

# Legislative Measures to Prevent Torture and Brutality – Constitution of India and Other Statutory Provisions

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**Abstract – Physical torture of the prisoners in police custody has been very unavoidable for a very long while in India. The prisoners in police guardianship in India incorporate undertrials (people who have been accused of perpetrating wrongdoings) just as political detainees. The truth is, neither of these two sorts of prisoners is saved from physical torture delivered by the police in their own guardianship. A quick survey of severity in police authority in India shows that different types of physical tor-tures are done by the police, including assault.**

**Keywords: Police, Torture and Mercilessness**

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## 1. INTRODUCTION

The British ruled India for right around two centuries (1757 through 1947). Amid those two centuries, the British Common Law continuously infested the Indian legitimate framework and established firm roots in the arrangement of the organization of criminal equity in India. The second 50% of the 1800s saw a spurt of an over the top number of establishments and enactments.

Preceding 1882, there was no uniform law of criminal strategy employable all through India. There were discrete laws for the Presidency towns (for example Madras Presidency, Bombay Presidency, and so forth.) and rural zones, not to discuss the neighborhood frameworks in different realms of other secured kingdoms (Krishnamurthy, 1996).

The methodology pertinent to the Presidency towns was first united by the Criminal Procedure Supreme Courts Act (XVI of 1852) which was in this manner supplanted by the High Court Criminal Procedure Act (XIII of 1865). The laws pre-scribing the method to be material to the territories were classified and authorized by the Criminal Procedure (Act XXV of 1861); it was revised near its heel by the Act X of 1872. At that point, the Criminal Procedure Code of 1882 (Act X of 1882) gave the nation a uniform law of criminal technique out of the blue. It was later supplanted by the new Code of Criminal Procedure in 1898; this Code shapes the establishment for the procedure as exists now. After autonomy, a few changes have been made in the Code. The corrected

variant is known as the Code of Criminal Procedure, 1973 (Dutta, 1990).

Each individual working in law authorization is a piece of the criminal equity framework, which plans to avoid/control wrongdoing and ensure the general population. The direct of the functionary affects the entire framework. In this way, law authorization work force need moral principles through an effectively thought out and characterized implicit rules that would enable these staff to rehearse self-control. In India, guidelines are recommended by the Code of Criminal Procedure, 1973, and the Police Acts just as the Police Manuals of different states with respect to how the police ought to carry on. The Indian Police Commission, 1901, resuscitated one of the requirements of the Police Act of 1861 by changing the Indian Evidence Act wherein admissions made to a police officer were unacceptable as proof in the official courtroom (Krishnamurthy, 1996). Likewise, the Indian Penal Code presented segments 330 and 331 out of 1982 endorsing discipline for the offense of torture by the law authorization work force (Vadackum-chery, 1997).

The Third National Police Commission, 1980, in its Fourth Report talked about issues identifying with the maltreatment of police control in the loathsome third degree techniques in police guardianship and furthermore made a few proposals to check this rank abuse of power other than naming it as an open infringement of the standard of law (Subramanian, 1997). In India, a Code of Conduct

for Police was embraced and issued by the Government of India in 1985 (Vadackum-chery, 1997). This depended on the recommendations of a Conference of Chiefs of Police in India in 1983. This Code likewise portrayed the moral standards of conduct of police faculty in care; it states, "law authorization staff, in doing their obligation, will beyond what many would consider possible, apply nonviolent implies before depending on the utilization of power and guns" (Subramanian, 1997, p. 266).

