

---

**INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH**

---

**CUSTODIAL TORTURE OF THE UNDER-TRAIL PRISONERS: A  
HUMAN RIGHT PERSPECTIVE**- Dichen Bhutia<sup>1</sup>**ABSTRACT**

*As rightly said by Nelson Mandela that the nation should not be judged by how it treats its uppermost inhabitants rather it should be judged by how it treats its lowest inhabitants.<sup>2</sup> Custodial torture is something that is inflicted upon the person in prison while he is in the care of the law enforcement agency which is the police authorities. Amongst all the people inside custody, almost 76% of India's entire jail population are under-trial prisoners. Cruelty and Violence by the authorities in power against the citizen who is under detention are dehumanizing and depressing scenarios in India Especially against those under-trial prisoners who linger in jails owing to the judicial system's incapacity to give them a prompt trial. With this, my research mainly deals with these issues of Custodial torture of the under-trial prisoners in the hands of the Enforcement agency from the human right as well as the legal perspective of the vacuums in the legal system that allow such incidents to be flourished without even getting convicted.*

*To make it convenient this research has been divided into different chapters where Chapter I provides the introductory part which deals with the introduction to the topic followed by Chapter II which will explain the different terms provided in the research. Chapter III will highlight the major problems of the Criminal Justice system i.e the impunity provided under Section 197 CRPC and the role of the Police during an investigation. Similarly Chapter IV will highlight the different rights that are available to the under-trial prisoners both from the national as well as international perspectives. Lastly By addressing the gaps this research will also try to suggest measures for filling those gaps.*

*Keywords: Custodial torture, Under-trial Prisoners, a human right.*

---

<sup>1</sup> LL.M. Student at West Bengal National University of Juridical Sciences Kolkata

<sup>2</sup>The Nelson Mandela Rules .The United Nations Standard Minimum Rules for the Treatment of the Prisoners, available at <http://www.un.org/en/events/mandelsday/mandelrules/html>.

## CHAPTER I

### INTRODUCTION

*“ It is said that no one knows the nation until one has been inside the jails. A nation should not be judged by how it treats its highest citizen, but its lowest ones.”<sup>3</sup>*

*‘Nelson Rolihlahla Mandela’*

Police are considered one of the main pillars of the Criminal Justice Administration. It is the agency established for the proper continuation of law and order in society. The repository of safety for the individual in the community. But when the protector of justice becomes the violator of justice what is the recourse for the ordinary citizen? Custodial Torture by the protector of the law or what we call "Police" meted out to the prison inmates especially the under-trial inmates, those unfortunate souls who are being denied prompt access to justice by our legal system owing to which they languish in jails for many years for no reason.

“According to the latest official data from the (NCRB) in its Prison Statistics India report for 2020, three out of every four people, are under-trial prisoners .3,71,848 people, or 76.1 percent of India's entire jail population, were awaiting trial as of December 31, 2020. The remaining 23% (1,12,589 inmates) were convicted, with 0.7 percent (3,590 inmates) being detainees.”<sup>4</sup>

According to Article 1 of the Universal Declaration of the Human Rights 1948 - "All human beings are born free and equal in dignity and rights." <sup>5</sup>All human beings are born into the common big human family, and it is expected that everyone should share a spirit of brotherhood that also includes people under-detention.<sup>6</sup> Similarly, the Prisoner, just because he is incarcerated should not be denied his basic human rights. The Protection of human rights should be available to all irrespective of whether he is a convict, the under-trials, or the detenu. <sup>7</sup>The Supreme Court has constantly shown its concern about the agency's ruthlessness and barbaric act against incarcerated prisoners in the plethora of judgments. Not

---

<sup>3</sup> The Nelson Mandela Rules ,The United Nations Standard Minimum Rules for the Treatment of the Prisoners, available at <http://www.un.org/en/events/mandelsday/mandelrules/html>.

<sup>4</sup> National Crime Record Bureau 2020 , Prison Statistics India Report .

<sup>5</sup> Universal Declaration of the Human Rights 1948, Article 1

<sup>6</sup> The Universal Declaration of human Right 1948 ,Article 1 also available at <https://www.claiminghumanrights.org/>>[last accessed 25/02/2022]

<sup>7</sup> See, Hussainara Khatun V Home Secretary ,State of Bihar (AIR 1979 SC 1360)

only the hardened criminals and terrorists but women and many innocent under-trial inmates also fall prey to this dark web of police atrocities. In *DilipK.Basu V State of West Bengal*, the Supreme Court observed that custodial violence and inhuman treatment are severe blows to the concept of the rule of law. As pointed out by Chief Justice of India, N.V Ramanna "the threat of violation of human rights and bodily integrity is found highest in the Police Station.<sup>8</sup> He further said that prisons are the "Black boxes" where the prisoners are unnoticed and unheard of. Therefore he emphasises the proper training and police sensitization to control this highhandedness.<sup>9</sup>

In an Interview with the print media 'Case of Mohammed Amir Ansari who was imprisoned for 14 years when he was only 18 years old where he was framed as a terrorist for the low-intensity bomb blast that took place between 1996-1997 without any proof.He was asked by the officials to sign a blank paper which he refused then again he was subjected to inhuman treatment and third-degree torture by pulling out the nails from his fingers, which made him drink water mixed with detergent, which ultimately led him to surrender the guilt before the authority.He was behind the bars for those crimes that he never committed.<sup>10</sup>

In another case, Irshad 41 years was abducted by police officials thrice in connection with the murder committed by his brother who was in jail for 25 years. Irshad used to go the jail to meet his brother because of which the police suspected him and took an eye on him. Later on, he was falsely abducted and addressed as a terrorist. He was subjected to Torture and third-degree treatment for a crime which he had never committed.<sup>11</sup> His story resembles the scenes from Bollywood movies but this has been lived by Irshad.

