



Police Brutality: Need for Comprehensive Torture Prevention Law

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ABSTRACT

This paper is focused on the effective implementation of United Nation Convention against Torture in India and maintaining harmonious balance between individual liberty and the need of social defense, which can be possible access to mechanism of justice and to prompt redress. Custodial violence continues to be prevalent in India. So far, neither the Indian Penal Code nor the Code of Criminal Procedure Code specifically or comprehensively addresses custodial torture. Torture is a common scenario in the country everyday this inhuman practice is taking place in India, which is not expected because torture represents the uncivilized human society. Thus efforts to bring a standalone law against torture had lapsed. Though India had signed the U.N. Convention Against Torture in 1997, it is yet to ratify. The ratification by India will improve its image as a responsible & a liberal nation & will also improve cooperation in criminal matters.

KEYWORDS

Torture, United Nation, Criminal Justice, Police Custody, Confession, Violation. .

(1) Introduction :

“The entire investigation conducted by the state investigating agency appears to be a desperate effort in damage control so as to ensure that no embarrassment is caused to the higher police functionary”². The right to freedom from torture is enshrined in number of human rights instruments which provide for protection of all individuals from being intentionally subjected to severe physical or psychological distress by, or with the approval or acquiescence of, government agents acting for a specific purpose, such as to obtain information. Custodial torture of criminal suspects in custody occurs too often in India. In response to this longstanding problem, Indian authorities

including the courts and the National Human Rights Commission have set out detailed procedures to prevent and punish police use of torture and ill-treatment³. However, Indian police still often torture suspects to punish them, gather information, or coerce confessions. In a report prepared by the Asian Centre for Human Rights, it has come to light that a total of 1,674 custodial deaths, including 1,530 deaths in judicial custody and 144 deaths in police custody, took place from April 1, 2017, to February 28, 2018. This implies 1,674 deaths in 334 days (11 months), i.e. over five custodial deaths per day on an average during 2017-2018⁴. This constitutes a significant increase in the number of custodial deaths as a total of 14,231 custodial deaths i.e about four custodial death per day on an average were reported during 2001 to 2010.⁵

State-wise custodial deaths in the period

S.No.	State	Deaths
1.	Uttar Pradesh	374
2.	Maharashtra	137
3.	Punjab	128
4.	Madhya Pradesh	113
5.	Bihar	109
6.	Rajasthan	89
7.	Gujarat	61
8.	Haryana	48
9.	Delhi	47
10.	Himanchal Pradesh	8
11.	J&K	4
12.	Chandigarh	2

(2) Perpetrator of Custodial torture :

³ Human Rights Watch, *Bound by Brotherhood India's failure to end killing in Police Custody*, December 2016 available at https://www.hrw.org/sites/default/files/report_pdf/india1216_web_0.pdf accessed on 13/05/2019 ⁴ Surav Datta, *Recovery based on coerced confession is illegal : Supreme court*, available at <https://www.newsclick.in/index.php/recovery-based-coerced-confession-illegal-supreme-court> accessed on 15/05/2019

⁵ Arijit Sengupta, *High numbers of custodial deaths:Police butchering basic human rights*, News Click, 28 June 2018, Available at <https://www.newsclick.in/high-numbers-custodial-deaths-police-butchering-basic-human-rights> accessed 31/05/2019

About 40% of complaints received every year by the NHRC are against the police, mainly for custodial violence. It is forbidden by law. It makes people to lose trust in police⁶. Torture is integral part of criminal investigation in India and considered as cheap and easy method in investigation. Therefore, It is tool of oppression used by, Police, prison guards, the military, para-military forces, armed opposition groups like the Naxalites (Indian Maoists), other public officials and non-state actors like upper castes, recovery agents of the Banks, forest department, Panchayats and so-called civil society organizations to threaten and intimidate detainees⁷. Brutal practices and the misuse of force is very common for those who are in the position of authority because they are given legal immunity from act of torture and extra-judicial killings under various legal provisions of Armed Forces Special Power Act (AFSPA) and section 197 of Cr.P.C.