## 2. LITERATURE REVIEW

The truth of the matter is, "law has restricted utilization of custodial brutality in undeniable terms" (Vadackum-chery, 1997, p. 19). The Indian Penal Code makes it an offense to willfully make physical damage coerce admission (Subramanian, 1996). Further-more, torture (any sort of physical brutality, notwithstanding prompting passings) of prisoners is precluded under Indian law, under areas 330 and 331 of the Indian Penal Code (Dhagamwar, 1993). The Constitution of India gives a few central rights to all residents through Articles 20, 21, 22, 39(A), and so on.; these Articles give the privilege to life or personal freedom, and in particular, opportunity from physical torture (dispensed by criminal equity personnel) to all natives [see Roy, 1997]. The Indian Evidence Act disallows utilization of admission made before a cop and the one got through affectation, risk, or brutality, in criminal preliminaries. The Indian Police Act under which the whole law authorization in India determines its authenticity and po-liceman his forces to work, precludes unwarranted individual brutality by police staff against the prisoners in police guardianship (Subramanian, 1997).

One sort of physical brutality utilized against detainees in police care is assault. "Assault keeps on being an exasperating part of custodial viciousness in India" (Amnesty International, 1998, p. 1). Assault is characterized in Section 375 of the Indian Penal Code as sex with a lady in explicit circumstances, the hugest issues being "without wanting to" and "without her assent". Normally, a base term of seven years of imprisonment might be forced on a sentenced attacker [Indian Penal Code, Section 376(1)]. In 1979, the Indian Government alluded update of the law on assault to the Law Commission of India. The Commission's 84th Report prescribed changes to the law relating to assault; a portion of these suggestions were fused into the Criminal Law (Amendment) Act of 1983. This Act presented another classification of offense — "custodial assault" (Amnesty International, 1994a).

Because of this order, since 1983, Section 376(2) of the Indian Penal Code recommends a progressively unforgiving discipline for cops who submit assault against ladies in their guardianship — ten years of detainment is the compulsory sentence; notwithstanding, life detainment alongside a financial fine may likewise be forced. The harsher sentence is

additionally pertinent to some different episodes of assault including where a man is discovered liable of assaulting a pregnant lady, a young lady under twelve years old, and assault. Another critical change realized by the Criminal Law (Amendment) Act of 1983 was that the "weight of confirmation" with respect to consent was exchanged to the blamed in situations where assault happens in police care. The blamed policeman or other authority should along these lines demonstrate that the lady consented, instead of the lady demonstrating that she did it.

Another critical issue with respect to custodial viciousness is custodial passings (ought to be better phrased as "custodial killings") of prisoners. The Third National Police Commission in 1980 made a few suggestions for managing custodial demise cases (Raghavan, 1999). Thusly, the Government of India issued a significant round in 1985 concerning passings of prisoners (coming about because of police excesses) in police guardianship. As per the round, a legal request is obligatory in all instances of custodial passings; the last report of the judicial request must be distributed in the authority Gazettes by the particular State Governments not long after the receipt of the report. In the event that it is felt that judicial investigation into custodial passings may not be feasible, an option must be attempted by stretching out the Coroner's Act to every single urban territory so all such passings are inspected under Section 174 of the Code of Criminal Procedure, 1973, by a coroner. Likewise, all custodial passings must be treated as "offensive" cases and they should be at first explored by an officer of the rank at the very least that of a Superintendent of Police. The Law Commission had recommended the moving of weight of verification in instances of custodial passings; appropriately, the Section 111 of the Indian Evidence Act was altered. Indeed, even the Supreme Court decided for the correction in State of Uttar Pradesh v. Slam Sugar Yadav case in 1985 (Vadackumchery, 1997). Likewise, the Section 302 of the Indian Penal Code has been changed to treat every single custodial murdering harshly.

The Supreme Court of India and different State High Courts have censured custodial viciousness and spoken unequivocally against barbarities submitted by police staff against prisoners in police custody. They have suggested stringent approvals for custodial savagery. The Supreme Court has observed - "The police, with their wide powers are well-suited to violate their energy to identify wrongdoings and are enticed to utilize the solid arm against the individuals who happen to fall under their confined locale. That inclination and enticement should in the bigger interest of equity, be stopped from developing in any way" (referred to in Subramanian, 1997, p. 238).

