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REVIEW ARTICLE

INDIAN SCENARIO ON CUSTODIAL TORTURE WITH SPECIAL REFERENCE TO WOMAN VICTIMS

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Indian Scenario on Custodial Torture with Special Reference to Woman Victims

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In India, torture is widely practiced in executive function especially in administration of criminal justice system by the police. The main cause of such continuity is the failure or unwillingness of governments to hold an inquiry and punish those who are found guilty. The redress for the victims of torture is not possible as they are not aware of their right nor the resources required seeking it. Custodial crimes are increasing rapidly and in Most of the cases the victims of torture are generally Dalits and Adivasi's Women, Children, Politicians and Human Rights Activists and Weaker Sections of the Community

The present scenario of last few decades makes it clear that the torture is endemic and it continues to be in practice even after the framing of law not only international level but as well as at national level. Therefore, India must take measures to ensure 'the rule of law, individual freedom, personal liberty and security enshrined in Indian polity'. This can be done by ratifying the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and enacting an effective national anti-torture law.

The security of human rights of women in custody is included in the constitution. Their rights too are protected. Custodial crimes in respect to women not only includes physical violence but also sexual violence like rape and outrage the modesty of women, which in fact leads to suicidal attempt.

To reveal the present scenario on torture, various reports and studied. Such reports reveal the true picture of the custodial crimes. The National Human Right Commission and Asian Centre for Human Rights which deals with the protection of human rights draw report time to time on custodial crimes. the data of NHRC, ACHR and NCRB are analysed.

National Human Rights Commission (NHRC)¹

The National Human Rights Commission (NHRC) in its Annual Reports recorded the number of custodial

deaths in police custody as well as judicial custody which are registered at an increasing rate. However, these custodial deaths represent only a part of the incidences of custodial torture in India and there is no record of torture that does not result in custodial death. The Supreme Court's guidelines in the case of *D.K.Basu Vs State of West Bengal* or NHRC's Guidelines to report custodial death and rape cases within 24 hours are not strictly adhere to meet the purpose of ending the practice of torture.

In India, an attempt has been made since 1999 to gather information on details of Cases where human rights were violated due to Police excesses such as 'Illegal Detentions', 'Fake Encounters', 'Extortion', 'Torture', etc. by National Crime Record Bureau, New Delhi and National Human Rights Commission, New Delhi, Under Home Ministry, Government of India. The details are presented by NCRB's Crime in India Report 2008, that as per the report 253 cases of Human Rights Violation by Police were reported throughout the country during 2008. Only 14 Policemen were charge-sheeted and only 08 of them were convicted for these Human Rights Violations during the year. Chhattisgarh has reported the maximum 233 cases (92.1% of such cases). 59 out of 253 cases were reported under crime head 'Torture'. 39 and 33 cases were reported under the head of 'Extortion' and 'Failure in taking action' respectively. 25 cases reported under the head of 'False implication'. On the other hand, also Asian Centre for Human Rights (ACHR) in its latest report Torture in India 2009 states that in the last eight years (from April 2001 to March 2009), an estimated 1,184 persons were killed in police custody in India. Most of the victims were killed as a result of torture within the first 48 hours after being taken into custody. The official data available with (TwoCircles.net) says every second police encounter that takes place in the country is fake. Colonial-era police laws enable state and local politicians to interfere routinely in police operations, sometimes directing police officers to drop investigations against people with political connections, including known criminals, and to

harass or file false charges against political opponents. These practices corrode public confidence.²

NHRC's guidelines and Instructions on Torture

The NHRC being established for the protection of human rights has identified custodial deaths and rapes as a priority area of concern where human rights are violated and issued instructions to all states and union territories to report within 24 hours of occurrence of any instance of custodial rape or death (which were studied in chapter 8). NHRC later held that all post-mortem examinations done in respect of deaths in police custody and in jails should be videotaped and sent to the commission along with post-mortem report. Moreover the interrogation must be done under CCTV cameras.

1. Asian Centre for Human Rights (ACHR)³

The ACHR, based in New Delhi, focuses on human rights issues, providing research and information to national human rights bodies, lobbying for specific cases, and legal and political advice to individuals and groups.

