

INJUSTICE BEHIND BARS : UNVEILING THE ISSUE OF CUSTODIAL TORTURE IN INDIA

Dr. Inderpreet Kaur Narang*¹

Assistant Professor, Department of Laws, GNDU, RC, Ladhewali, Jalandhar

Abstract

Custodial violence and custodial deaths is not a new phenomenon. Despite several initiatives in recent years, torture and ill treatment continues to be endemic throughout India and continues to deny human dignity to thousands of individuals. The law in all countries authorises the police to use force under certain circumstances. This authority is in fact, basic to its role and cannot be questioned. It is a part of policeman's legal mandate. But despite of the Constitutional guarantees, statutory protections and expanding human rights Jurisprudence securing the life and liberty of a human being, the custodial torture and custodial deaths are still rampant happening. This paper analyses the Constitutional and legal framework, gauging the judicial trends and scouting the policy reforms necessary for strengthening the state accountability.

Key Terms - Custody , Custodial Torture , Police, Victims

Introduction

Policeman, as a custodian of law has multifaceted role in a society, viz. preservation of lives and property, protection of innocent against oppression and intimidation nipping the delinquent tendencies and act incessantly to ensure peace and order in the society, where liberty and equality permeate. To discharge these legitimate duties wide powers of the arrest and investigation are vested in police by law but these powers are abused by the police to torture the suspects and prisoners either to solve a crime or for sadistic pleasure, which stands ironically in relation to their position.

Custodial torture or violence is practically a worldwide phenomenon inflicted upon individuals regardless of sex, age, or state of health. In a third world country like India custodial violence is a serious and alarming problem. Brutal atrocities perpetuated by law enforcing agency on under trials, suspects and convicts are increasing at an alarming pace. Custodial torture erodes the legitimacy of Criminal Justice System as the State authority rather than being the custodians of the masses becomes the instrument of violence and coercion. In *D.K. Basu v. State of West Bengal* the Honorable Supreme Court characterized the "custodial torture as one of the worst crimes prevalent in any civilized society governed by rule of law".²

Universal prohibition against custodial violence and its Constitutional and legal safeguards have not been able to stop or reduce incidence of torture including custodial deaths. Custodial violence in judicial custody is as serious a problem as in police custody. In the research paper an attempt has been made to study the various aspects of custodial violence and violation of

¹ *Assistant Professor, Department of Laws, GNDU, RC, Ladhewali, Jalandhar

² AIR 1997 SC 610

human rights of prisoners. There would be detailed discussion of the rights of prisoners as laid down in the Constitution, and the legislative and procedural safeguards and remedies available to the victims of custodial violence. Researcher will conclude the paper by suggesting the ways and means to control custodial crimes in police custody.

Methodology

The researcher in this paper seeks to conduct a doctrinal-analytical method examining various aspects of custodial torture, Constitutional and legislative framework, Law Commission Reports and policy responses ensuring accountability. The researcher shall also incorporate various International Documents dealing with the topic.

Meaning And Concept of Custodial Torture

The term ‘custody’ is neither defined in the procedural laws nor in the substantive laws. But it means protective care. According to dictionary, meaning, ‘custody’ is the legal right or duty to care of somebody. It is the state of being guarded or kept in prison temporarily, especially by the police. Custody means the care and control of a thing or person for inspection, preservation and security. When the court grants custody over an offender, the correctional authority has power over the offender and this must be used to endorse the health of the offender. The word custody implies guardianship and protective care. Even when applied to indicate arrest or imprisonment, it does not carry any worrying symptoms of violence during custody.