Subsequently, in a perfect world, plainly custodial violence (as far as torture, assault, and custodial demise/slaughtering) submitted by law requirement faculty is illicit and those staff (who should maintain the law) can't entertain themselves with un-legal conduct. It undermines human poise; brutalizes the police framework; relinquishes the trust of the general population and the legal executive, and furthermore influences the picture of law implementation all in all. Besides, theoretically it uncovered the cop to the danger of criminal obligation and resulting authorize. In spite of all these perfect/hypothetical shields, what are the substances of police ruthlessness against the prisoners in police authority? The following segment portrays those realities in India.

### 3. BRUTALITY

The greater part of all, physical torture in police care results in custodial passings of several prisoners, the across the nation wonder of custodial passings keeps on surfacing with exasperating recurrence. For example, the developing rate of custodial violence in the province of West Bengal has turned into a sensitive political issue a lot to the humiliation of the decision Left Front government. The custodial loss of life in that state since the Left Front alliance came to control in 1977 (to July, 1995) is accounted to 220 (The Hindu, August 11, 1995) . At a question and answer session on December 10, 1999, the Chairman of the West Bengal Human Rights Commission Mr Justice M. K. Mukherjee expressed that "there has been right around one custodial passing each week over the province of West Bengal" (The Statesman, December 11, 1999, p. 4) . Pardon International in their report, entitled Amnesty International and India (March, 1996) expressed, "The NHRC [National Human Rights Commission] in India recorded 130 passings in police guardianship the nation over amid a ten-month time span in 1995. Those tortured to death were both criminal suspects and political detainees" (p. 6).

Given the degree of physical torture, assault, just as passings (coming about because of torture) in police care crosswise over India, what pursues next is a presentation of some ongoing illustrative instances of assortments of physical torture, assault, and custodial passings.

#### Physical Torture

- Rajiv Rattan was restricted at Kharar police station (in the territory of Punjab) for about fourteen days. While in care, he was tortured and sustained grave wounds that finished in the fracture of the neck of his femur bone, making him for all time debilitated (Times of India, December 5, 1999).
- Milan Sengupta was gotten by the police on December 4, 1999, and was kept at Sadar

police headquarters in Patna (in the territory of Bihar). In guardianship, the police beat him up savagely coming about to a bone break to his left side leg (Times of India, December 11, 1999).

- Tasleem and his companion Manish were severely pounded by a head constable and a constable in police care in New Delhi to extricate information about a burglary at Tasleem's neighbor's home, in November, 1999 (Times of India, December 18, 1999) .
- In July, 1999, the West Bengal Human Rights Commission announced that over the province of West Bengal the police have utilized exorbitant powers on under preliminaries just as political detainees in a few cases bringing about crack of bones and changeless incapacity too (The Statesman, July 7, 1999) .
- Abdul Sattar was taken to Bassi police headquarters (in the territory of Rajasthan) in August, 1998, and was stripped bare and beaten. For five days he was tortured including electric stuns to his hands, feet, and privates. Additionally, Sita Ram and Satya Narayan were pummeled by the police in a similar police headquarters amid a similar time. Each of the three were compelled to admit to genuine wrongdoings (Amnesty International, 1999) .
- In February, 1997, seven prisoners in Rajkot (in the territory of Gujarat) police guardianship were blinded by police work force; a mixture of a restorative emollient and bean stew powder had been scoured at them by police authorities to extract admission to different violations (Amnesty International, 1998) .
- Prakash Singh and his significant other were arrested by the Punjab Police in April, 1996, on doubt of having drugs. They were both stripped and beaten with sticks. Likewise, wooden rollers were moved over the muscles of their thighs. Later on, they were discharged on safeguard, and documented a grievance of torture with the Punjab and Haryana High Court (Amnesty International, 1997a)
- During 1979 and 1980, thirty men and young men were blinded in police authority in Bhagalpur (in the territory of Bihar) (Amnesty International, 1997a).

