

Prisoners And Human Rights In India -A Comparative Study Of Normative/Existential Order With Special Reference To Custodial Torture In India

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Introduction

The concept of human rights is as old as human civilization. The Greatest gift of classical and contemporary human thought and culture to civilization is the notion of human rights. The concept of human rights has been ever dynamic and constantly keeps touching new dimensions as each society continues to evolve. That is why there is hardly any consensus among the scholars about the universal definition of human rights. Sometimes we find lack of consensus as a concern for human rights on the other hand the very necessity of human rights poses questions, as Vaclav Havel had once said that he had often asked himself why human beings had any rights at all? Answering the question, he regarded that human rights, freedoms and dignity as so powerful that people become ever willing to die for them. Undoubtedly, they are the innate requirements, which need to be available to every human being. Article 1 of the Universal Declaration of Human Rights talks about that all human beings are born free and equal in dignity and rights

Jerome J. Shestack in his article '*The Jurisprudence of Human Rights*' also expressed the similar views that human rights are those rights which one possesses by virtue of being human.

Universality of Human Rights: The debate between cultural relativism and universalism is one of the most intense debates in the arena of human rights. As the Greek historian Herodotus once said that there are no universal ethics as each nation regards its own customs as superior. The similar problem was faced with when, United Nations Educational, Scientific and Cultural Organization (UNESCO) was working on the idea of understanding human rights from the perspective of diverse religious, cultural and intellectual backgrounds. The French philosopher Jacques Maritain expressed the problem of bringing consensus between men who come from the four corners of the globe and who not only belong to different cultures and civilizations, but are of antagonistic spiritual associations and schools of thought. But keeping aside all such doubts, the Human Rights commission affirmed that they would try looking to all the world's great religions and cultures for the universal notions of the common good and the same efforts gave birth to Universal Declaration of Human Rights. This declaration with one preamble and thirty articles talk of various human rights like civil, economic, political, social and cultural in a comprehensive manner. This declaration talks of the rights of human beings in general and of prisoners in particular. The same ensures equality before law (Article 7), prohibition of discrimination (Article 7), freedom of Speech and expression (Article 19), freedom of movement (Article 13), protection in respect of conviction for offence (Article 11(2)), protection of life and personal liberty (Article 3), right against arbitrary arrest and detention (Article 9) and remedy of enforcement of rights (Article 8).

Apart from the arrangements done in UDHR, we find many other instruments also which talk of the similar protections for the rights of prisoners like:

International Covenant on Civil and Political Rights: It arranges for equality before law, Prohibition of discrimination, Freedom of speech and expression, Freedom of move freely within the territory of a State, Protection from prosecution and punishment, Not to be compelled to testify against himself, Right to life and liberty , Protection against arrest and detention etc.

The European Convention for the Protection of Human Rights:The same defined a number of civil and political rights like the right to life, right against torture, right against slavery, right to privacy etc. one of its subsidiaries like the CPT (Committee on the Prevention of Torture) organizes visit to places of detention like prisons, juvenile detention centre, police stations, psychiatric hospitals, social care homes in order to assess the person deprived of their liberty, if a state fails to co-operate with CPT, the Committee may decide to make a public statement.

Some other instruments like The Protection of Human Rights and the Inter-American System, The Convention on Human Rights of the Commonwealth of Independent States (C.I.S.) Commonly Known as the 'Minsk Convention' and The African Charter on Human and People's Rights also talk about the protection of prisoners.

Legal Mechanism available to Prisoners in India: Provisions to Check Custodial Torture in India:

Constitutional Safeguards:

The India Constitution does not mention about any particular right against torture as we find in the case of International Covenant on Civil and Political Rights. Some of the Articles like 14, 19, 20, 21, 22, 32 and 226 of the Constitution under the chapter fundamental rights provide for the safeguards against torture in India.