Torture means an act of inflicting or agonizing pain especially as punishment or coercion or any method of inflicting such pain, which law enforcing authority or any persons or group of persons inflicts upon a criminal or suspect or arrestee for extracting true information or for coercion to a person in order to make confession. When it is an advance degree, it is sadistic in nature, inhuman, unreasoning, irrational, uncivil and beastly, hence brutal and it's not merely physical. The Supreme Court in *Sunil Batra v. Delhi Administration & Others* held that prisoners are not denuded of Fundamental Rights except to the extent of lawful deprivation.³

The prohibition of torture and other cruel, inhuman or degrading treatment or punishment has been advocated ever since the adoption of Universal Declaration of Human Rights⁴, 1948 and Geneva Convention, 1949.⁵ It is considered to be a violation of human rights, and is declared to be unacceptable by Article 5 of the Universal Declaration of Human Rights. Signatories of Third and Fourth Geneva Convention officially agree not to torture prisoners in armed conflicts. Torture is also strongly prohibited by the United Nations Convention Against Torture,⁶ which has 83 signatories and ratified by 169 state parties.⁷ National and international

³ AIR 1978 SC 1675

⁴ UN General Assembly, *Universal Declaration of Human Rights*, December 10, 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html>, accessed November 1, 2020

⁵ International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, August 12, 1949, 75 UNTS 287, available at, <https://www.refworld.org/docid/3ae6b36d2.html>, accessed November 1, 2020

⁶ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, December 10, 1984, United Nations, Treaty Series, Vol. 1465, available at, <https://www.refworld.org/docid/3ae6b3a94.html>, accessed November 1, 2020

⁷ <https://treaties.un.org/Pages/ViewDetails.aspx?src>, accessed November 1, 2020

legal prohibitions on torture derive from a consensus that torture and similar ill-treatment are immoral, as well as impractical.⁸ Despite these International Conventions and Organizations that monitor abuses of human rights such as Amnesty International, The International Rehabilitation Council for Torture Victims, the provisions are condoned by states in many regions of the world.⁹ Amnesty International estimates that at least 81 world governments currently practice torture, some of them even openly.¹⁰

Aspects of Custodial Torture

Our criminal law has progressed beyond doubt and has laid down the fundamental principles of Criminal Jurisprudence such as “Accused to be presumed innocent until proved guilty, The burden of Proof lies on the prosecution to prove the guilt of the accused beyond all reasonable doubt. The benefit of doubt must always go to the accused and the principle of “Let ninety criminal go unpunished, but let no one innocent person suffer” be always applied. These principles though not mentioned in the statutes or the Constitution have been considered as fundamental to our Criminal Jurisprudence. In spite of the glorification of these fundamental principles by various Human Rights Organizations, we can see that many types of third degree methods are still in vogue including the following-

- i. Beating
- ii. Burning of parts of human body with help of cigarette.
- iii. Denying Food, Water and sleep.
- iv. Forcing the arrest person to drink urine.
- v. Putting ice slabs on naked part of human body.
- vi. Suspending the person in head down position by his legs.
- vii. Providing electric shock treatment.
- viii. Providing hot water bottle treatment.
- ix. Forced extraction of teeth and nail.
- x. Using of rack as an instrument to stretch the limbs and body.
- xi. A thumbscrew, a metal studded vice in which suspect's thumbs are compressed.
- xii. Putting rats and cockroaches inside the trouser of the person with his hand and legs tied down.
- xiii. Inserting stick in public zone.
- xiv. Plucking hair and moustache.

⁸ "Torture and Ill-Treatment in the 'War on Terror'" Amnesty International. 2005-11-01.