## Assault

- The evening of July 13, 1996, a few police officials grabbed 18-year-old Nisha Devi and kept her in police guardianship in Nangal Kaha-dar village, Etawah region, in the territory of Uttar Pradesh. That night, while in authority, she was assaulted by more than one cop to reveal the whereabouts of her brother by marriage whom the police associated with a theft that occurred two days prior (Amnesty International, 1997c) .
- On May 5, 1995, Devika Rani, a 45-year-old female inhabitant of Ludhiana, in the territory of Punjab, was taken from the Civil Hospital by the police; she was visiting her better half who was experiencing treatment at the medical clinic. Her 18-year-old child, Rajesh Kumar had prior been captured and was in police care at the Atam Park police post. Mrs. Rani was taken to a similar police headquarters. In care, she was tortured and attacked by an Assistant Sub-Inspector, the Head Constable, and two other men within the sight of her child; this was done to pressure her admission about her child's inclusion in a criminal case. She was kept in improper confinement for six days, and was at last discharged from the police post on May 11 at 9:00 pm (Amnesty International, 1997c) .
- During early morning hours on August 1, 1996, 37-year-old Elangbam Ahanjaobi Devi was stripped and assaulted by two police authorities before her child at a police headquarters in Imphal in the province of Manipur. Ahanjaobi Devi and her better half at long last detailed the episode to the Manipur Human Rights Commission in February, 1997 (Amnesty International, 1997c) .
- On January 2, 1994, a female occupant of Ludhiana (in the territory of Punjab) was assaulted by Jagjit Singh, a worker of the Punjab Police, while she was in police authority. The injured individual was assaulted to extricate data about her husband's association in a criminal episode (Subramanian, 1997).
- On April 16, 2000, 26-year-old Srichand was arrested at Modi Nagar police headquarters in the territory of Uttar Pradesh, concerning a robbery case. He was tortured to death by the Uttar Pradesh Police; the police took his body back to his home on April 26, 2000 (The Hindustan Times, April 27, 2000).
- Sikandar Singh, an undertrial was bolted up at , Lakhisarai police headquarters (in the territory of Bihar) from September 6, 1999. Ceaseless physical torture by police faculty prompted his passing in police care on December 17, 1999. The Superintendent of Police in Bihar conceded that the undertrial kicked the bucket in police guardianship (Times of India, January 8, 2000) .
- In September, 1999, 21-year-old Devinder Singh kicked the bucket in police care in the province of Punjab, subsequent to being tortured by the police. An instance of homicide was along these lines recorded against a police sub-monitor regarding the passing of Devinder Singh (Amnesty International, 2000) .
- On January 19, 1994, 28-year-old Udayan was captured and arrested at Mannarghat police headquarters, Palakkad area (in the province of Kerala) purportedly for conveying fake currency. Pitiless beating by police work force brought about his passing the next day (Amnesty International, 1994b).
- On July 30, 1993, Raju Bhujbal passed on in police guardianship in Tura (in the province of Meghalaya) because of torture (Amnesty International, 1994c) . [See p. 4-8 of this Report for ten illustrative instances of custodial passings coming about because of torture]
- On December 29, 1993, Chandrasekharan passed on in police guardianship at the Pondicherry police station (in the province of Tamil Nadu) because of merciless torture delivered on him by police work force (Subramanian, 1997). [See p. 378-383 for six illustrative instances of custodial passings coming about because of torture]

## Custodial Death

- On June 19, 2000, 25-year-old Lalan Chakraborti passed on in police care at the Bolpur police headquarters in Birbhum region of the province of West Bengal. Therefore, a legal examination has been requested by the Calcutta High Court (Anandabazar Patrika, June 19, 2000) .

As to death, the truth of the matter is - consistently many prisoners pass on in police guardianship the nation over because of physical torture. The quantities of such passings have been accounted for by Amnesty International as pursues: 517 between January 1, 1985 through December 31, 1993 (Amnesty International, 1994c); 200 individuals had kicked the bucket in 1996 (Amnesty International,



1997); and no less than 300 passings in 1997 (Amnesty International, 1998) .