Such an act of viciousness against the human being leaves the entire society numb. There are thousands of such cases which destroy the lives of many individuals after being falsely implicated in charges that they didn't even do. Custodial Torture against such under-trial prisoners leaving their life miserable is the worst-case scenario. The Mathura Rape case where the highhandedness of the police led to the rape of a young tribal girl Mathura inside

---

<sup>8</sup>See ,Chief Justice of India ,N.V Ramana available at <https://www.news18.com/news/india/5-custodial-deaths-per-day-rapes-caste-crimes-why-cji-finds-threat-to-human-rights-highest-in-thanas-4061867.html>

<sup>9</sup>See ,Chief Justice of India ,N.V Ramana available at <https://www.news18.com/news/india/5-custodial-deaths-per-day-rapes-caste-crimes-why-cji-finds-threat-to-human-rights-highest-in-thanas-4061867.html>

<sup>10</sup>See ,<http://www.quint.com>/also available at youtube at the thumbnail "Framed as a terrorist : 14 years in jail "[last accessed on 28/02/2022 at 20:24 P.m][Mohmd.Amir Ansari V State of Maharastra]

<sup>11</sup>See ,<http://www.quint.com>/also available at YouTube at the thumbnail "The Quint: 4 years in jail,11 years struggle, Yet half the justice served"[last accessed on 28/02/2022 at 20:24 P.m]

the police station, <sup>12</sup>The Hyderabad fake encounter by the Police (In case of the accused of Rape),<sup>13</sup>Ishrat Jahan encounter <sup>14</sup> and several other cases where the police used unlawful means.

**In Olmstead V United States**<sup>15</sup>, Justice Brandeis observed that "Government as the Omnipotent and Omnipresent teacher teaches the whole people by its example. If the authority itself becomes the violator, it breeds contempt of the law." <sup>16</sup> The inhuman custodial Torture creates an atmosphere of discomfort among the ordinary citizen who longer has faith in the system. This violence, maltreatment against the Prisoner to obtain the information, a shortcut to deal with the matter, and pressure from the public to break the suspect that makes even the innocent person confess any crime because of which confession made to the Police cannot be considered as a shred of valid evidence.<sup>17</sup>

Various national and international instruments strictly opposed this practice of police atrocities. Article 5 of the UDHR prohibits torture, cruel, inhuman & degrading treatment similar provision under Article 7 has been inserted in the International Covenant on Civil and Political Rights (ICCPR) 1966. The Convention against Torture and other cruel, inhuman, degrading treatment or Punishment (UNCAT) of 1984 also enshrined under its provision the prohibition of the such barbaric practice of Torture. As of 17<sup>th</sup> November 2021, 173 countries so far have ratified this convention. <sup>18</sup>India also signed this convention in 1977 but had not yet ratified it. With this background, this paper delves explicitly into explaining the Custodial Torture of under-trial prisoners from the human rights and legal perspective.

---

<sup>12</sup>Tukaram V State of Maharashtra AIR 1979SC185

<sup>13</sup><http://www.thenewsminute.com/article/disha-case-encounter-nine-things-hyderabad-cops-allegedly-lied-about-164209?amp>

<sup>14</sup>In june 2004 , The Gujarat Police Crime Branch had fired upon and killed a 19 years old Ishrat Jahan ,Javed Shaikh ,AmjadaliAkbarali Rana and ZeeshanJohar linked to Pakistan terror group Lahkar-e—Taiba who planned to assassinate the CM Narendra Modi available at <http://www.thehindu.com/news/national/explained-police-encounters-in-india-cases-convictions--court-orders/article654631.ece/amp/>

<sup>15</sup>See, Olmstaed V United Sates US at page 485,quoted in Mapp V Ohio US at Pg . 659(c)

<sup>16</sup>Ibid 10

<sup>17</sup>See, The Indian Evidence Act 1872 ,Section 25 accessed through <http://www.legalservice.india.com>>[last accessed 25/02/2022 at 17:35]

<sup>18</sup><http://www.ohcr.org>

## CHAPTER II

### DEMYSTIFYING THE TERM ‘POLICE’ ‘TORTURE’ AND ‘UNDER-TRIAL PRISONERS’

Before proceeding into the other aspects of study we need to understand the meaning of the term “Police” “torture” and the “Under-trial”. Basically the term police according to the Webster dictionary is the- “ Government Department who are concerned mainly for the safeguard of the proper law and order ,ensuring safety and health of the peopleincluding the power of judicial ,executive and the legislative function while performing the necessary act.”<sup>19</sup>So as per the definition they exists mainly for the protection of the citizen ,to ensure they are safe and the laws are properly executed .In this scenario the agency can use required force necessary for the proper functioning but the problem lies here the police high-handedness in using more than optimal force leading to the torture and often resulting to the death of some. The case of the *Khatri V State of Bihar Bhagalpur Blinding Case* 1981 which is the worst form of human right violations whereby the Supreme court heard the case in which the police blinded the under-trial by poking a hole in the eyelids and pouring acid into it <sup>20</sup>.This led to the blinding of the under-trial prisoner. Similarly *On 23<sup>rd</sup> June 2020 in Tamil Nadu* both the father[P Jeyaraj] and son[J.Fenix] were allegedly killed by the Santhakulam police while they were in custody. Firstly P.Jeyaraj A timber trader was detained by the Police for opening shop beyond 9pm during the Pandemic afterwards when his son went to the police station seeking the release of his father ,he was also put behind the bars .Both the father and the son were beaten harshly , tortured and sexually assaulted by the police. Later on they were admitted tokovilpatti government hospital , by the police authorities . Subsequently they succumbed to death because of the injuries<sup>21</sup>. The supposed lockdown disobedience blame on them was something that would have got him a maximum of 3 months incarceration if found to be guilty <sup>22</sup>.But the highhandedness of the Police took their lives. This scenario shows a horrible condition and the inefficiency in the system that allows such incident to flourish without being even being convicted. It is rare that the police are often being convicted.