<http://www.amnesty.org/en/library/info/ACT40/014/2005/en>, accessed November 1,2020

⁹ Available at https://issuu.com/irct/docs/irct_updated_strategy_2018-2020, accessed November 1,2020

¹⁰ Available at <https://amnesty.org.in/news-update/amnesty-international-acceptability-torture-highest-india-china/>, accessed November 1,2020

- xv. Making the person crouch.
- xvi. Putting psychological impact on the person.
- xvii. Inhuman treatment
- xviii. Third degree
- xix. Custodial deaths

Police as a law-enforcing agent for the up-keep of welfare of society has to perform their duty and it is their duty to find the culprit and arrest and put through the trial according to the law of the country for the punishment of the culprit. It is their duty to safeguard the society and individual. In order to bring to book the culprit in a proper forum investigation of the matter before taking to such forum is essential. The 20th century saw a drastic change in the role and function of the State and with that, there was a change in the role and function of the police as well. Police as a functionary of criminal justice system, has to play a crucial role in maintenance of peace and enforcement of law and order and this is considered to be its primary duty. Of late, police duties have increased enormously and are becoming more diversified. In the backdrop of a comprehensive, sociological, technological, economic, political and psychological change, now underway in India, the values and ethics of police must also change, so that it does not become an outdated model because of the rapidity of social change. Despite the new democratic, secular, socialistic welfare and humanitarian values vouched for in the Constitution, the Indian Police, by and large, follows the philosophy of Para-militarism associated with the mechanism of awe, threat and coercion. In other words, the democratic philosophy of the Constitution hardly gets reflected in the organisation of Indian Police.

Constitutional Safeguards

The Constitution has acknowledged prisoner's rights and dignity as of any person and citizen of India. The concept of punishment has also gone through a major change from deterrence to reformatory approach. The basic objective of social justice enshrined in the preamble lays provision of justice, liberty, equality to all its citizens and prohibits exploitation. Recognition of the inherent dignity and of the equal and inalienable rights of all members of the society is foundation of freedom, justice and peace in the society. Therefore, treatment of inmates of prison must also conform to the basic standards of humanity and fairness.

In the accusatorial system of criminal justice, as a person is considered to be a criminal only if and when he is convicted by a court of law, the police should also presume that a person in custody may be innocent, till his guilt is proved. The principle of presumption of innocence is specifically provided in The Universal Declaration of Human Rights,¹¹ The International Covenant on Civil and Political Rights¹² and The Standard Minimum Rules.¹³ Since arrested persons are presumed innocent, police may impose only those conditions and restrictions on them as will ensure their appearance at trial, prevent their interference with evidence and

¹¹ Article 11(1), Universal Declaration of Human Rights, 1948.

¹² Article 14(2), The International Covenant on Civil and Political Rights, 1966

¹³ Rule 84(2), The Standard Minimum Rules, Adopted by the First United Nations Congress on the Prevention of Crime and The Treatment of Offenders, held at Geneva in 1955, *Compilation, Vol. I*, p. 243

further commission of offences. Though India has not so far ratified the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment 1984, it has ratified, acceded and signed the various other International Declarations, Covenants, Conventions and Treaties dealing with rights of prisoners.

Custodial violence has been prohibited by the Constitution and certain legal provisions. Constitution¹⁴, The prohibitions imposed by Articles 20, 21 and 22 of the Constitution are directly relevant to the criminal process. Article 20 imposes a prohibition relevant to the criminal proceeding. Article 20 (1) basically prohibits retrospective operation of penal legislation. It incorporates a prohibition on ex post facto penal law to prevent corruption among government servants in their official dealings. Article 20(2) guards against double jeopardy for the same offence and Article 20(3) provides that no persons accused of any offence shall be compelled to be a witness against himself. All the aforesaid Articles protect an individual against testimonial compulsion on the promise that such compulsion may act as a subtle form of coercion on the accused. In *Zahira Habidullah H. Sheikh v. State of Gujarat*¹⁵ Article 20(2) was not invoked and Supreme Court directed retrial of the accused after their acquittal by the trial court. It is necessary that the first trial should have been conducted before court competent to try the case to attract the provision of Article 20(2). The protection under Article 20(3) is available only against the compulsion of accused to give evidence 'against himself', but left to himself he may voluntarily waive his privileges by entering into the witness box or by giving evidence voluntarily on request.

