights in custody. As police officer are interested in accomplishing the maximum conviction with intent to take credit and get the work done, they supposed to act brutally with people and thus under the peril of law commits custodial torture.

Now days, torture in police custody become a culture whereby the human rights were violated and the judiciary act passively, as human right violation in custody does not covered under legal stand point.

Custodial torture is an act by which severe pain or suffering is caused by strong, i.e. police over the weak i.e. arrestee within the four walls of police station. Torture victims are generally arrested in connection with criminal investigation; thereby they are being tortured to extract information and confessions. Some were arrested as to seek out their friends, relatives and some are arrested as false charges were framed against them at the order of powerful local members

and the police act as an instrument of repression on behalf of them.

KINDS & METHOD OF TORTURE

Various method of torture is used by police; some of them are listed below:

1. Beating
2. Sensory deprivation
3. Stimulated drowning
4. Electric shock
5. Shooting and extra judicial killing
6. Lathi Charge
7. Mental torture
8. Sexual assault and rape as a tool of state repression
9. Custodial death

Torture in some or other way include Third degree method (E.g. Torture, Assault etc.) being adopted by the police to extort confession is violative of human right and exemplary compensation can be awarded by the judiciary to the victim in suitable cases. The expression ‘life or personal liberty’ in Article 21 includes right to live with human dignity which includes guaranty against torture and assault by the State. Article 21 guarantees protection against torture and assault by the State while a person is in the custody³

WHO ARE TORTURE VICTIMS?

Studies indicate that generally, the victims of custodial torture are poor, women, children and

socially excluded group, disadvantaged people those who belong to the weaker sections of society with little or no political or financial power and are unable to protect their interests. Rich, wealthy and prosperous members are not generally subjected to torture as the police afraid of their resourcefulness.

The members of the weaker or poorer sections of society are arrested informally and kept in police custody for days without any entry of such arrests in the police records. During informal detention and interrogation they are subjected to torture, which sometimes results in death. In event of death in custody, the body of the deceased is disposed of silently or thrown to a public place making it a case of suicide or accident. Records are manipulated to protect the police personnel. The relatives or friends of the victims are unable to seek protection of law on account of their poverty, ignorance and illiteracy. Even if voluntary organizations take up their cases or file public interest litigations, no effective or speedy remedy is available to them, which results in the erring officers remain blameless or guiltless.⁴

PROTECTION AGAINST CUSTODIAL TORTURE

The law does not permit torture. The torture by police is violation of the right to life and personal liberty under Article 21 of the Constitution. Rights of an individual in police custody are protected basically by the Indian Constitution and by various other laws like Code of Criminal Procedure, Indian Evidence Act, Indian Penal Code and Protection of Human Rights Act. These rights are also recognized by various international documents like Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. In spite of national and international legal standards for the protection of rights of persons in police custody, human rights violations in police custody are endemic in India and are tarnishing the picture of India abroad.

INTERNATIONAL AMBIT

Custodial torture is not peculiar to this country but it is wide spread. It is a universal act against human dignity. At international level we have UDHR of 1948 in which Article 5 states that "No one shall be subjected to torture or to cruel in human or degradation treatment or punishment". Since 1948, the concept of protecting dignity of an individual is highlighted whether it is challenged by State or private person.

UN Convention on torture 1984, Inter American Convention on torture and various other conventions and treaties were held in which the prevention of torture has been emphasised. In our country we are also facing the problem of custodial torture. Our

constitution safeguards human dignity and the policies were framed to secure freedom and growth of all fearlessly.

The Convention Against Torture states "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession" is a torture. It perfectly fits in Indian conditions. On looking at scenario of torture in India, it becomes evident that there have been several positive attempts to address the problem of torture over a number of years, notably by the Supreme Court and several High Courts that have handed down numerous judgments prescribing practical measures for its prevention. The establishment of NHRC under the Protection of Human Rights Act (PHRA) in 1993 and signing of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (Convention against Torture) in October 1997 are reiteration of India's long standing public commitment to address the practice of torture. In spite of such efforts, torture and ill treatment continues to be endemic throughout India and also it is in the increase.⁵

CONSTITUTIONAL AMBIT

Constitution of India does not define custodial torture. It covers all human rights violations relating to life or limb under the umbrella of Article 21. Article 21 is the soul of our constitution as it gives and protects enormous rights within its framework not only against State but also against individuals. Custodial torture is a threat against life of an individual. It can never be justified under any circumstances. But during administration of criminal justice, it was challenged and used under the criminal proceedings.