<sup>19</sup><http://.Webster-dictionary-definition-of-police/> [last accessed 8/04/2022]

<sup>20</sup><https://www.legalserviceindia.com/legal/article-4537-the-human-right-of-under-trial-prisoners.html>[last accessed on 8/04/2022]

<sup>21</sup>Father and son allegedly killed in police custody for opening shop beyond time in Tamilnadu available at <http://www.indianexpress.com>[20/05/2022]

<sup>22</sup>ArunJanardhana explained How Tamil Nadu Police brutal acts of revenge cclaimed lives of father and son available at <http://www.indianexpress.com> [last accessed 20/06/2022]

NCRB 2020 reported the no of Deaths in the Police custody (person not in remand) includes 43 deaths in which 22 cases were registered against the police with 11 arrest , 4 cases being charge-sheeted with 0 conviction. Person in remand include 33 deaths were reported , 23 cases was registered, only 1 case is being charge-sheeted and 1 arrested ,11 acquittals /Discharge with 0 conviction .<sup>23</sup>

Now coming to the word “Torture” it can be often being defined as the act of inflicting pain and suffering on the individual in the form of punishment or to persuade them to do something for the another person. Article 1 of the Universal Declaration against torture defined torture as –“ *as an act in which a public official intentionally inflicts severe pain or suffering on a person whether physical or mental for the purpose of gathering information or a confession from him or a third party, punishing him for this act he has committed or is suspected of having committed or intimidating him or other people.*”It excludes pain or suffering resulting only from inherent or incidental to authorized punishments to the degree that they are compatible with the Standard Minimum Rules for the treatment of prisoners.<sup>24</sup>In the landmark judgement of ***D.K Basu V State of West Bengal*** given by the Supreme court on the basic rights of the prisoners while he was on jail .stated that “Torture is wound in the soul so painful that sometimes you can even touch them and so intangible that there are no ways to heal them”.<sup>25</sup>Custodial violence is therefore a tool in the hands of the generally stronger one over the weaker. In this case the apex court held that the torture by the police in the custody is a serious blow on the rule of law. Perhaps an assault on the human dignity. In the case of ***Smt. Shakila Abdul Khan V V.R Dhobe***J T 2003 SC 282<sup>26</sup>it was observed that if the appropriate measures are not be taken against the custodial violence then the whole human civilization would be in risk leading to anarchy and the ideals of

---

<sup>23</sup>[www.ncrb.gov.in](http://www.ncrb.gov.in) 2020

<sup>24</sup> Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, GA res. 3452 (XXX), Annex, 9 Dec. 1975. 3 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, GA res. 39/46, Annex, 10 Dec. 1984

<sup>25</sup>D.K Basu V State of West Bengal (AIR 1997 SC 610) also available at <http://www.indian.kanoon.org>[last accessed on 8/04/2022]In this case the major guidelines have been provided by the Supreme court :i.e

Right to be known the grounds of arrest .

Right to get a lawyer of his choice .

Right to inform the family members and so on.

<sup>26</sup>Smt. Shakila Abdul Khan V V.R Dhobe JT 2003 SC 282 also available at [http://www. indiankanoon.org](http://www.indiankanoon.org)[last accessed at 8/04/2022]

barbarism.<sup>27</sup>Torture have often being resisted by the various international instruments of Human rights be it UDHR ,ICCPR and other human rights instrument under the different provision whereby no person shall be subjected to torture and inhuman and degrading treatment .

The term “Under-trial” Prisoners -According to the Standard Minimum Rules for the treatment of the Prisoners adopted by the UN congress on the Prevention of the Crime and treatment of Offender held at Geneva in 1955 under Rule 84 (1) defined Under-trial prisoners as-“ Persons arrested or imprisoned by the reason of a criminal charges against them who are detained either in the police custody but have not being tried or sentenced”.<sup>28</sup>Therefore under-trials are the one who are not yet convicted for the crime but rather they are put behind the bars for the investigation, for enquiry for which they are accused of. <sup>29</sup>Among all the prisoners locked up inside the jail .The worst sufferer of human rights violation are these under-trial prisoners. In India as of 2020 there are more under-trials than the convicts and detentue .

### **CHAPTER III**

## **IMPUNITY AGAINST TORTURE UNDER SECTION 197 CRPC AND ROLE OF THE POLICE DURING INVESTIGATION/**

*“Prisons are black boxes .Prisoners are often unseen and Unheard “<sup>30</sup>*

The major problem that persists in India with regards to the custodial torture and violence inside police station is the abuse of the power at the hands of the law enforcement agency that often times take law in their hand and the disappointment of the criminal justice system

---

<sup>27</sup>See ,Narender Kumar ,”Constitutional law of India “,Allahabad law Agency” 2020 edition at Pg no 403

<sup>28</sup> See ,” Standard Minimum Rules for the treatment of the Prisoners adopted by the UN congress on the Prevention of the Crime and treatment of Offender held at Geneva in 1955 approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 under Rule 84 (1)also available at

[http://www.unodc.org/pdf/Criminal\\_justice/UN\\_Standard\\_Minimum\\_Rules\\_for\\_the\\_treatment\\_of\\_the\\_prisoners](http://www.unodc.org/pdf/Criminal_justice/UN_Standard_Minimum_Rules_for_the_treatment_of_the_prisoners)  
[last accessed at 9/04/2022]

<sup>29</sup>See,<http://www.civils-daily-burning-issue-of-under-trials-custodial-torture-death>[last accessed on 10.04.2022]

<sup>30</sup>CJI ,N.V Ramana said on the inaugural session of the 18<sup>th</sup> All India Legal Service Authorities in Jaipur available at <http://www.economictimes.com>

to convict them being another. The defence that they claimed after being accused of torture is that they are the department of the government and government can do no wrong, claiming the immunity provided under the various provisions Section 197 being one of them. But this is the wrong immunity they are claiming.