Close to these numbers, another fascinating certainty is - numerous Indian cops have faith in inflicting torture on prisoners in police care. In March 1997, a review was led among Indian Police Service officers at the National Police Academy, Hyderabad. The discoveries from the overview were reported by the news every other week India Today. The most shocking finding was — "17 percent [of those IPS officers] concurred that prisoners in police care ought to be exposed to torture (third degree strategies) to get to reality" (Amnesty International, 1997b, p. 1)

#### **4. LEGISLATIVE MEASURES TO PREVENT TORTURE AND BRUTALITY – CONSTITUTION OF INDIA AND OTHER STATUTORY PROVISIONS**

The standard of law implies that nobody will be denied of his freedom aside from with the expert of a law and all people will be equivalent under the steady gaze of the law. It implies that even the Government and its operators need to act as indicated by and inside the cutoff points of the law . In a majority rule government and under the Indian Constitution, the police as illustrative of a State who's sway lies in the Indian individuals are local officials and the police station is an open property. The lead inside it ought to adjust to law, needs to regard fundamental human opportunity to guarantee an essential certainty between the general population of a city, State or area and the wings of the State, the lawfulness apparatus, i.e., the police. Custodial torture, cruel treatment, binding detainees, third degree strategies which are frequently utilized and drilled by police authorities throughout their official obligations are against the standards of the humanized countries and are uncouth exercises violative of the standards of principle of law and human poise. The fundamental target of the police is to capture crooks, to secure well behaved residents, to anticipate commission of wrongdoings and to keep up peace.

Torture has been rehearsed as often as possible in India paying little mind to the Government in power. Torture is carried out all the time by requirement authorities over the span of criminal examinations. According to International Rehabilitation Council for Torture Victims, the in all probability culprits to be associated with torture and different types of abuse are: the police, the military, paramilitary powers, State controlled powers, Governmental authorities, wellbeing experts and co-prisoners acting with the endorsement or on the requests of open authorities . In India the primary culprits of torture have been cops and other law implementation authorities, for example, paramilitary powers and those experts, who have the ability to confine and cross examine people.

In India, torture isn't expressively restricted by the Constitution yet the Ministry of Home Affairs has asserted that Indian law contains satisfactory arrangements for protecting human rights and adequate shields against police severity and torture likewise exist. In spite of the fact that, the disallowance of torture in explicit terms needs Constitutional specialist, Indian courts have held that Article 21 of the Constitution suggests insurance against torture.

Arrangements under the Indian Legal System: To Protect a Person from Custodial Torture

Insurance against Conviction or Enhanced Punishment under Ex-Post Facto Law

Article 20(1) of the Constitution of India gives that, no individual will be indicted for any offense aside from infringement of law in power at the season of commission of the demonstration charged as an offense, nor be exposed to any more noteworthy punishment than that which may have been exacted under the law in power at the season of the commission of an offense.

The idea of ex-post facto law has its underlying foundations in the adage nulla poena sine lege, which profounds the possibility that no man will be made to languish with the exception of over a particular rupture of the criminal law. The ramifications of this saying can be extensively expressed as under:-

- It denies review inconvenience of culpability.
- It denies the expansion by similarity of a criminal guideline to cover a case not clearly falling inside it, and.
- It restricts plan of the punitive laws in exorbitantly unclear and wide terms. Article 20(1) sets two restrictions upon the law making intensity of each authoritative expert in India as respects to review criminal enactments. It disallows - the creation of an ex-post facto criminal law for example making a demonstration a wrongdoing out of the blue and making that law review and the curse of a punishment more prominent than that which may have been incurred under the law, which was in power when the demonstration was submitted.

Qualification between ex-post facto law and review law was first time examined if there should be an occurrence of *Colden v Bulf*. For this situation Court watched, "Each ex-post facto law should fundamentally be review yet every review law isn't ex-post facto law. The previous just is precluded. Each law that removes or hinders, rights vested

pleasingly to existing laws is review and for the most part unjustifiable and might be harsh, it is a decent broad standard that a law ought to have no hindsight, however there are cases in which the laws may legitimately and to support the network, and furthermore of people, identify with a period predecessor to their beginning, as status of insensibility or a weight that makes or exasperate, the wrongdoing or increment the discipline or change the guidelines of proof with the end goal of conviction. There is an extraordinary and evident contrast between making an unlawful demonstration legitimately and the creation a guiltless activity criminal and rebuffing it as a wrongdoing".