Article 20 gives a person the right against conviction of offences. It also protects a person from double jeopardy and provides that a person can't be tortured to confess a crime which he has not committed. Article 21 provides that the state and its agencies can't torture a person in custody and it is available to both a national and a foreigner. The articles 39(e), (f), 41 and 42 of the directive principles of the state policy were upheld by the Supreme Court in *Bandhua Mukti Morcha* case to give a real meaning to right to life under Article 21 of the Constitution.

Article 22 provides a person four rights like information of grounds of arrest, to have a legal practitioner of his choice, to be presented before the nearest Magistrate within 24 hours of the arrest, right of representation and the representation to be considered by the state.

Statutory Safeguards:

Indian Evidence Act, 1872: The Indian Evidence Act though does not clearly express the prohibition of torture but it says that collection of evidences through the illegal means including torture is prohibited.

Code of Criminal Procedure, 1973:

Section 46 and 49 of the *Code of Criminal Procedure, 1973* protect those persons from the torture who are not accused of death and life imprisonment offences. Section 54 provides that if a person in custody complains of torture against him, the Magistrate will examine his body and make the record of his examination. They may bring the case of any type of torture or assault against them (people in custody) before the court and ask for the provision of a

medical examination of their bodies. Such persons will be provided medical practitioner for such requests. Section 482 of the code provides for the interference by the High Court in case of non follow up of the procedure by the Magistrate. Section 176 provides compulsory magisterial inquiry in case of deaths in police custody.

Indian Police Act:

Section 7 and 29 of the *Indian Police Act* provide that if a police officer is found neglecting his duties he may be dismissed or suspended.

Indian Penal Code (IPC), 1860:

The new section 376 (1) (b) was added by amending the *Section 376 of IPC*. This new amendment checks the authority of the police officials working on high posts. It provides for penalizing police officers committing heinous crimes like rape in police custody and was brought after the *Mathura rape case*. Sections 330, 331, 342 and 348 of IPC restrict the police officers to use third degree methods during investigation.

Supreme Court's guidelines against Custodial Torture:

Our Apex Court, in many cases has not only given recognition to the concept of human rights but also expanded its scope by the process of judicial activism. Through the leading judgments like *Joginder Kumar v. State of Uttar Pradesh*, *Sheela Barse v. State of Maharashtra*, *Nandini Satpathy v. P.L. Dhani*, *Bhagwan Singh v. State of Punjab*, *Munshi Singh Gautam v. State of Madhya Pradesh* and *D.K. Basu v. State of West Bengal* has issued the following guidelines for the protection of the same:

1. The accused person in custody has the right to have any person known to him by his side and be told if possible about the place of his arrest to that known person.
2. The arrested person must be told about this right.
3. There should be a proper record in the diary of the police station as to whom the information has been given.
4. The Magistrate must be fully satisfied about keeping a person in custody.
5. There should be the availability of keeping the female suspects separately in lock ups and they must be watched over by female constables only.
6. Female suspects' interrogation must be done only in the presence of female officers.
7. The information needs to be given to the nearest legal aid committee about the arrest of a person.
8. The information also needs to be given to any person known to the accused and police needs to be in continuous contact of him/her.
9. The Magistrate must enquire from the accused about any kind of torture or ill treatment with him in the police custody.
10. The arrest of a person must comply law and interrogation must not result in torture.
11. The use of third degree methods are just contrary to law and use of scientific methods are to be preferred than using torture to have information from the accused.
12. The courts need to have more sensitive and realistic approach for solving cases of custodial crimes.
13. There should be a clear record of the police personnel handling the interrogation like name and designation in a register.
14. The police needs to inform the relative/friend of the arrestee within a period of 8 to 12 hours of his arrest through legal aid organisation about the police station of the