Section 197 of the CRPC which provides impunity to the Judges and the Public servants who are not removed from the office save by or with the sanction of the government is accused of any offence alleged to have been committed by them while in office, court will not take cognizance of such matter at hand. But the progressive Judgements of the Supreme court in the case like of *Circulate the Judgements Amongst v State of Gujarat 2017*<sup>31</sup> where it was held that the immunity claimed that state can do no wrong is a colonial interpretation of law and it is no more used in a welfare state. So the state will be liable as much a ordinary citizen when the offence has been committed by the employee of the state.

Also in the case of *PP Unnikrishan V Puttiyotti Alikutty (2000)* On the evening 1994 where the Complainant was called in the Police station and he was asked to stay there until the first appellat comes. But the appellat did not arrive nor the complainant were allowed to leave the police station, so they had to remain inside the jail overnight. Next morning when the appellat arrive they put the Complainant inside the lockup and start questioning 'did u steal the articles form the shop?' and also repeatedly start beating him. He was kept inside the prison for three days. On next day when he was released, Also they asked the Complainant that if he tell anyone as to what happened here, the appellat would charge him with the false case.<sup>32</sup> The supreme court said that the police officials were abusing their power hence are not granted with the immunity. Also in *PUCL V Union of India :1977* The highest court refused to grant immunity to the Public officials under Section 197 when the officials violated the rights of the detainee. But not to be forgotten there are end number of cases where government refuse to give sanction for prosecution because of the Political entanglement with the Police. For instance in the Ishrat Jahan Fake encounter case<sup>33</sup> the Gujarat Government refuse to give CBI sanction to prosecute the three police officials<sup>34</sup>. Therefore this immunity has become a major cause of concern to prosecute the perpetrator.

<sup>31</sup>[http://www.the\\_wire\\_government\\_malicious\\_prosecution\\_abuse\\_of\\_power](http://www.the_wire_government_malicious_prosecution_abuse_of_power) [last accessed on 10/04/2022]

<sup>32</sup>[http://lawyersservice.in<PP\\_unnikrishanan>2000](http://lawyersservice.in<PP_unnikrishanan>2000) [last accessed on 7/04/2022]

<sup>33</sup>[Aparna Alluri and AnandKatakam, Ishrat Jahan Encounter case Explained accessed through www.hindusthantimes.com](http://www.hindusthantimes.com), <http://www.hindusthantimes.com/static/ishratjahanencountercase> last accessed on 7/04/2022

<sup>34</sup><http://www.leaflet.in> 'Justice cant breathe! Time to revisit immunity garnted to the Cops in India BY Ravi Singh Chhikara And Alisha Luthra July 2021 [last accessed on 8/04/2022]

Whenever they faced with the charges of the abusing the power, their act is considered to be committed during the discharge of the duty. The act of rape ,torture and extra judicial killing .Do they even come under the discharge of the duties is a matter of concern. The immunity shield the officials from the prosecution and often times they do away with such brutality.

## **ROLE OF POLICE DURING INVESTIGATION**

Under Chapter XII of the CRPC police officer have the discretion of investigating the crime of both cognizable Section 156 of CRPC in which case the Police do not need the warrant to carry forward the investigation and in the non cognizable offence under section 155 of CRPC a warrant needs to be issued for arresting a person .In case of the cognizable offence under section 156 of CRPC the power of the police are widest and not even the court are allowed to interfere in the investigation of the case .Section 154 CRPC provided the information to be given to the police either written or oral to the Police which will be called as a FIR [First Information Report ]. It is excepted that Police officer under this section use the power legally and under the limits .He should not cross the line in the name of the discretion .But in India we all are well aware of the kind of situation when it comes to power the official used. Many a time if we see the registration of the FIR in cases of police brutality we will hardly find any .Tied by the common brotherhood and with the feelings of oneness, the other police officer hardly filed or register an FIR against their colleagues. It is often difficult to find a evidence against the police ,as it either tampered or vanished . Therefore the situation is miserable when it comes to prosecuting the perpetrator.Section 160 of CRPC gives the Police the power to call for the attendance of the witness and in case of the person below 15 years and the man above 65 years attendance will be at the place where he reside .Section 161 CRPC the police officer will examine the witness by recording the statement in writing or by the audio-visual means. After which the Police officer shall submit the final reports which is called as the charge-sheet to the magistrate. Criminal Justice system grant surplus power to the Police and their role is vital when it comes to investigating a crime but the attitude of the police in using this power is abysmal .But it is oblivion to only point out the negative roles that police play, there are instances where a positive role played a police that leads to the conviction of the hardened criminals like Mohd. AjmalKasab tried for the Bombay bomb blast .It is the positive action by them. But as the discussion is about the Custodial Torture of the Under-trial prisoners I would not delve into discussing the positive role played by the Police.

## **CHAPTER IV**

### **HUMAN RIGHTS OF THE UNDER-TRAIL PRISONERS**

Various national and international instruments barred torture, Inhuman and degrading treatment against prison inmates. Their rights might be shrunk because of the crime they have committed and are incarcerated, but their rights still survive.<sup>35</sup>Torture of any form is a gross violation of human rights. In the case *of Bhagwan V State of Punjab*, the Supreme court observed that "Torturing a person and using third-degree methods are medieval nature and they are barbaric and contrary to the law. The Police would be accomplishing behind their closed-door precisely what the demands of our legal order forbid".<sup>36</sup> Also, in *DilipK.Basu V State of West Bengal*, the Supreme Court observed that custodial violence and inhuman treatment are severe blows to the theory of the rule of law.<sup>37</sup> Thus, it would be better to divide these rights into two categories: the Rights of the Prisoners under International legislation and the Rights of the Prisoners under National legislation. *In Kishore Singh V State of Rajasthan* where Justice Krishna Iyer a believer of reformatory approach and in his famous saying that "Every saint have the past and every sinner will have the future" speaking for the court he observed that "Human dignity is a fundamental constitutional principle that should not be traded for a simple fear entertained by a prison authority. " Torture is a terrible thing that make any one a criminal because of the fear of beating and killing by the over zealous prison authorities .It make them confess anything that one would like them to. Along with this there are other important provision provided under the constitution that protects the prisoners against such inhuman act in the hands of the police .