Asian Centre for Human Rights (ACHR) plays a vital role in pursuing the process of passing of torture bill. A national conference was held on 24-25 June 2009 on 2008 bill. Various suggestions and debate leads to 2008 bill a mere pin before a sword. 2008 bill fails to satisfy the need of torture prevailing in present scenario.⁴

Reports of Asian Centre for Human Rights

Asian Centre for Human Rights in its report, "*Torture in India 2011*", stated that a total of 14,231 persons i.e. more than four persons per day died in police and judicial custody in India from 2001 to 2010. This includes 1,504 deaths in police custody and 12,727 deaths in judicial custody from 2001-2002 to 2009-2010 as per the cases submitted to the National Human Rights Commission (NHRC).⁵

Asian Centre for Human Rights published Torture in India series for 2008, 2009, 2010, and 2011 which brings attention of national and international bodies on torture in India. It is sad to say that the government of India has been unwilling to address torture. It drafted Prevention of Torture Bill, 2008 with only four operative clauses, which does not even satisfy the norms of UNCAT. The Asian Centre for Human Rights (ACHR) takes action by drafting alternate "Prevention of Torture Bill, 2009" through a national conference in Delhi held on 24-25 June 2009.

i) Torture in India 2008⁶

In this report particular attention is given to institutional responses to torture specially the role of India's National Human Rights Commission. The report examines the role of the judiciary in the eradication of

torture and provides specific judgments related to custodial crimes. The report also examines the use of torture by Armed Opposition Groups (AOGs). The report also presents facts and circumstances of individual cases of torture and analysis them. In each Section of the report, the relevant international and national protections are examined in theory as well as in practice. Finally, the report examines the response of the international human rights system and the lack of inadequate response of the government of India to combat torture.

ii) Torture in India June 2009⁷

ACHR Torture Report 2009 was on Torture and deaths in police custody. It also states that Indian government was fail to apply guidelines of D.K. Basu judgment to combat with custodial torture. In this report failure of NHRC work over torture was also discussed and the data of state wise list of number of custodial death was given.

iii) Torture in India April 2010⁸

This report focus on the debate on Prevention of Torture Bill, 2010 for the protection of individual from torture. The contribution of National Human Rights Commission to combat torture is analysed with the reported cases of NHRC. The report examines the role of the judiciary in the eradication of torture and provides for their specific judgments.

iv) Torture in India november 2011⁹

ACHR in its report on torture in India 2011 disclose the data of custodial death and torture in India from 2000-2010. It explains offences of custodial torture which are committed against women, children, and public in general with data. It also explains the causes of custodial crimes and the number of cases under it. The judicial pronouncements with the compensation awarded to victims of custodial torture were also highlighted.

From the above contribution of ACHR, and the evidence gathered in their report suggests that the use of torture is employed as a routine practice. A significant majority of the 16,855 persons in police and judicial custody between 1994 to 2008 were summoned, detained or arrested for petty offences. And a disturbingly high proportion those detained is poor or belongs to Scheduled Castes or the Scheduled Tribes.

From the study of various reports, Asian Centre for Human Rights recommended that:

1. The Supreme Court should amend the guidelines issued in the D.K. Basu judgment to apply while arrest and detention by the police
2. NHRC should make difference between custodial death in its statistics between deaths

through natural causes and death by abuses of human rights.

3. Government should reframe the Prevention of Torture Bill, 2008 after organizing public hearing and ensure its conformity with the UNCAT

2. National Crime Report Bureau¹¹

National Crime Report Bureau is an agency of government which gives the data of crimes all over the India annually. It contains the number of cases registered, sent for trial and convicted or acquitted in all kinds of offences. However the data of custodial crimes is also given under the report but it contains the data related to custodial death which is the result of torture inflicted on person. Therefore few data are also discussed here of custodial death. As this crime is committed by police personnel, the crimes and offences related to torture as well as by police personnel are shown below under different headings. The data of 2014 are enclosed herewith the data of last 5 years as and when required.

i) Complaints, Inquiries and cases registered against police personnel

The crime in India 2014 report shows the data of crimes related to police personnel. It reveals that Complaints received and cases registered against police personnel

A total of 47,774 complaints were reported in the country against police personnel during the year 2014. Inquiries were instituted in as many as 12,129 cases. Out of these, departmental inquiries were initiated in 11,711 cases, magisterial inquiries in 67 cases and judicial inquiries in 351 cases. Thus, inquiries were instituted in 25.4% of complaints.

The total number of cases that were either not substantiated or not found true was 20,126 which amounted to 42.1% of the total complaints reported. A decline of 6.5% was noticed in reported complaints against police personnel as compared to the previous year (from 51,120 in the year 2013 to 47,774 in 2014) see Table A.