These immunities play significant role in the prevalence of torture and violence.⁸

(3) Judicial Response :

The Supreme Court of India in various cases has laid down guidelines and principles of custody jurisprudence; leaving no space for any ambiguity in understanding the spirit behind the Constitutional and statutory provisions relating to human rights and human dignity In *Neelabati Bahera v. State of Orissa*,⁹ Hon'ble Supreme Court pointed out that prisoners and detenus are not denuded of their fundamental rights under Article 21 and it is only such restrictions as are permitted by law, which can be imposed on the enjoyment of the fundamental rights of the arrestee and detenus. Until three decades after independence, the courts in India continued to give primacy to the doctrine of "sovereign functions" and rarely granted relief in petitions filed against the State for vicarious liability for excesses. The situation changed after *Maneka Gandhi*

⁶ *Insight editorial ,Torture A global Problem, available at, <https://www.insightsonindia.com/2019/03/28/insights-into-editorial-reality-of-impunity-rhetoric-of-human-rights/> accessed on 31/05/2019*

⁷ *People's Vigilance Committee on Human Rights, Anti Torture Initiatives In India, available at <https://www.scribd.com/presentation/27506661/Anti-Torture-Initiative-in-India> accessed on 01/06/2019*

⁸ *Editorial, South Asia Speak, Pattern of Human Rights Violations through torture and other forms of organized violence in India,27 June 2009 available at <https://southiaspeaks.wordpress.com/2009/06/27/pattern-of-human-right-violation-through-torture-and-other-form-of-organized-violence-in-india/> accessed on 01/06/2019*

⁹ 1994(1) Recent Criminal Reports 18 (SC)

v. Union of India,¹⁰ where the Supreme Court ruled that the State actions resulting in the violation of life and liberty must be right, just and fair. In *Munshi Singh Gautam v. State of M.P*¹¹ it was observed by Hon'ble Supreme Court that personal liberty has an important role to play in the life of every citizen. Life or personal liberty includes a right to live with human dignity. There is an inbuilt guarantee against torture or assault by the State or its functionaries. For years now, the Court has raised the issues of increasing custodial torture and has preserved the basic fundamental rights of the citizens in various cases before it. In *Khatari v. State of Bihar*¹², the Bhagalpur blinding case, the Court introduced the principle of giving compensation to the victims for the first time. The principle for calculating quantum of compensation was laid down in *People's Union for Democratic Rights v. State of Biha*¹³ r. In *Sunil Batra (II) v. Delhi Administration*¹⁴, the Court considered solitary confinement of prisoners as a human perversity that should be avoided and issued suitable guidelines. The Apex Court while commenting on the violation of human rights because of indiscriminate arrest observed that, "the law of arrest is one of the balancing individual rights, liberties and privileges on the one hand and responsibilities on the other hand: of weighing and balancing or rights, liberties and privileges of the single individual and those of individuals collectively: of simply deciding what is wanted and where to put the weight and the emphasis: of deciding which comes first the criminal or the society, the law violation or the abider".

(3) Police Reforms:

Police is an exclusive subject under state list. States can enact any law on the subject of police. But most of the states are following the archaic Indian Police Act 1861. However, various Committees/Commissions in the past have made a number of important recommendations regarding police reforms. Notable amongst these are *Gore Committee on police training*, *National Police Commission (1978-82)*; the *Padmanabhaiah Committee*¹⁵ on restructuring of