### **NATIONAL CONCERN:CONSTITUTIONAL PROVISION THAT PROHIBITS TORTURE**

Our Indian Constitution grants the indispensable human rights to all the citizen including some of the rights to the prisoners as well under PART III and Part IV of the Indian Constitution.<sup>38</sup> For instance Art. 14 that prohibits discrimination and prohibits legislation that discriminate the citizens. Art. 14 has been therefore shown to be a barrier against any

---

<sup>35</sup>See, *Sunil Batra V Delhi Administration* (AIR 1980 SC1579)

<sup>36</sup>See, *Bhagwan V State of Punjab* (1992)3 SCC 249;AIR 1992 SC 1579

<sup>37</sup>See, *In Kishore Singh V state of Rajasthan* (2012 )8 SCC 1

<sup>38</sup>See "Paper :Access to Justice Module :Access to Justice to the prisoners "also available at <https://www.bbau.ac.in/dept/HR/TM/Justice%20to%20Prisoners.ePathshala.pdf>

arbitrary or discriminatory government action. Hence any inhuman and discriminatory practises against the citizen no matter if the person is a normal person or under detention by the state will be covered under Article 14 of the Constitution. Similarly Article 19 of the Constitution that guarantees six fundamental freedom to all the citizen including the prisoners excluding the right to movement and to reside and settle any where within the territory of India. Apart from this rights they are being provided with the right freely speak and express them even inside the jail. Similarly Article 21 of the constitution is considered to be a heart and soul of the Constitution that guarantees the one of the most vital fundamental right i.e. right to Life and Personal liberty. There are different facets of the rights of the prisoners enshrined under Article 21 which denied Custodial torture/Violence of the prisoners in the form of providing them with the free legal aid ,speedy trail , Fair investigation ,right against inhuman treatment and so on .This I will discuss in the upcoming chapter in detail. While article 21 discuss about different procedure how a right is guaranteed which should be fair under Article 22 of the constitution provides the requirements of how this right fairness is maintained Article 22 provides the safeguards against the arrest and detention the right to informed as soon as it may be the grounds as to why he was arrested ,Right to consult and to be defended by the lawyer of the choice ,Right to produce before a magistrate within 24 hours of arrest and also prohibit the detention of the person without a trail .

After *Meneka Gandhi V Union of India*<sup>39</sup> the Supreme Court presented a fresh dynamic aspect of Article 21 , expanding its boundaries to the widest possible amplitude declaring that the term life appearing in Article 21 had been construed and comprehended on a wide spectrum by the Supreme Court's constitution bench. In *Anita Kushwaha V PushpaSadan*<sup>40</sup> It has been established that a prisoners, whether convicted ,on trial or detained ,does not ceases to be human being when incarcerated and that he retains his fundamental rights guaranteed by the constitution including his right to life. After being convicted of a crime under the established procedure or in the line with the legal system convicts still retains their other constitutional rights while on jail other wise it will be a gross contravention of the rule of law and natural justice. <sup>41</sup>*Access to justice* is one the inherent and the inalienable rights guaranteed to the prisoners .All the prisoners be it a convict , under-trial or a detenue should have to right too access justice. It is one of the most priced rights Supreme Court in

---

<sup>39</sup>*Meneka Gandhi V Union of India AIR 1978SC597*

<sup>40</sup>*Anita Kushwaha V PushpaSadan AIR 2016 SC 3506*

<sup>41</sup>*Narender Kumar ,”Constitutional law of India”, Allahabad law agancy ,tenth editon 2018 reprint 2020 pg no 382-399*

**HussainaraKhatoon V home secretary Bihar**<sup>42</sup>and in **Tamil Nadu Mercantile BankShareholder Welfare Vs SC Sekar** :No person aggrieved should be left without a remedy at hand.

Other rights would be **Right to free legal aid under Article 39 of the Constitution** : Every indigent prisoner who could not afford to hire a lawyer to defend should be provided with the free legal aid .So that Rule of law and natural justice would prevail and denial of which leads them to the culpability at the hands of the police personal .In the case of **M.H Hoskot V State of Maharashtra**<sup>43</sup> : the apex court ruled out that right to free legal aid at the cost of the state is the part of right to fair trail and the denial of which is the violation of the Article 21 .SC held that” Right to grant free legal aid to the indigent person is the duty of the state and not the charity of the Government .

**Right to Speedy trail** : Speedy trail explicitly fall under the amplitude of Article 21 .It provides that the fair and speedy trail should be given to the prisoners denial would amount to the abuse of the right of the prisoner under article 21. In many cases we hear the prisoners who are under-trial who because of the lack of financial support unable to furnish the bail or the lack of free ,fair and speedy trail languish in the jail for the crime which they have never committed .Such helpless innocent convicts who are not even the convicts fall prey into the hand of the torture and brutality at the hands of the Law enforcement agency. For this reason speedy trail is a very important rights of every prisoners .Supreme Court in **HussainaraKhatoon (NO II )v Home Secretary ,State of Bihar**<sup>44</sup> held that the under-trial prisoners should not be put behind the bars longer than which they are sentenced to .Keeping them for longer period would amount to the defiance of the human right and the fundamental right under Article 21 thus ordered the discharge of the under-trial prisoner who were languishing in the jail for many years **In Common Cause V Union Of India**<sup>45</sup>observed that holding the criminal proceeding for a longer time is itself a medium of oppression against the accused .Thereby court issued a direction for the release of the prisoners on bail or discharge them and asked for the closure of the case.