The protection of life and liberty of a citizen also includes the persons arrested and if at all his life and liberty is to be curtailed, it must be according to the guidelines of Article 21 of the Constitution which says that 'no person shall be deprived of his life or personal liberty except according to procedure established by law'. The expression personal liberty is not limited to bodily restraint or to confinement to prison only as has been illustrated by Hon'ble Supreme Court in *Kharak Singh v. State of U.P.*¹⁶

Article 22(1) and 22(2) of the Constitution ensure that certain checks exist in the law to prevent abuse of power of arrest and detention. Article 22(1) provides that no person who is arrested shall be detained in custody without being informed as soon as may be, of the ground for such arrest, nor shall he be, of the grounds for such arrest, nor shall he be denied the right to consult and to be defended by legal practitioner of the choice. Article 22(2) provides that every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to court of the Magistrate no such person shall be detained in custody beyond the said period.

The previous illegal detention becomes lawful when subsequently the accused is arrested and produced before the court within twenty four hours. The above mentioned rights are available to the citizens as well as non-citizens and not available to persons arrested and detained under

¹⁴ Narender Kumar, *Constitution of India*, Central Law Agency, Allahabad, Edition 5th, 2015, at p.127.

¹⁵ 2004 Cr.LJ 2050 SC

¹⁶ AIR 1963 SC 1295

preventive detention law. Article 22(2) is violated when a person is arrested by remand order of a Magistrate and not produced before the court within 24 hours. Articles 226 and 32 entitle a person to seek judicial intervention through the writ of *habeas corpus* for his release from unlawful detention. Judicial intervention can also be sought against arrest on insufficient grounds through the writ of *mandamus* under the said Articles and also through inherent jurisdiction of the High Court under section 482.¹⁷

Legislative Safeguards Against Custodial Violence

Safeguards against police torture are provided in substantive and procedural Criminal law, various Police and Prison Acts and Manuals that also contain rules against torture. The relevant statutory provisions on the subject have been supplemented by the significant judicial pronouncements. The substantive criminal law provides punishment to a person causing injury, torture or death on the body of a person in custody.¹⁸ The procedural laws contain several provisions safeguarding the legal rights of a person in custody.¹⁹ In addition, the Protection of Human Right Act, 1993 provides institutions of the National and State Human Rights Commissions as well as Human Rights Courts for better protection of human rights of a person in custody.

The Indian Penal Code

The Indian Penal Code provides that voluntary causing hurt to extort confession or to compel restoration of property shall be liable to pay a fine and imprisonment for a period of 7 years.²⁰ The Code further provides that voluntarily causing grievous hurt to extort confession or to compel restoration of property shall be punishable for a period of 10 years.²¹ The law does not tolerate the achievement even of a lawful purpose by unlawful means. Hence a police officer torturing a suspect in his custody, though inspired by the admirable motive of discovering the truth is guilty of an offence under this section. A policeman who stands by acquiescing in an assault on a prisoner committed by other policeman for the purpose of extorting a confession is guilty of abetment of offence under this section. In *Parmanand v. Emperor* it was held that If he takes active part in assault, he would be guilty of substantive offence itself.²²

The Code of Criminal Procedure, 1973

The mandates of The Indian Constitution are contained in The Code of Criminal Procedure. Sections 50, 56 and 57 of the Code of Criminal Procedure provide that no person can be detained in custody without informing the grounds for arrest and that a detainee must be presented before a Magistrate within twenty-four hours of arrest. Section 57 of the Code provides that person arrested should not be detained in police custody for more than twenty-four hours. Twenty-four hours prescribed in the Code is only an outermost limit beyond which