¹⁰ 1978 AIR 597

¹¹ AIR (SC) 402 2005,

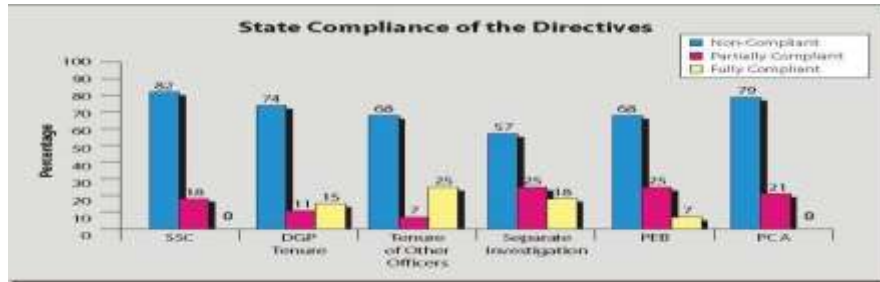
¹² AIR 1981 SC 928

¹³ 1987 AIR 355 1987 SCR (1) 631 1987 SCC (1) 265 JT 1987 (1) 18 1986 SCALE (2)1093

¹⁴ A.I.R. 1980, S.C. 1579.

¹⁵ Summary of Recommendations made by the Padmanabhaiah Committee on Police Reforms available at

Police (2000); and the *Malimath Committee on reforms in Criminal Justice System* (2002-03)¹⁶. Yet another Committee, *Ribeiro Committee*¹⁷, and *Soli Sorabjee Committee.*, *Prakash Singh Vs Union Of India* (2006) Supreme Court directives for Police Reforms : even the directions of SC have not been implemented by the states¹⁸.



The States brought out the following problems with the Police Reforms post Prakash Singh case¹⁹:

1. Political interference in police administration is minimal The need for a State Security Commission is questioned, as there is no unwarranted influence over the police. (Gujarat, Nagaland)
2. Undermines the power of the elected Government Setting up a State Security Commission with binding powers is likely to undermine the power of a constitutionally established State over the State police, lead to the creation of a parallel body which is not accountable to the people of

http://www.humanrightsinitiative.org/programs/aj/police/india/initiatives/summary_padmanabh_aiah.pdf accessed on 1/06/2019

¹⁶ K. Deepalakshami, *Malimath Committee recommendations on police reforms*, available at <https://www.thehindu.com/news/national/the-malimath-committees-recommendations-on-reforms-in-the-criminal-justice-system-in-20-points/article22457589> accessed on 1/06/2019

¹⁷ *Report of the Ribeiro Committee on Police Reforms A Critical Analysis* available at http://www.humanrightsinitiative.org/programs/aj/police/india/initiatives/analysis_ribeiro.pdf accessed on 01/06/2019

¹⁸ *Insight Editorial : Police Reforms in India: The story so far*, Available at <https://www.insightsonindia.com/2011/08/05/police-reforms-in-india-the-story-so-far/> accessed on 01/06/2019

¹⁹ Aishwarya Padmanabhanâ, "Prakash Singh v. Union of India An analysis of Police Reforms" available at https://www.supremecourtcases.com/index2.php?option=com_content&itemid=135&do_pdf=1&id=21218 (2011) PL May S-12 accessed on 01/06/2019 the State and would infringe the rights of the State. (Andhra Pradesh, Gujarat, Karnataka, Uttar Pradesh)

3. Fixed tenure will demoralize officers and limit the Governmental flexibility A fixed two-year tenure for the DGP, irrespective of their superannuation date, will block opportunities for other eligible senior officers, who will be demoralized. Further, the directives take away the right of the Government to transfer police officers to meet administrative exigencies. Similar arguments have been leveled against a fixed tenure for the IG, DIG, SP and SHO. (Andhra Pradesh, Uttar Pradesh, Gujarat, Nagaland)³

4. Involvement of the UPSC is neither practical nor necessary Under the existing law, there is no provision for

empanelling three officers by the Union Public Service Commission to provide three names of candidates for DGP to the State Government to appoint. The involvement of the UPSC in this is neither practical nor necessary.