**Right to fair investigation :**

Investigation conducted by the agency should be fair enough so that the innocent victims are not tried under the false claims .Most of the cases where the person is convict are from the

---

<sup>42</sup>HussainaraKhatoon V home secretary Bihar AIR 1979 SC1360

<sup>43</sup>M.H Hoskot V State of Maharashtra AIR 1978 SC 1548

<sup>44</sup> Ibid 19

<sup>45</sup>Common Cause V Union Of India AIR 1996 SC 1619

vulnerable groups of the society who because of their poverty ,lack of legal awareness are put behind the bars for no reason. Even if they denied the charges under which they are framed no body would listen to their voices .So fair and reasonable trail is a need of the hour .As nowadays over power in the hands of the Police leads to the corruption .In **ZairaHabibullaH.Sheikh V State of Gujarat** :<sup>46</sup> SC held that the trail which is primarily aimed for finding the truth should be fair .It would amount to be injustice if trial is not fair and reasonable.

**Right to bail** : Bail should be granted as a matter of right unless a crime is heinous and serious .But in many cases they are being denial of this right to bail.

In **Babu Singh V State of UP**<sup>47</sup> SC held that denial of the bail amounted to the violation of the Article 21 of the constitution as it is demining one's right to life and liberty guaranteed under the article.

**Right against Solitary Confinement : In Sunil Bhatra V Delhi Administration**<sup>48</sup>:

who was sentenced to death by the session court of Delhi ,while he appealed against the decision given by the high court during this period he was put into the solitary confinement by the prison authorities which was in opposition to the article 21 .Therefore SC held that if ever the person to be put into solitary confinement it could only be decided by the court of law under Section 73 and 74 of the Indian Penal Code and not by the prison authorities. Section 30 of the Prison Authorities Act 1984 also denied solitary confinement to be determined by the prison authorities.SC held that the Solitary Confinement is the disobedience of the Right under Article 21.

**Under-trail prisoners should not be kept with the hardened criminals.** Under-trails should be kept in a separate prison because the innocent one who are under-trails and are not yet being convicted when come in contact with the hardened criminals they also get influenced leading them to become one of them.<sup>49</sup>

## **INTERNATIONAL CONCERN**

Any sort of torture is prohibited under the international law.

**The Universal Declaration Of Human Rights 1948** :adopted by the General Assembly on 10 December 1948 is a standard set of principles that every person should adhere to. Article

---

<sup>46</sup>ZairaHabibullaH.Sheikh V State of Gujarat AIR2004SC3114

<sup>47</sup>Babu Singh V State of UP AIR 1978 SC527

<sup>48</sup>In Sunil Bhatra V Delhi Administration AIR 1978 SC 1675

<sup>49</sup>Hussainarakhatoon home secretary Vs State of Bihar AIR 1979 SC1360

5 of the UDHR explicitly explains that: "No one shall be subjected to torture, cruel, inhuman and degrading treatment or punishment."<sup>9</sup> Similarly Article 7 and Article 10 of the International Covenants On Civil and Political Rights 1996 states that no body should be ever put through any inhuman or humiliating treatment or ever being denuded of their liberty and freedom.<sup>50</sup> Also the European Convention for the Protection of the Human Rights and Fundamental Freedoms 1950 under Article 3: "states that no one shall be subjected to torture or inhuman or degrading treatment or punishment." This is an absolute rights and any form of Torture in any circumstances will not be justified. This provision not only deals with Torture rather, it is also applicable to the violence within the police custody. Apart from this International instrument one of the significant instruments that specifically deals with the torture is the United Nation Convention Against Torture (UNCAT).<sup>51</sup>

## **CONVENTION AGAINSTS TORTURE**

India has signed the United nation convention on torture in that was passed in 1984 fortunately India had showed its concern that it condemn any form of torture by signing it on 1997 but has not yet ratified it which mandated the Indian Government to bring forth a national law in this regards .In 2008 finally after 13 years , the bill (Prevention of torture bill 2010) was put forward in the Lok Sabha by the then Home Minister P .Chidambaram as a urgent requirement of the ratification process by enacting a national law to meet the international standards .This is evident from the above discussion about the increase of the torture in the police custody yet the denial of the many officials to accept it.

As rightly pointed out by Dr .Shashi Tharoor condemning the torture – “Torture is simply a wrong. It is morally unacceptable ,legally unjustifiable ,and it is practically defective because people in pain would tell you anything what you want to hear from them in order to stop torture .So the truth is that it should not be allowed to happen anymore, and we have to ask ourselves what kind of India we wish to build in the 21<sup>st</sup> century ,not a land which condones such practise.”<sup>52</sup> Thereby supporting the motion for bringing the law.But due to some

---

<sup>50</sup>International covenant on civil and political rights (ICCPR)Article 7 and Article 10.

<sup>51</sup>United Nation Convention Against Torture and other Cruel,Inhuman and degrading treatment or punishment United Nation Declaration Against human rights 1948 G.A Resolution 39/46 available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

<sup>52</sup>Prevention of Torture Bill 2010Available at

[http://www.humanrightsinitiative.org/programs/ai/rti/india/national2009/email\\_alerts/prevention\\_of\\_torture\\_bill\\_lok\\_sabha\\_debate\\_6thmay\\_2010](http://www.humanrightsinitiative.org/programs/ai/rti/india/national2009/email_alerts/prevention_of_torture_bill_lok_sabha_debate_6thmay_2010)

problematic provision of the Bill ,the Bill was sent by the Rajyasabha to the standing committee to make some changes ,but the bill was dissolved because of the Dissolution of the 15<sup>th</sup>Lok- Sabha in 2014 .By then in the year 2016 Dr. Ashwini Kumar ,the former minister of law and justice filed a petition in the Supreme Court asking for the India's Compliance with the UNCAT .<sup>53</sup>The court further referred the matter to the Law Commission to do the examination whereby Commission submitted its 273<sup>rd</sup> report in Oct 2017. The commission recommended various measures to meet the compliance with the Convention .<sup>54</sup>