Table (A) Complaints, Inquiries and cases registered against police personnel during 2010-2014

Year	No. of complaints received/alleged during the year	No. of Inquiry Instituted			Complaints/Cases declared false / unsubstantiated	No. of cases registered during the year	No. of cases sent for trials/charge-sheeted
		Departmental	Magisterial	Judicial			
2010	58,438	21,563	326	268	31,115	10,470	861
2011	61,765	21,144	282	246	28,789	11,171	913
2012	57,363	19,490	352	252	30,875	2,289	839
2013	51,120	14,928	247	655	26,640	1,989	799
2014	47,774	11,711	67	351	20,126	2,601	1,268

Sources: Crime in India report 2014. NCRB New Delhi

This table also shows the number of complaints, inquiries and cases registered against police personnel during 2010-2014. Highest number of cases are in the year 2011 i.e. 61,765 but the number of cases sent for trial or charge sheeted were 913 only which is less than 2% of total cases. This shows that in most of the cases declared to be false. The number of cases from 2010 to 2011 shows an increase but in all from 2011 to 2014, number of complaints, inquiries and cases registered against police personnel are decreasing.

In the year 2014 complaints, inquiries and cases registered against police personnel according to state wise allocation are enclosed in Table (B). The maximum complaints against police personnel were received in Delhi which accounted for 24.9% (11,902 out of 47,774 complaints) followed by Madhya Pradesh accounted for 22.8% (10,887 complaints), Maharashtra 13.7% (6,528 complaints) and Chhattisgarh 6.5% (3,105 complaints). See Table B

Table (B) Complaints/Cases Registered Against Police Personnel During 2014

S.No.	State/UT	Number of complaints received during the year	Number of Inquiry Instituted			Number of Criminal Cases registered during the year
			Departmental	Magisterial	Judicial	
(1)	(2)	(3)	(4)	(5)	(6)	(7)
STATES:						
1	Andhra Pradesh	189	79	0	32	128
2	Arunachal Pradesh	23	4	0	7	24
3	Assam	48	30	1	11	28
4	Bihar	279	268	0	2	8
5	Chhattisgarh	3105	922	2	0	57
6	Goa	38	2	0	1	38
7	Gujarat	1144	782	3	35	417
8	Haryana	2214	748	0	0	25
9	Himachal Pradesh	383	74	0	0	10
10	Jammu & Kashmir	1209	742	0	1	32
11	Jharkhand	2	2	0	0	2
12	Karnataka	211	58	5	58	140
13	Kerala	1003	829	2	17	172
14	Madhya Pradesh	10887	1764	9	9	73
15	Maharashtra	6528	727	8	60	487
16	Manipur	141	12	0	0	0
17	Meghalaya	5	1	0	1	5
18	Mizoram	0	0	0	0	0
19	Nagaland	10	6	1	0	10
20	Odisha	40	14	1	21	26
21	Punjab	2036	466	2	0	115
22	Rajasthan	2881	541	14	8	167
23	Sikkim	0	0	0	0	0
24	Tamil Nadu	138	50	10	57	126
25	Telangana	285	65	0	0	100
26	Tripura	11	3	0	8	11
27	Uttar Pradesh	1848	1805	4	2	170
28	Uttarakhand	140	139	0	0	2
29	West Bengal	96	82	5	2	25
TOTAL STATE(S)		34894	10215	67	332	2398
UNION TERRITORIES:						
30	A & N Islands	18	0	0	18	17
31	Chandigarh	951	951	0	0	4
32	D&N Haveli	1	0	0	1	1
33	Daman & Diu	1	0	0	0	1
34	Delhi UT	11902	540	0	0	173
35	Lakshadweep	2	0	0	0	2
36	Pondicherry	5	5	0	0	5
TOTAL UT(S)		12880	1496	0	19	203
TOTAL (ALL INDIA)		47774	11711	67	351	2601

Sources: Crime in India report 2014. NCRB New Delhi

ii) Involvement of police personnel and action taken against them

A total of 1,482 police personnel were arrested during the year 2014. Out of which 1,166 police personnel were charge-sheeted/sent up for trial during the

period. 146 Cases were either withdrawn or disposed of and 126 Trials were completed in respect of police personnel in which 82 were acquitted and 44 were convicted. The relevant details for the last five years are presented. See Table C.