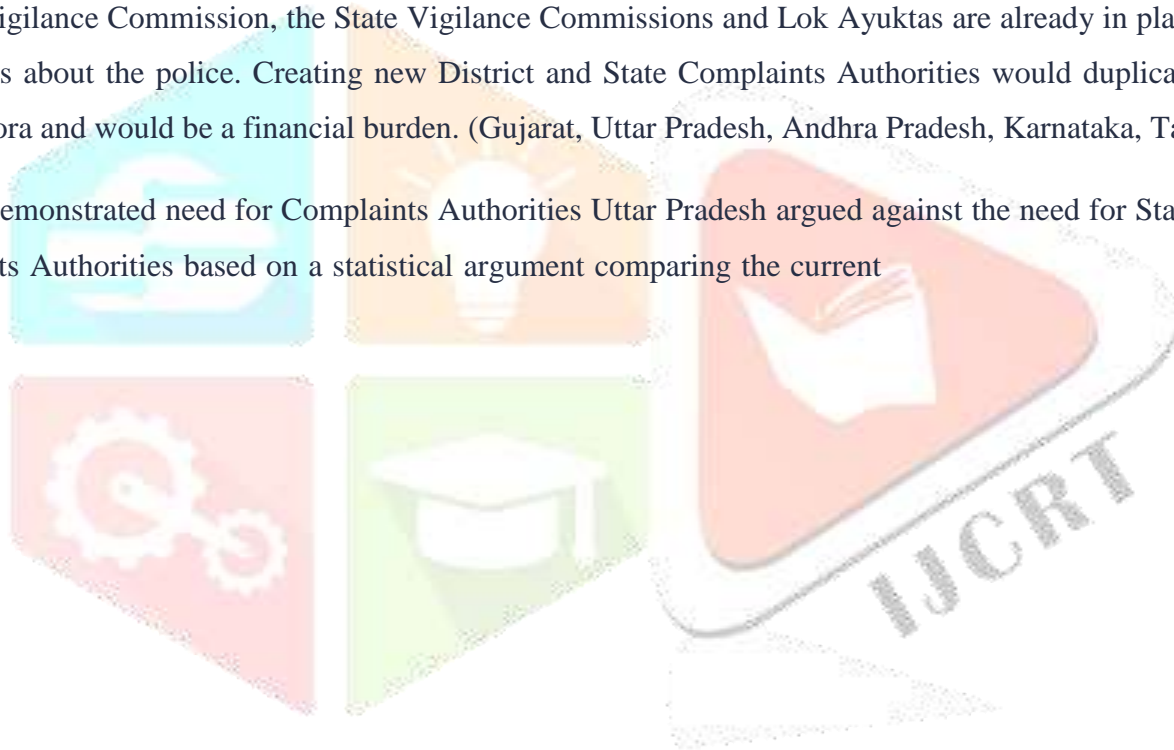
(Gujarat, Karnataka)

5. Fixed tenure is not important for good performance Short tenure does not impact on efficient functioning. (Andhra Pradesh)

6. Police Establishment Board will duplicate existing systems A Police Establishment Board would run contrary to the democratic functions of the Government and result in the creation of a separate power centre, comprising bureaucrats who are not answerable to the people, while also duplicating existing systems. (Gujarat, Uttar Pradesh).

7. Complaints Authorities will duplicate existing efforts and be a financial burden National and State Human Rights Commissions, the Minorities Commission, the Scheduled Castes and Schedules Tribes Commission, the Central Vigilance Commission, the State Vigilance Commissions and Lok Ayuktas are already in place to deal with complaints about the police. Creating new District and State Complaints Authorities would duplicate the work of existing fora and would be a financial burden. (Gujarat, Uttar Pradesh, Andhra Pradesh, Karnataka, Tamil Nadu)

8. No demonstrated need for Complaints Authorities Uttar Pradesh argued against the need for State and District Complaints Authorities based on a statistical argument comparing the current



number of complaints against the police and the number found to be incorrect or unsubstantiated. Nagaland maintained that the commission of excesses by the police is a very rare occurrence.