¹⁷ Section 482, The Code of Criminal Procedure, 1973

¹⁸ The Indian Penal Code, 1860

¹⁹ The Code of Criminal Procedure, 1973 ; The Indian Evidence Act, 1872

²⁰ Section 330, The Indian Penal Code, 1860

²¹ Section 331, The Indian Penal Code, 1860

²² AIR 1940 Nag. Pp. 340-347-348

arrested person cannot be detained in police custody²³. Section 56 and Section 76 of The Code of Criminal Procedure reiterate similar conditions regarding arrest and detention²⁴. Section 160 of The Code prohibits the detention of males under the age of fifteen or females of any age for the purposes of investigation or questioning by the police. Section 167 of the Code also requires the police to produce the accused person before the nearest Magistrate within twenty-four hours of his arrest. This right is also directly related to other rights like right to presumption of innocence and right against self-incrimination. For this obvious reason, the Supreme Court and various High Courts also have strongly urged upon the State and its police authorities to ensure the enforcement of this requirement. Where it is found disobeyed they should come down heavily upon the erring police personnel.

After the amendment of 2005 section 46(4) of Cr.P.C provides that no woman can be arrested after sunset and before sunrise, except in exceptional circumstances where the woman police officer may do so after obtaining written permission of the judicial Magistrate concerned. The Law Commission of India in its 135th report on 'Women in Custody' had recommended the insertion of a separate chapter in the code, containing various detailed provisions to avoid harassment to women during arrest and in custody but the amendment fails to take into account this recommendation.²⁵

Section 49 of Cr.P.C is another important safeguard on power of arrest. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape; in other words he must not be subjected to torture or violence in the name of effecting arrest.

It is only however on a formal arrest that a person can avail of different statutory protections promised under The Code of Criminal Procedure. Moreover, these legal protections can be made use of only if someone is aware of the unlawful detention of the person concerned and the information of arrest and its grounds are duly notified. This further calls for giving of information to some other legal aid agency where no one comes to the rescue of the detained person. The situation is more demanding in India where half of its population is living below the poverty line and over 95% of the persons wrongfully confined belong to this category.²⁶

²³ Section 57 reads: "No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under Section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's court."

²⁴ Section 56 provides that a police officer making an arrest without warrant must take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station. This duty of the police officer is subject to the provisions contained in the Code as to bail. While the time given in Article 22(2) is twenty four hours, Section 56 requires taking or sending of the arrested person without unnecessary delay.; Section 76 provides a similar rule in substance in case of arrest under warrant. Section 76 reads: "The police officer or other person executing a warrant of arrest shall (subject to the provision of Section 71 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person: Provided that such delay shall not be in any case, exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's court."

²⁵ Law Commission of India, 135th report on 'Women in Custody', 1989, available at <http://lawcommissionofindia.nic.in/101-169/Report135.pdf>, accessed November 12, 2020

²⁶ Gurpal Singh & G.I.S. Sandhu, *Violation of Human Rights And Indiscriminate Arrests-An Appraisal of Constitutional Safeguards For Personal Liberty*, In Birinder Pal Singh Sehgal, *Human Rights In India: Problems And Perspectives*, available at <https://books.google.co.in/books?id=>, accessed November 12, 2020

The Supreme Court in *Sheela Barse v. State of Maharashtra* case²⁷ had imposed a duty on the Magistrate before whom the arrested person is produced to enquire from the arrested person whether he has any complaint of torture or maltreatment in police custody and inform him that he has a right under Section 54 of the Code of Criminal Procedure to be medically examined. Earlier the Supreme Court in *Khatri v. State of Bihar*,²⁸ opined that the provisions prohibiting detention without remand is a very healthy provision which enables the Magistrates to keep check over the police investigation and it is necessary that the Magistrate should try to enforce this requirement and where it is found to be disobeyed, should come down heavily upon the police by holding it guilty of illegal detention.

The Indian Evidence Act 1872

As the law stands today, if a complaint is made against torture, death or injury in police custody no evidence is available to authenticate the charge in court of law. The prosecution is unable to produce evidence to prove the charge. It is difficult to secure evidence against policeman responsible for applying third degree methods, since they are in charge of records of police station, which they do not find difficult to manipulate. Consequently, prosecution against the officers generally results in acquittal.