- concerned area and the time and place of his arrest if the relative/friend lives outside the town.
15. The Supreme Court recommended to include section 114(B) of 135th Report of Law Commission in the Indian Evidence Act, 1872 to establish that the injuries received by a person in police custody should be taken as caused by the police officer of that concerned police station.
 16. The Apex court has declared torture as the violation of fundamental rights of the person and made a provision for the trial of the police official who wishfully ignore the guidelines of Supreme Court under the provisions of Indian Penal Code or the Contempt of Courts Act, 1971.
 17. In *D.K. Basu case* Supreme Court stressed on certain arrangements to be made like preparing the memo of the arrest attested by the relative/respectable person of the locality, ensuring of arrestee's right to inform someone about his arrest, right to be physically examined at the place of his request, provision of medical examination after every 48 hours of detention and permission to meet the lawyer during interrogation.

Recommendations of National Human Rights Commission:

The same has issued the following directions to safeguard human rights which are as under:

- 1) It provides that the District Magistrate and Superintendent of police can directly send an information to the commission if there is any incident of death or rape in police custody within 24 hours.
- 2) It also provides that if a person receives any injuries in police custody then they will be considered as caused by the police officers.
- 3) A mandatory enquiry of each case of custodial death, rape, of serious injuries by a Session Judge. Here NHRC has recommended the views of National Police Commission in its annual report of 1995-96.
- 4) To send the video film of post-mortem examination to the commission in order to curb the practice of manipulating the post-mortem reports. (Annual report 1997-98).
- 5) The provision of serious penalty to the responsible police official rather than a mere reprimand or transfer.
- 6) Ratification of Indian government to the Convention Against Torture.
- 7) Use of scientific methods like forensic experts, laboratories to get accurate and reliable evidence.
- 8) Provision of interim relief/ compensation in case of unlawful detention.
- 9) To make training of police officials in the field of human rights as a continuous process to change their mindsets. (Annual report 2005-2006).
- 10) There should be surprise visits of NHRC's officers to police lock-ups.
- 11) There should be the provision for the establishment of human rights cell in state police headquarters.
- 12) It has also issued guidelines on conducting polygraph tests.

Guidelines of the other Authorities:

The 16th law Commission in its 177th report has recommended that it should be the duty of the concerned police official to ensure the safety of the people under his custody. He should also be penalized in case of failure of the same. There should also be the presence of a lawyer during the investigation by the police. The 185th Law Commission report stressed on

safeguarding the interests of the people arrested. The *Malimath Committee* had also recommended the codification of the rights of the people arrested.

The Magnitude of the Problem:

Though India has signed the *United Nations Convention Against Torture (UNCAT)* in 1997 but has not yet ratified it and while going through the statistics of custodial deaths in the annual reports of NHRC, it has been found that cases regarding it are on the rise with the passing of each year. The table below is apt to present the gravity of the problem and substantiate the above view point

Table 1.1**Cases of custodial deaths registered by NHRC in India (1993-94 to 2006-07)**

Years	Deaths in custody
1993-1994	62
1994-1995	162
1995-1996	444
1996-1997	888
1997-1998	1012
1998-1999	1297
1999-2000	1093
2000-2001	1037
2001-2002	1277
2002-2003	1340
2003-2004	1462
2004-2005	1493
2005-2006	1730
2006-2007	1618

Source: Annual Reports of National Human Rights Commission.

The above table shows that NHRC reported only 62 cases of custodial deaths during 1993-94 but in the very next year an alarming increase with a total 162 cases was seen in the year 1994-95. The number of custodial deaths was 444 in 1995-96 which got doubled i.e.888 in just one year in 1996-97. During 1997-98 1012 deaths were reported which was followed by 1297 complaints during the year 1998-99 and 1093 complaints during 1999-2000. In 2000-01, there was seen a decrease in the number of complaints, when NHRC registered 1037 cases, which was followed by 1277 cases in 2001-02, 1340 in 2002-03, and 1462 in 2003-04, again in the coming years, the NHRC registered 1493 cases in 2004-05, and 1730 cases in 2005-06, 1620 cases in 2006-07. So starting from 1993-94 (ever since the inception) to 2006-07 it has registered a total 14915 cases of custodial deaths. It shows that on an average, it has registered one complaint of custodial death in every three days in India. Similarly looking at the report of ACHR (Asian Centre for Human Rights) published in Nov. 2011, presented