.9. Complaints Authorities will demoralise police The establishment of District and State Complaints Authorities may lead to the police being demoralised, failing to implement various laws and becoming ineffective out of a fear of being prosecuted by yet another agency. (Andhra Pradesh)

(4) Government Initiatives :

Police is an exclusive state subject and the center has its limitations in this regard. After independence, some states came out with their own police acts. For example, the Bombay Police act, 1951; the Kerala Police act 1960; the Delhi Police act, 1978. However, all of these police acts were a replica of the Indian police act, 1861. This has in extreme situations made the situation of guardian turning predator and the confidence of the people has come down.²⁰ Police abuse reflects a failure by India's central government and state governments to implement accountability mechanisms. Despite strict guidelines, directions were for "compliance till framing of the appropriate legislations" by the central and state governments²¹. State governments saw in the caveat an escape clause, which would take them beyond the purview of apex court's scrutiny, and they passed laws which legitimized the status quo or introduced only cosmetic changes. The Model Bill of 2006 drafted under Soli Sorabjee's chairpersonship has been adopted in breach by 17 states and entirely ignored by the Centre. Then, as if to signal some sign of wakefulness, another Police Act drafting committee was formed in 2013 to make revisions to the 2006 model. Dutifully, it has given its recommendations, which now lie mouldering in bureaucratic caverns measureless to man.²² The institutions mandated by the Supreme Court State Security Commission, Police Establishment Board, Complaints

²⁰ *Indian Polity Notes, Police reforms in India; against the backdrop of T.P. Senkumar case.* available at <https://www.clearias.com/police-reforms-india/> accessed on 1/06/2019

²¹ *Human Rights Watch, Bound By Brotherhood, Indian Failure to end killing in Police custody,* available at https://www.hrw.org/sites/default/files/report_pdf/india1216_web_0.pdf accessed on 01/06/2019

²² Prakash Singh, A step towards Police reforms, available at <https://www.dnaindia.com/analysis/column-a-step-towards-police-reforms-2710208> accessed on 01/06/2019

Authority have been set up in several states, but their composition has been subverted, their powers curtailed and their charter diluted. Officers on field assignments are transferred round the year. There is tardiness in the separation of investigative work from law and order duties. The Union government has also not shown any commitment in implementing police reforms. It has yet to pass the Model Police Act drafted by Soli Sorabjee as far back as 2006²³.

(7) Torture Bill,2010 :

The Prevention of Torture Bill, 2010 seeks to provide for punishment for torture committed by government officials. The Bill defines torture as “grievous hurt”, or danger to life, limb and health. Intentional infliction of grievous hurt must be coupled with animosity against a group in order to establish the crime of torture²⁴. The definition of torture not only ignores other purposes of torture like punishment and intimidation but also makes infliction of grievous hurt or danger to life a necessary condition. Complaints against torture have to be made within six months. The sanction of the appropriate government is required before a court can entertain a complaint.²⁵ **Analysis:**

The definition of torture does not include mental pain or suffering, and some acts which may constitute torture. The Bill imposing a time limit of six months and requiring prior government sanction but fails to recognize that sometimes the victims are subjected to prolonged torture which and it would be difficult for the victims to obtain such sanctions as the sanction leaves wide scope for partiality and manipulation²⁶.

²³ *Ibid*

²⁴ PRS legislative research, *Prevention of torture bill,2010,Ministry of home affairs,available at <https://www.prsindia.org/billtrack/the-prevention-of-torture-bill-2010-1129/> accessed on 01/06/2019*

²⁵ *Legal India,Torture is a crime issues and perspective,available at <https://www.legalindia.com/torture-is-a-crime-issue-and-perspectiive/> accessed on 1/06/2019.* ²⁶ *Supra Note 25*

(8) Law Commission of India Response:**(i) 113th Report (1985):**

In the 113th Report the Law Commission recommended the amendment to the Indian Evidence Act, 1872, by inserting section 114B providing that in case of custodial injuries, if there is evidence, the court may presume that injury was caused by the police having the custody of that person during that period Onus to prove contrary is on the police authorities.

(ii) 152nd Report (1994):

The Commission dealt with the issues of arrest and abuse of authority by the officials and making reference Articles 20, 21 and 22 of constitution and sections 166 & 167 ,330 & 331 ,376(2), 376B to 376D, 503 and 506 of Indian Penal Code.The Commission also considered the provisions of Cr.PC, particularly section 41 , 49 ,50, 53 , , 54 ,56-58, 75-76 ,154 ,163 164, 313,and 357 .