The law hence provides that a confession to police is inadmissible before the court of law under Sections 25 and 26 of The Indian Evidence Act, 1872, if the making of the confession appears to the court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. A confession, if voluntary and truthfully made is an “efficacious proof of guilt.”

The Act further provides that no confession made to a police officer, shall be proved as against a person accused of any offence. The broad ground for not admitting confessions made to a police officer is to avoid the danger of admitting a false confession. The police officer in order to secure conviction in a case very often puts the person so arrest to severe torture and makes him to confess a guilt without having committed it and when such steps are taken there is impunity for the real offender and great encouragement to crime. This section makes no distinction between a confession made before investigation and a confession made after investigation. It is confession to a police officer made at any time that is not admissible.²⁹

According to section 26 of Indian Evidence Act “No confession made by any person whilst he is in the custody of police officer, unless it is made in the immediate presence of a Magistrate, shall be proved against such person.” The object of this section is to prevent the abuse of their powers by police. The crucial test is whether at the time when a person makes a confession, he is a free man or his movements are controlled by the police or through some other agency

²⁷ AIR 1983 SC 378

²⁸ (1981) 1 S.C.C. 627

²⁹ Sections 25 and 26, The Indian Evidence Act, 1872.

employed by them for the purpose of securing such confession. The word ‘custody’ in this context mean not only formal custody but includes such state of affairs in which the accused can be said to have come into the hands of a police officer, or can be said to have been under some sort of restriction. Such confessions are inadmissible unless made in the immediate presence of a Magistrate.

Law Commission Report And The Prevention of Torture Bill

The Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment was adopted by the United Nations General Assembly in December, 1984.³⁰ India signed the Convention on 14th October, 1997. Ratification of the Convention requires enabling legislation to reflect the definition and punishment for "torture". In its 273rd report handed over to the Law Ministry on October 30, the Law Commission proposed a new anti-torture law titled “The Prevention of Torture Bill, 2017” which provides a wide definition to torture 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.”³¹

The Commonwealth Human Rights Initiative (CHRI), the World Organization against Torture (OMCT), People’s Watch, Quill Foundation, the International Commission of Jurists and Project 39 A from the National Law University, Delhi, conducted the conference “On Strengthening Legal Protection Against Torture in India” on October 26 and 27, 2018 with nearly 80 experts, lawyers, academics, journalists and activists.³² The discussions highlighted a shared concern over the denial of the Indian government to recognize torture as a specific crime.

Judicial Expansion of Rights of Persons in Custody

The Indian judiciary from time to time contributed in expanding the ambit and scope of various Fundamental Rights of persons accused of crimes and those behind bars.

For instance in *Kharak Singh v. State of U.P.*, the court expanded personal liberty includes privacy from surveillance.³³ Later in *Francis Corallie v. UT Delhi* the Court held that torture and cruel treatment are incompatible with human dignity.³⁴ In *Sheela Barse v. State of Maharashtra* the court imposed a duty on the Magistrates to ask detainees whether they had been tortured and to order their medical examination.³⁵ In *Joginder Kumar v. State of UP*, The Court mandated that arrest must be justified by necessity and arrestee’s relatives must be informed promptly.³⁶ In *D.K. Basu v State of West Bengal* the court synthesized eleven guidelines on arrest and detention now treated as binding under Articles 141 and 142 of The Constitution.³⁷

³⁰ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, December 10, 1984, Resolution 39/46, entered into force on June 26, 1987

³¹ Law Commission of India, 273rd Report on “Implementation of The UN Convention Against Torture”, 2017

³² Available at <https://www.omct.org/statements/2018/11/d25105/>, accessed November 15, 2020