more serious figures by stating that more than four persons have been killed each day in India from 2001 to 2010. Whereas, the report of *ACHR- Torture in India 2008: A state of Denial* - the first ever nationwide assessment on torture in India had brought the fact that about four persons have died or been killed each day in custody (prison and police) since 2002 to 2007. So the statistics presented here are really shameful in a country like India which is known as world's biggest democratic country.

ACHR has also brought in light that 99.99% of deaths in police custody are due to torture as they occur within 48 hours of the arrest of the victim. Here, below is the chart of state-wise deaths in police custody from 2001-2002 to 2010-2011 as per the annual reports of NHRC from 2001-2008 and the answer given by Jitendra Singh (Minister of State in the Ministry of Home Affairs) in Lok Sabha on 9.8.2011.

Table 1.2

A study of police torture in India----- A report of ACHR (2011)

State/UT	2001 - 2002	2002 - 2003	2003- 2004	2004 - 2005	2005 - 2006	2006 - 2007	2007 - 2008	2008 - 2009	2009 - 2010	2010 - 2011	Total
Maharashtra	27	26	32	23	20	21	25	25	20	31	250
Uttar Pradesh	11	16	18	7	18	11	32	30	16	15	174
Gujarat	8	17	20	15	20	7	16	13	9	9	134
Andhra Pradesh	16	10	10	13	11	5	9	12	9	14	109
West Bengal	17	16	13	11	8	7	8	5	8	5	98
Tamil Nadu	7	17	12	9	7	16	06	7	8	6	95
Assam	10	15	6	4	7	8	12	9	6	7	84
Karnataka	9	16	4	9	5	8	5	3	3	5	67
Punjab	7	9	7	6	6	1	7	5	3	6	57
Madhya Pradesh	7	1	3	2	4	10	10	5	8	5	55
Haryana	5	6	2	2	4	2	9	6	6	3	45
Bihar	2	4	9	3	1	2	8	5	4	6	44
Kerala	4	4	4	6	5	3	6	2	6	2	42
Jharkhand	4	6	3	5	4	3	3	2	5	6	41
Rajasthan	5	6	5	0	7	3	2	4	4	2	38
Orissa	7	1	1	3	2	2	6	2	3	7	34
Delhi	5	2	3	5	3	3	6	0	0	3	30
Chhattisgarh	4	3	2	5	2	3	2	1	1	1	24
Uttarakhand	3	1	2	3	1	1	5	0	0	4	20
Meghalaya	3	3	3	2	0	1	3	1	1	0	17

Arunachal Pradesh	2	2	2	0	1	1	0	2	0	0	10
Tripura	1	1	0	1	1	1	1	1	0	1	8
J&K	0	0	0	0	1	0	3	0	0	2	6
U.P	1	0	0	0	0	0	1	0	3	0	5
Goa	0	0	0	0	1	0	0	0	0	2	3
Chandigarh	0	0	0	1	0	0	1	1	0	0	3
Pondicherry	0	1	1	1	0	0	0	0	0	0	3
Manipur	0	0	0	0	0	0	0	0	0	2	2
Mizoram	0	0	0	0	0	0	0	0	0	2	2
Nagaland	0	0	0	0	0	0	0	0	1	1	2
Sikkim	0	0	0	0	0	0	1	0	0	0	1
D&N Haveli	0	0	0	0	0	0	0	1	0	0	1
A&N Island	0	0	0	0	0	0	0	0	0	0	0
Daman & Diu	0	0	0	0	0	0	0	0	0	0	0
Lakshadweep	0	0	0	0	0	0	0	0	0	0	0
Total	165	183	162	136	139	119	187	142	124	147	1504