(iii)177th Report of the Law Commission (2001) :

The Law Commission of India, in its 177th Report (suggested that amendments should be brought in Cr.PC by inserting section 55A which may read as under It shall be the duty of the person having the custody of an accused to take reasonable care of the health and safety of the accused.”

(iv)185th Report of the Law Commission (2003) :

In the 185th Report, the Commission pointed out that a reference was in fact made by the Supreme Court to the 113 th Report of the Law Commission in *State of MP v. Shyam Sunder Trivedi*1995(4) SCC 262 if there is evidence that the injury was caused during the period when the person was in the police custody, the Court may presume that the injury was caused by the police officer having the custody of that person.

(v) 268th Report of Law Commission(2017): In its 268th Report, the Commission recommended insertion of section 41(1A) and amendment to 41B, Cr. PC requiring the police officer to intimate the rights of the person arrested, for bail and liberalizing the process of bail.**(vi) Law Commission of India: 273rd Report :**

Recommended that India ratify the United Nations Convention against Torture and pass a law to prevent torture and punish its perpetrators and recommends amendment to section 357B to incorporate□ payment of compensation, in addition to payment of fine, as provided under section 326A or section 376D of the Indian Penal Code,1860. Indian Evidence Act, 1872 recomended insertion of section 114B (Presumption)Law, Punishment for acts of torture extending up to life imprisonment and fine, Compensation to Victims and Protection of Victims.

(9) The Prevention of Torture Bill, 2017

“The Supreme Court had said that there was “extreme urgency” in national interest to frame of an effective law to prevent torture and inhuman treatment of individuals in custody”. The Law Commission in 273rd Report has proposed a new anti-torture law titled “The Prevention of Torture Bill, 2017” to ratify the United Nations Convention against Torture and pass a law to prevent torture and punish its perpetrators. According to The prevention of Torture Bill,2017 torture is not confined to physical pain but also includes “inflicting injury, either intentionally or involuntarily, or even an attempt to cause such an injury, which will include physical, mental or psychological. The Bill has recommended punishments for torture ranging from fine to life imprisonment on the perpetrator, The burden of proof is on the police to explain the injury on the under-trial, justifiable compensation for the victims to be decided by courts and compensation for treatment and rehabilitation of victims.

(10) Implementation of Torture Convention :

India stands behind 161 nations, including Pakistan, as it is yet to ratify the 30-year-old United Nations’ Convention against Torture by making a law on it despite signing it way back in 1997. ‘The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’, also known as United Nations Convention against Torture, is an international human rights treaty. It aims to prevent torture and other acts of cruel, inhuman or degrading treatment and punishment around the world. The ratification by making a law on the subject is in the best interest of India as it considers all acts of torture as criminal offence and includes right of compensation and rehabilitation of victims. In the era of increasing international cooperation on criminal matters it would facilitate the extradition of Indians from other countries, strengthening the rule of law and would enhance India’s credibility on human rights front.

(11) Conclusion :

In the absence of an anti-torture law; and to secure an individual’s right to life and liberty, The government must legislate on this matter and ratify the convention as soon as possible. Investigation is essential to the pursuit of justice but poorly performed investigations cause injury to victims, suspects, members of the courtroom workgroup, and society as a whole. Therefore, modernization of Police Investigation, area specialization, Modern forensic tools, improving intelligence should be emphasized. State should own the responsibility for the injuries caused by its agents on citizens, and principle of sovereign immunity cannot override the rights assured by the Constitution. While dealing with the plea of sovereign immunity.

(12) Suggestions :

Some of Isolated innovations are happened here and there but they are not enough and torture is embedded itself in the sub-culture of policing. Therefore, there is a need for stand-alone and Comprehensive Torture prevention Law which puts certain bar on physical and mental torture especially for depressed sections of the society.

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