³³ AIR 1963 SC 1295

³⁴ (1981)1 SCC 608

³⁵ (1983)2 SCC 96

³⁶ (1994)4 SCC 260

³⁷ AIR 1997 SC 610

Subsequently in several cases the Doctrine of Compensatory Jurisprudence was evolved by the Honorable Supreme Court. The case of *Nilabati Behra v. State of Orissa* introduced compensatory jurisprudence for custodial deaths holding the states vicariously liable for police excesses.³⁸ In *Saheli v. Commissioner of Police*, the Delhi Police was held vicariously liable for police brutality leading to child's death.³⁹ The case of *Peoples Union For Civil Liberties v. State of Maharashtra* extended the principle to encounter killings requiring registration of FIRs and independent investigation.⁴⁰

The Court further ensured structural remedies such as in the case of *Re: inhuman Conditions in 1382 Prisons* it directed the installation of CCTV Cameras in Police stations and Lock-ups.⁴¹ This was followed by Madras High Court in *re: Custodial referred to as Suo Motu v. The State* deaths in Sathankulam issued a suo motu monitoring mechanism after the death of Jayaraj and Bennix ensuring the preservice of Post Mortem videos and CCTV footage.⁴²

The cases discussed above are a testimony to the contribution of the Judiciary in ameliorating the conditions of persons in custody but lots need to be done yet to ensure the preservice of human rights of prisoners.

Policy Recommendations

Policy recommendations for preventing custodial torture include enactment of stronger laws with severe punishments for public servants involved in torture ensuring timely reporting of incidents, prompt and mandatory judicial inquiries providing specialized training to police to change mindsets and promote human rights.

Key recommendations involve –

- Implementation of laws that stringently criminalize custodial torture death and sexual abuse by Public servants with severe penalties including imprisonment and fines.
- To effectively combat custodial torture it is imperative to Ratify and implement The UN Convention Against Torture to strengthen international and national efforts to prevent torture behind bars.
- Establish a Legal Framework for compensation and rehabilitation and protection of victims of custodial torture and their families.
- It is further required that immediate and mandatory reporting of incidents of violence in custody should be made compulsory.
- The reporting should be followed by swift and thorough investigations using scientific and Forensic methods.

³⁸ (1993)2 SCC 746

³⁹ (1990) 1 SCC 422

⁴⁰ (2014)10 SCC 635

⁴¹ (2016)3 SCC 700

⁴² 2020 SC Online Mad 7390

- The Magisterial enquiries in cases of custodial deaths should be completed promptly for further adequate actions.
- The Police personnel should be provided continuous training to change their mindsets and emphasis should be made on human rights and ethical conducts.
- State should foster a culture of Zero tolerance for human rights violation within the police force.
- CCTV and Digital monitoring by Magistrates should be made mandatory as directed in several case laws.
- Strengthening the role of National Human Rights Commission (NHRC) as monitoring body for custodial torture and ensure it receives timely reports of violence and conduct timely investigation of cases of custodial torture.

Conclusion

From the detailed perusal of existing provisions we can sum up that although some provisions relating to the issue of Custodial Torture exist in the Criminal Laws yet they neither define the term "torture" as clearly as in Article 1 of The United Nations Convention Against Torture nor make it a criminal offence as called for by Article 4 of the said Convention. There are many loopholes in the system that require to be plugged in In the circumstances. It is therefore urgently necessary for the ratification of the Convention so that domestic laws of our country are brought in conformity with the Convention. This would necessitate either amendment of the existing laws such as Indian Penal Code or bringing in a new legislation.

There is no proper implementation of the available laws which prompt the occurrence of custodial violence in India. The laws which are enacted should be strictly implemented. One who violates the law should be punished severely. There is a need for the effective implementation of laws which are enacted by the legislature. Only enactment of laws does not help to prevent the custodial crimes happening in India. Only the people who are literate are only aware of the rights which are given by the state. The illiterates are completely unaware of their rights. There is a need for spreading awareness amongst the people about their Constitutional and Legal rights and more so sensitizing the police in order to make them people friendly as custodians of law and order.