But India government is in a state of denial of addressing the issue of torture in specific .A statement made by the then Prime Minister Rajiv Gandhi In an interview with the British Television said “We don't torture anybody”, we are very categorical about that ,whatever we had complaints about torture , we have checked and are not found it to be true” - <sup>55</sup>

Recently India's Attorney General at the United Nation during the 3<sup>rd</sup> Universal periodic Review , a Review on the India's Human Right Record :said that “ India believes in peace ,non-violence and human rights dignity. As, such the concept of torture is alien to our culture and it has no place in the governance of nation”. This is clear from this statement how our Country does not believe that ‘torture’ as a form of violence exists in India considering it be an alien concept.”<sup>56</sup>

Custodial torture is the naked violation of the human rights. As already discussed above the various cases where the menace of violence by the police have taken many innocent lives. As of 2019 the number of cases registered against the Police Personnel for the violation of the Human rights are 49 .Among them 10 includes the Encounter killings,15 includes the Death inside the custody ,torture or causing hurt 1 ,extortion 3 and others include 20 .From those 49 cases only in 12 cases the final reports are submitted 7 cases are charge sheeted with 0 conviction of the Police personnel. <sup>57</sup>

According to the National Human Rights Commission report of 2021, shows 151 custodial death in India, with more than 13 states did not report any custodial deaths. Maharashtra with the highest custodial death of 26, followed by Gujarat with 21 deaths, Bihar with 18,UP and

---

<sup>53</sup>Dr. Ashwani Kumar V Union Of India [Writ Petition no 738/2016] available at

<http://indiankanoon.org/doc/19030773>

<sup>54</sup>Report no 273<sup>rd</sup> : Implementation of the United Nation Convention Against Torture available at

<http://www.lawcommissionofindia.nic.in/reports/report/273pdf>

<sup>55</sup>This is said by the then Prime Minister Rajiv Gandhi when asked about the Indian Human Right record in a television of panorama .[Source –Amensty International Report ]

<sup>56</sup>[https://www.mea.gov.in/Uploads/PublicationDocs/27953\\_3rd\\_Universal\\_Periodic\\_Review\\_of\\_India.pdf](https://www.mea.gov.in/Uploads/PublicationDocs/27953_3rd_Universal_Periodic_Review_of_India.pdf)

<sup>57</sup>See, [ncrb.gov.in](http://ncrb.gov.in)

Madhya Pradesh with 11 cases.<sup>58</sup> According to NCRB 2021, 74 deaths were occurred in the police custody.<sup>59</sup> The problem is this are only the figures that shows the number of custodial deaths in the custody, the data are still silent about the number of custodial torture that are still not reported and the number of custodial tortures that leads to the death of the prisoner that are happening on a daily basis. Officials report did not anywhere mention the death due to torture .They said the death either due to sickness, due to suicide or any other reason.

## **CONCLUSION**

Custodial torture as the name suggests is the pain and suffering inflicted on the person which is the naked violation of the human rights especially those unfortunate souls who are lingering inside the jail awaiting for trials .As the data mentioned above half of the jail population in India are under-trial prisoners .Some are inside the trials for the petty offences if their trial would have been done on time then those prisoners would have been outside the prison within no less time. This is the major concern of our Criminal Justice system .Apart from this those prisoner are being subjected to the inhuman and degrading treatment which leave their life measurable worse than an animal. As we have already discussed about the kind of treatment they had to suffer while inside the jail .It is time for the India to adopt such measures to stop this heinous and brutal act committed by the Police on the prisoners especially towards the under-trials as they are neither convicted of the crime nor are set free. One positive step would be to give effect to the long standing Anti –torture legislation to effect by bringing up the domestic legislation in order to meet the international standard that prohibits the torture of any form. It will create deterrence against this custodial torture. India had signed the Convention long years back but had not yet ratified. Because of which many innocent falls prey into the hands of adverse brutality of the police.

## **SUGGESTIONS**

- It is high time that India should ratify the United Nation Convention against torture by enacting the domestic legislations in order to meet the International standard.

---

<sup>58</sup>See, National Herald, Online 4/12/2021 also available at [http://www. Nationalheraldindia.com/151-people-died-in-police-custody-2021](http://www.Nationalheraldindia.com/151-people-died-in-police-custody-2021). [last accessed 25/02/2022]

<sup>59</sup>See, National Crime Report Bureau (NCRB ) 2020.

- The immunity that is provided to the Police officials under section 197 of the CRPC ,it needs to be amended so that a balance is maintained between the discharge of the function as well as seeing that this immunity in no way be misused by the police to harass the innocent people .
- Proper guidance ,transparency and sensitization of the law enforcement and transformation of the criminal justice system can help improve the condition of the Under-trial prisoners to an extent.
- For petty and minor offences the prisoners should be given a prompt trial and effort should be made that no one languish in a jail for the prolonged period .