Table (C) Number of police personnel under trial, convicted & acquitted during 2010-2014

Sl. No.	Year	No. of police personnel sent for trial	No. of police personnel whose cases withdrawn or otherwise disposed of	No. of police personnel in whose cases trial was completed	No. of police personnel	
					Convicted	Acquitted
1	2010	1,107	141	205	53	152
2	2011	1,229	475	439	47	392
3	2012	1,147	633	158	42	116
4	2013	1,250	412	154	53	101
5	2014	1,166	146	126	44	82

Sources: Crime in India report 2014. NCRB New Delhi

The data of last five years shows the number of police personnel acquitted and convicted. It can be conclude that the convicted personnel are less in number than acquitted as in most of the cases the torture cannot be proved this shows that there is an urgent need to formulate law which will make the procedure easier and conviction possible.

iii) Departmental action against police personnel

Departmental action taken by the States/UTs against the erring police personnel indicates the disciplinary control being exercised by the concerned authorities on 29,726 police personnel. Enquires were conducted against 14,778 police personnel during the year out of which 5890 cases were either withdrawn or otherwise disposed of in respect of 5,890 policemen. Under the action taken against the police personnel, 416 police personnel were either dismissed or removed from the service. The highest dismissals/removals were reported from Delhi (68) accounting for 16.3% followed by Uttar Pradesh (62), Punjab (59) and Gujarat (28). Minor punishments were given to 12,549 police personnel and major punishments were awarded to 4,637 police personnel during this period. In 4,572 departmental enquiries, charges were not proved and filed and 9,853 departmental enquiries were pending at the end of the year 2014. The relevant details for the last five years are presented. See Table D.

Table (D) Departmental action and punishment awarded to police personnel during 2010—2014

Sl. No.	Year	Number of Personnel			Major punishment awarded	Minor punishment awarded
		Against whom disciplinary action initiated	Whose cases withdrawn or otherwise disposed off	Dismissed/ removed from Service		
1	2010	27723	5125	666	4561	17006
2	2011	26736	8500	873	4482	15004
3	2012	23720	7477	608	4199	11900
4	2013	24217	7021	544	3980	13724
5	2014	29726	5890	416	4637	12549

Sources: Crime in India report 2014. NCRB New Delhi

From the table above, it can be concluded that the Departmental action and punishment awarded to police personnel during 2010—2014 shows that in most of the cases minor punishment has been awarded which shows loss of faith in executive function. Moreover the police has an apprehension that their act of torture will be punished only by minor punishments, they continue practicing torture activities. Therefore, there is a need to enact an strict law for the same.

iv) Custodial Rape

As the topic of research deals with custodial torture: laws and policies with special reference to women victims. The data above contains the facts of both and women, but rape is an offence against women which is studied under this heading .Custodial rape viz. rape under custody of police, of hospital, judicial custody etc. has been added for the first time in crime in India report 2014. During the year 2014, Out of 36,735 total rape cases in the country, 197 cases were reported as custodial rapes. Highest number of custodial rape cases were reported in Uttar Pradesh (189 cases consisting of 5 cases of Gang rape and 184 cases of other custodial rapes) followed by Arunachal Pradesh (4 cases of custodial rape) Rajasthan (3 cases consisting of 2 cases of custodial gang rape and 1 case of other custodial rape) and Pondicherry (1 case of custodial rape other than gang rape). This figure shows that the women are subject to fear and rape she enters in police station.

v) Deaths in Police Custody

The conversion rate of Custodial torture into Custodial death are increasing day by day therefore the cases registered for deaths in police custody in the year 2010 to 2014 have been discussed and the information on deaths in custodial crimes are recorded under the following categories:

- Deaths in police custody / lock up (of persons remanded to police custody by court).

In the year 2014, there were 32 deaths in police custody or disappearance of persons from police

custody who were remanded to such custody by the Court. The highest such deaths or disappearance of persons have been reported in Andhra Pradesh (16).

- b) Deaths in police custody/lock up (of persons not remanded to police custody by court).