Source: Asian Centre for Human Rights report on torture 2011

The present table shows that from a study of 2001- 2011 Maharashtra appears to be the biggest violator with reporting 250 cases of torture by the police in India. The states like U.P., Gujarat, Andhra Pradesh, West Bengal, Tamil Nadu, Assam, and Karnataka take 2nd, 3rd, 4th, 5th, 6th, 7th and 8th positions respectively. The Union Territories like Andaman and Nicobar Island, Daman and Diu, Lakshadweep show absolutely no cases of torture by the police.

The table also shows the status of Punjab which is at the 9th place in India with regard to inflicting torture on people by the police. What is really alarming is that Punjab comes in the category of top ten biggest violator States in India regarding the role of police torture against the people.

The NHRC also recorded 12,727 deaths in Judicial custody from 2001-2002 to 2009-10 (28th Feb 2010) with an average of 1,416 cases of custodial deaths every year in the country. But ACHR is of the opinion that the data of NHRC does not represent the true picture. SuhasChakma (2011) expressed that In case of J&K it registered only 6 death cases in police custody from 2001-02 to 2010-11 and only 2 cases of custodial deaths in Manipur during the same period but Chief Minister Omar Abdullah on 31.3.2011 in his written answer in the Legislative Council stated that 341 persons had died in police custody since 1990 in J&K.

Although, NHRC has done a commendable job to provide monetary relief. SuhasChakma again citing the example of the Ministry of Home Affairs, Government of India in Lok Sabha (through Ajay Maken on 9th March 2010) stated that the NHRC recommended monetary relief of Rs. 5, 59, 45,000 to the next of kin of the deceased in 386 cases of custodial death/rape across the country form 1 April 2006 to 28 February 2010, But no disciplinary

action has been recommended by it in any case from 2008-09 till 31 July 2011. So it is desirable that the guilty public officials must be prosecuted also along with the provision of monetary compensation.

Also looking at the picture of data provided by National Crimes Record Bureau during 2010-11 shows the state- wise following status of deaths in police custody in India.

Table 1.3**NCRB' State- wise status of deaths in police custody in India (2010-11)**

States	Year 2010-11
Maharashtra	31
U.P.	15
Andhra Pradesh	14
Gujarat	9
Assam	7
Orissa	7
Bihar, Punjab, Tamil Nadu and Jharkhand	6 each
Karnataka, M.P and West Bengal	5 each
Uttarakhand	04 each
Delhi and Haryana	3 each
Goa, J&K, Kerala and Manipur	2 each
Mizoram and Rajasthan	2 each
Nagaland	1
Tripura	1
Chhattisgarh	1

Source: National Crime Records Bureau

The present table shows that Maharashtra appears to be a state with maximum number of Custodial deaths in police custody, whereas states like Tripura, Nagaland and Chhattisgarh record the minimum number of cases under this category. The States like U.P., Andhra Pradesh, Gujarat, Assam, Orissa take second, third, fourth, fifth and sixth positions. The table also shows that out of the study of 25 states Punjab is at 6th position with regard to the custodial deaths in India.

Conclusion

Police Accountability in a democratic society has been debated many times. Recent developments across the country have posed new challenges about the changing nature of problem and the policing quagmire that still lurks. The above mentioned study certainly takes us closer to the comparative picture of what exists in papers and what are actually on grounds with regard to the availability of human rights to prisoners in India. It calls for urgent

improvements at many levels in practice because provisions like urgent representation of people's resentment about police reforms, careful selection of people for police services, to curb the issue of staff crunch, principal of minimum force, frequent training programs for police, more stress on community policing, inspection of police lock-ups, provision of proper medical assistance to people in police custody etc. are already there and have been time and again talked about much. So it is high time that we realise the urgent need to implement these suggestions in actual sense with regard to humane policing head on.

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