---

### **REFERENCES :**

- Article 1 of the Universal Declaration of the Human Rights 1948.
- The Universal Declaration of human Right 1948 ,Article 1 also available at <http://www.claiminghumanrights.org>>[last accessed 25/02/2022]
- HussainaraKhatoon V Home Secretary ,State of Bihar (AIR1979 SC 1360)
- ,Chief Justice of India ,N.V Ramana available at <https://www.news18.com/news/india/5-custodial-deaths-per-day-rapes-caste-crimes-why-cji-finds-threat-to-human-rights-highest-in-thanahs-4061867.html>
- ,<http://www.quint.com> also available at youtube at the thumbnail “Framed as a terrorist : 14 years in jail ”[last accessed on 28/02/2022 at 20:24 P.m][Mohmd.Amir Ansari V State of Maharastra]
- ,<http://www.quint.com> also available at YouTube at the thumbnail “The Quint: 4 years in jail,11 years struggle, Yet half the justice served”[last accessed on 28/02/2022 at 20:24 P.m]
- Olmstaed V United Sates US at page 485,quoted in Mapp V Ohio US at Pg . 659(c),
- The Indian Evidence Act 1872 ,Section 25 accessed through <http://www.legalservice.india.com>>
- <http://www.webster-dictionary-definition-of-police>.
- <https://www.legalserviceindia.com/legal/article-4537-the-human-right-of-under-trial-prisoners.html>
- Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, GA res. 3452 (XXX), Annex, 9 Dec. 1975. 3 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, GA res. 39/46, Annex, 10 Dec. 1984
- D.K Basu V State of West Bengal (AIR 1997 SC 610) also available <http://www.indian.kanoon.org>[last accessed on 8/04/2022]In this case the major guidelines have been provided by the Supreme court :i.e Right to be known the grounds of arrest .Right to get a lawyer of his choice .Right to inform the family members and so on.

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

<https://www.ijalr.in/>

- Smt. Shakila Abdul Khan V V.R Dhobe JT 2003 SC 282 also available at <http://www.indiankanoon.org>[last accessed at 8/04/2022]
- Narender Kumar ,”Constitutional law of India “,Allahabad law Agency” 2020 edition at Pg no 403
- Standard Minimum Rules for the treatment of the prisoners adopted by the UN congress on the Prevention of the Crime and treatment of Offender held at Geneva in 1955 approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 under Rule 84 (1)also available at [http://www.unodc.org/pdf/Criminal\\_justice/UN\\_Standard\\_Minimum\\_Rules\\_for\\_the\\_treatment\\_of\\_the\\_prisoners](http://www.unodc.org/pdf/Criminal_justice/UN_Standard_Minimum_Rules_for_the_treatment_of_the_prisoners) [last accessed at 9/04/2022]
- <http://www.civils-daily-burning-issue-of-under-trials-custodial-torture-death>[last accessed on 10.04.2022]
- [http://www.the\\_wire\\_government\\_malicious\\_prosecution\\_abuse\\_of\\_power](http://www.the_wire_government_malicious_prosecution_abuse_of_power)
- <http://lawyersservice.in><PP\_unnikrishanan >2000[last accessed on 7/04/2022]
- Aparna Alluri and AnandKatakam , Ishrat Jahan Encounter case Explained accessed through [www.hindusthantimes.com](http://www.hindusthantimes.com)
- <http://www.hindusthantimes.com/static/ishratjahanencountercase> last accessed on 7/04/2022
- <http://www.leaflet.in> ‘Justice cant breathe! Time to revisit immunity garnted to the Cops in India BY Ravi Singh Chhikara And Alisha Luthra July 2021 [last accessed on 8/04/2022]
- Sunil Batra V Delhi Administration (AIR 1980 SC1579)
- (1992)3 SCC 249:AIR 1992 SC 1579
- (2012 )8 SCC 1
- “Paper :Access to Justice Module :Access to Justice to the prisoners “also available at <https://www.bbau.ac.in/dept/HR/TM/Justice%20to%20Prisoners.ePathshala.pdf>
- AIR 1978 SC 597
- AIR 2016 SC 3506
- Narender Kumar ,”Constitutional law of India”, Allahabad law agency ,tenth editon 2018 reprint 2020 pg no 382-399
- AIR 1979 SC 1360
- AIR 1978 SC 1548
- AIR 1996 SC 1619
- AIR 2004 SC 3114
- AIR 1978 SC 527
- AIR 1978 SC 1675
- Hussainara khatoon home secretary Vs State of Bihar AIR 1979 SC1360
- AIR 1978 SC527
- AIR 1978 SC 1675
- Hussainara khatoon home secretary Vs State of Bihar AIR 1979 SC1360
- Tukaram V State of Maharashtra AIR 1979SC185

- <http://www.thenewsminute.com/article/disha-case-encounter-nine-things-hyderabad-cops-allegedly-lied-about-164209?amp>
  - <sup>1</sup>In June 2004, The Gujarat Police Crime Branch had fired upon and killed a 19-year-old Ishrat Jahan, Javed Shaikh, Amjad Ali Akbarali Rana and Zeeshan Johar linked to Pakistan terror group Lashkar-e-Taiba who planned to assassinate the CM Narendra Modi available at <http://www.thehindu.com/news/national/expained-police-encounters-in-india-cases-convictions--court-orders/article654631.ece/amp/>
  - Lok Sabha debate 2016
  - This is said by the then Prime Minister Rajiv Gandhi when asked about the Indian Human Rights record in a television of panorama. [Sour, ncrb.gov.in ]
  - National Herald, Online 4/12/2021 also available at <http://www.Nationalheraldindia.com/151-people-died-in-police-custody-2021>. [last accessed 25/02/2022]
  - Prevention of Torture Bill 2010 Available at [http://www.humanrightsinitiative.org/programs/ai/rti/india/national2009/email\\_alerts/prevention\\_of\\_torture\\_bill\\_lok\\_sabha\\_debate\\_6thmay\\_2010](http://www.humanrightsinitiative.org/programs/ai/rti/india/national2009/email_alerts/prevention_of_torture_bill_lok_sabha_debate_6thmay_2010)
  - Dr. Ashwani Kumar V Union Of India [Writ Petition no 738/2016] available at <http://indiankanoon.org.doc/19030773>
  - Report no 273<sup>rd</sup> : Implementation of the United Nation Convention Against Torture available at <http://www.lawcommissionofindia.nic.in/reports/report/273pdf>
  - National Crime Report Bureau (NCRB ) 2020.ce –Amnesty International Report ]
-