A total of 61 deaths in police custody or disappearance of persons from police custody, who were not remanded to police custody by court, were reported during 2014, showing a decline of 37.1% in 2014 over 2013 (97 deaths or disappearance). Majority of such incidents were reported in Maharashtra (17) followed by Uttar Pradesh (8), Tamil Nadu and Gujarat (7 each). These four States together have accounted for 63.9% (39 out of 61 deaths) in country during 2014. See Table E

Table (E) No. of Death in Policy custody/Lockup 2010-2014

S. No.	Death in Police Custody/Lockup	2010	2011	2012	2013	2014
1	Of persons remanded to police custody by court	25	29	38	21	32
2	Of persons not remanded to police custody by court	45	75	71	97	61

Source: Crime in India report 2012, Crime in India report 2014. NCRB New Delhi

This table shows data of last five years in which Deaths in police custody/lock up of persons remanded to police custody by court is at increasing rate while Deaths in police custody/lock up of persons not remanded to police custody by court is higher in 2011 and 2013 which decrease in year 2014.

vi) Human rights violation by police

An attempt has been made since 1999 to gather information on details of cases where human rights were violated due to police excesses such as 'disappearance of persons', 'illegal detentions', 'fake encounters', 'extortion', 'torture', etc. The details are presented. See Table F

TABLE (F) Incidence of Human Rights Violation by Police and Their Disposal During 2014

S. No.	Incidence of	No. of Cases registered		No. of Cases found to be fault		No. of Police Personnel			
		(3)	(4)	(5)	(6)	Charge-sheeted		Convicted	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1	Disappearance of Persons	35	0	34	0	1	0	0	0
2	Illegal Detention or Arrests	0	0	0	0	0	0	0	0
2.1	Illegal Detention or Arrests of SCs	0	0	0	0	0	0	0	0
2.2	Illegal Detention or Arrests of STs	0	0	0	0	0	0	0	0
2.3	Illegal Detention or Arrests - Others	0	0	0	0	0	0	0	0
4	Fake Encounter Killings	0	0	0	0	0	0	0	0
5	Human Rights violation against Terrorists or Extremists	0	0	0	0	0	0	0	0
6	Extortion	3	0	0	0	4	0	0	0
7	Hurt/Injury	16	4	4	0	7	0	1	0
8	Failure in Taking Action	0	0	0	0	0	0	0	0
9	Assault on Women with Intent to Outrage her Modesty	14	3	3	0	11	1	2	0
10	Insult to the Modesty of Women	0	0	0	0	0	0	0	0
11	Atrocities on SCs	20	0	13	0	5	0	0	0
12	Atrocities on STs	1	0	7	0	2	0	0	0
13	Torture	1	0	1	0	0	0	0	0
13.1	Torture of SCs	1	0	1	0	0	0	0	0
13.2	Torture of STs	0	0	0	0	0	0	0	0
13.3	Torture of Others	0	0	0	0	0	0	0	0
14	Failure in Registering FIR	0	0	0	0	0	0	0	0
15	Section 4 of the SC/ST (POA) Act, 1989	1	0	0	0	0	0	0	0
16	Sec. 23(4) of the Protection of Children from Sexual Offence Act, 2012	1	0	0	0	0	0	0	0
17	Others Human Rights Violations	6	3	0	0	2	0	0	0
Total		98	10	62	0	30	3	3	0

Source: Crime in India report 2014. NCRB New Delhi

A total of 108 cases of human rights violation by police (State Police + Central Paramilitary Forces) were reported during 2014, out of which 62 were found to be false. 33 policemen were charge-sheeted and 3 police personnel were convicted for these human rights violations. "Disappearance of persons" has reported the highest number of cases registered amounting to 35 cases followed by "hurt/injury" & "atrocities against SCs" (20 cases each), "assault on women with intent to outrage her modesty" (17 cases), "extortion" (3 cases) and "atrocities on STs", "torture", "sec. 4 of the SC/ST (POA) Act" and "sec. 23(4) of the Protection of Children from Sexual Offences Act, 2012" (1 case each).

OBSERVATION:

From the above study it can be said that the numbers of cases against torture are increasing day by day and efforts put to eradicate it seems to be insufficient.

There is continues increase in number of complaints and torture against police.

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The present positions of custodial torture with facts and figures which in turn make us realize that the police atrocities if not regulated the police 'rakshak' become 'bhakshak'. This chapter contains the data of last five years which shows an increasing number of police atrocities against accused including data of custodial rape as well as custodial death. The figures of action taken against police shows that the government is least interested in giving punishment to their agents as they are performing sovereign function.

Therefore, efforts to control the police power must be initiated otherwise the faith of public over the executive body will be at stake. The people fear to file any case against police as they know that no action will be taken against them. Moreover the instances of complaints registered are more and the convictions of such cases are very least. Therefore efforts should be made to improve the role of police.

END NOTES:

"Prevention and Punishment of Torture Bill, 2009";
Report of the National Conference on the
Prevention of Torture Bill, 2008 as drafted by
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