The idea of ex-post facto law as gave under the Constitution of India is perceived under the global instruments as Article 11(2) of the Universal Declaration of Human Rights gives that 'nobody will be held liable of any correctional offense because of any demonstration or exclusion, which did not comprise reformatory offense, under national or worldwide law when it was submitted. Nor will a heavier punishment be forced than the one that was pertinent at the time the correctional offense was submitted'. Article 15 of the International Covenant on Civil and Political Rights gives that 'nobody will be held liable of any criminal offense because of any demonstration or exclusion which did not comprise a criminal offense, under national or universal law, when it was perpetrated. Nor will a heavier punishment be forced than the one that was pertinent when the criminal offense was carried out. On the off chance that resulting to the commission of the offense, arrangement is made by law for burden of lighter punishment, the guilty party will profit there by'.

Articles 245, 246 and 248 of the Constitution present power on the Parliament and the State Legislature to make laws. There is nothing in these Articles to give that the Indian lawmaking bodies don't have the privilege to make review enactment which each sovereign council has. Notwithstanding, the main express restriction forced upon the power is review enactment that is contained in Article 20(1).

In Shiv Bahadur's case it was seen that forbiddance contained in the Article 20(1) isn't limited to the legitimacy or going of the law yet reaches out to conviction or sentence dependent on its character as an ex-post facto law. Article 20(1) denies the making of another offense with review impact. It doesn't preclude the production of another standard of proof or an assumption for a current offense.

In Soni Devrajibhai Basubai's case the Supreme Court illuminated the extent of Article 20(1). For this situation endowment demise culpable under the recently embedded Section 304-B of Indian Penal Code was looked to be made material against the respondents. The appealing party's girl was hitched to the respondent on 13 August 1986, and she kicked the

bucket under secretive conditions. The litigant presumed injustice and got a case enrolled under Section 498-A read with Section 34 of IPC. He further connected for an appeal looking for the expansion of the charge under recently embedded Section 304-B of IPC which had turned out to be successful from 19 November 1986. The Supreme Court held that as on the date of the passing of little girl of the litigant, Section 304-B of IPC had not appeared and along these lines the insurance of Article 20(1) of the Constitution of India would be accessible to the blamed people.

The words 'punishment more prominent than which may have been dispensed' mean an individual might be exposed to just those punishments which were endorsed by the law that were in power when he submitted the offense. On the off chance that an extra or higher punishment is recommended by any law made therefore to the commission of the offense that won't work against him in regard of the offense being referred to. Notwithstanding, the Article does not disallow the substitution of a punishment which isn't higher or more prominent than the past one.

## CONCLUSION

No individual will be arraigned and rebuffed for a similar offense more than once. Article 20(2) depends on the adages *nemo debet bis vexari, si constat curiae quod sidpro una et eadem causa*, which implies that nobody must be vexed twice on the off chance that it appears to the court that it is for one and a similar reason.

The Constitution of India as well as Section 26 of the General Clauses Act, 1897 gives that, 'where a demonstration or exclusion establishes an offense under at least two institutions, at that point the wrongdoer will be obligated to be arraigned and rebuffed under either or any of those authorizations however will not be subject to be rebuffed twice for a similar offense,' and Section 300 of the Criminal Procedure Code, 1973 have perceived a similar right of a denounced individual. Arrangement of Section 300 of Criminal Procedure Code, 1973 is more extensive in their ambit as opposed to Article 20(2) of the Constitution of India. This is so as the Constitutional insurance is accessible just to a denounced individual who has been arraigned and rebuffed, though under the Criminal Procedure Code, 1973 the assurance offered likewise stretches out to a charged individual who had been indicted and absolved.

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