Article 21 which is one of the luminary provisions in the Constitution of India, 1950 and is a part of the system for protection of fundamental rights occupies a place of superiority in the Constitution. The Article mandates that no person shall be deprived of his life and personal liberty except according to the procedure established by law. Life or personal liberty includes a right to live with human dignity and it is inherent under this article. This article gives protection and guarantee against torture or assault by the State or its functionaries.

Articles 20(3) and 22 of the Constitution further extend protection and guarantees to every citizen making his life meaningful and not a mere animal existence. It is, therefore, difficult to understand how torture and custodial violence can be permitted to confront the rights protected by the Constitution. Torture and death in custody raise serious questions about the credibility of rule of law and administration of criminal justice system. The community gets concerned about it and the cry for justice becomes louder and deserves immediate remedial measures. The Court has in a large number of cases expressed great concern on the

atrocities perpetuate by the protectors of law i.e. by the police.

Apart from constitutional law, various other statutory laws also contained provision directly or indirectly related with torture. Criminal Procedure Code, Indian Evidence Act, Indian Penal Code and the Police Act explicitly guarantee safeguards for the protection of human rights in accordance with the constitution of India.. Article 22 (2) of the Constitution and section 56 and 57 CrPC guarantee the right to be produced before the magistrate immediately and within 24 hours. The delay in no case shall exceed 24 hours exclusive of the time necessary for the journey from the place of the arrest to the court. These provisions also provided that the police arresting with or without warrant to inform the arrested person without delay the grounds of arrest of arrest. It enables the accused to apply for bail or to presence against the prosecution.

The right to bail arises from the moment an individual is arrested and detained and it is well known that 'Bail is a right and Jail is an exception' in all bailable offences. The Constitution and Code of Criminal Procedure recognize the right of every arrested person to consult a legal counsel of his choice. The Supreme Court has recognized right to remain silent during custodial interrogation. Even the state is under a constitutional mandate under Article 21 to provide free legal aid to an indigent person even when the accused is produced for the first time before the magistrate.

Article 20 (2) of the Constitution ensures protection from double prosecution for the similar offence. The basic right under criminal justice is the right to have the benefit of presumption of innocence till the guilt is proved under Section 101 of Evidence Act. Section 54 CrPC gives the accused the right to have medical examination in case of complaints of torture by police. It is also the duty of the magistrate to inform the arrested person about the right to have himself medically examined.

The law does not recognize confession made to police as evidence. The protections against 'involuntary' confessions are contained in the constitutional provision as statement against self-incrimination under Article 20 (3). Section 162 of Code of Criminal Procedure, section 24, 25 and 26 of Evidence Act and section 330 and 331 of Indian Penal Code and section 29 of Police Act, treat it as an offence. One of the important safeguards in case of illegal arrest is the writ of Habeas Corpus under Article 226 to approach the High court. Section 97 code of Criminal Procedure also provides the power to search for the person in illegal detention.

However all the safeguards are provided by law but police contravene every one of them by simple trick-they do not ever record the arrest, do not ever produce him before a magistrate until the required information

has been taken, he was arrested for less than 24 hours etc. which does not prove the guilt of police.

JUDICIAL OUTLOOK

Our judiciary play an eminent role in protection of human rights in all segments and in all regimes. Various decisions given by them form the important part of our legislative framework which not only empowers our legislation but also protects and secured the very essence of our constitution. Custodial torture comes under the peril of article 21 and is secured and protected by Indian judiciary. In D.K. Basu vs. State of West Bengal ⁶ case, judiciary gives guidelines for arrest procedure so as to control custodial violence.

CONCLUSION

Custodial torture is an extreme violation of human dignity and degradation which destroys to a very large extent the individual personality. It is one of the worst kind of crime in civilized society whereby police consider themselves to be above the law.

In India, statistics of custodial torture are available under NHRC, ASHR, Crime Record Bureau and other organisations, but still most of the incidents of torture are not recorded. Incidents of torture and injury in urban areas are brought to public notice by the media, while large number of such incidents occurring in rural areas of our vast country, remain unnoticed. In this state of affairs, it is difficult to pinpoint the exact number of incidents of torture and death in custody⁷

END NOTES:

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