

CUSTODIAL TORTURE: A GROSS VIOLATION OF HUMAN RIGHTS

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1. INTRODUCTION

Ensuring liberty and upholding dignity of an individual is the paramount concern of every democratic state. Living in this era of globalisation, any incident violating human rights is of pivotal importance to the world at large. Expanding ambit of human rights on one hand and increasing counts of crime rate on other hand, poses a challenge to all law-enforcing machineries to strike a balance between the two.

Human rights and custodial torture are contradictory terms. Torture in custody at the hands of protectors of law i.e. police is considered to be a harshest form of human rights violation. Perseverance of human rights can be guaranteed only by curbing this unnecessary evil. The expression “torture” has neither been defined in the Constitution of India nor in any other penal law. Issue of custodial torture is concern of international community and a universal subject. Thus, custodial forcefulness, suffering and abuse by police authority are not peculiar to this country but a widespread phenomenon.³¹⁴

India, being the biggest democracy of the world, embedded in its laws, protection of life and personal liberty³¹⁵ as one of the fundamental rights. Still, existence of cases of custodial torture and third degree upon under-trials and suspects is an integral part of investigation. The former Supreme

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³¹⁴ Dayal, Keshav, *Custodial Crimes And Human Rights Violation*, HUMAN RIGHTS YEAR BOOK, 2010, P.80

³¹⁵ CONSTITUTION OF INDIA, art. 21.

Court judge, V.R. Krishna Iyer, J., has said that custodial torture is worse than terrorism because the authority of the State is behind it.³¹⁶

India is party to almost all the key International Instruments protecting human rights.³¹⁷ This give rise to question- why such incidents still prevail? This fact portrays a contradictory picture of our country to world at large.³¹⁸

Thus in this paper, the author aims to look at the various international instruments as well as the efforts incorporated by Indian legislature and judiciary to curb the evil of torture and what more can be done in this context

Concept of Torture

As per Oxford dictionary *torture* means “The action or practice of inflicting severe pain on someone as a punishment or in order to force them to do or say something”.³¹⁹ Torture is a brutal act having an adverse impact on the body and mind of the victim. It has been prevalent in world since ancient times in diverse forms including, though not limited to sleepless nights, beatings, electric tremors, hanging by limbs, forceful bogus executions and sexual attack, especially rape³²⁰ to create fear, extract confessions, pose power and take revenge. Practicing it in any form, causes severe deprivations to one’s right to live freely in a dignified manner, without any sort of fear.

Amnesty International in its report of 2001, highlighted that between 1997 and 2001 torture was practiced by 140 states and that means every year there are thousands of victims, who are subjected to beating, rape and electrocution. Further in its 2014 report, Amnesty International,

³¹⁶Custodial torture worse than terrorism, <http://www.thehindu.com/2003/07/27/stories/2003072703510500.htm>, visited on 21.10.2015

³¹⁷Jaswal, Paramjit S. And Jaswal, Nishtha, *Police Atrocities, Human Rights and Judicial Wisdom*, HUMAN RIGHTS YEAR BOOK, 2010 P.208

³¹⁸JineeLokaneeta, *Torture in Postcolonial India: A Liberal Paradox?* (unpublished manuscript) (on file with author)

³¹⁹<http://www.oxforddictionaries.com/definition/english/torture>, visited on 24.10.2015

³²⁰AMNESTY INTERNATIONAL AND CODESRIA, A HANDBOOK ON MONITORING AND DOCUMENTING HUMAN RIGHTS VIOLATIONS IN AFRICA, 2000 p. 11.

pointed out 79 signatories of the Convention against Torture are still adopting torturing techniques.

Definition of torture under various international conventions :

- **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984):**

“Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”³²¹

The Inter-American Convention to Prevent and Punish Torture (1975):

“Torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for another purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.”³²²

India -The Prevention of Torture Bill, 2010

³²¹Convention Against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment, Art 3, Dec 10, 1984

³²²The Inter-American Convention To Prevent And Punish Torture, Art. 2, Sep. 09, 1985

“Whoever, being a public servant or being abetted by a public servant or with the consent or acquiescence of a public servant, intentionally does any act for the purposes to obtain from him or a third person such information or a confession which causes—

- i) grievous hurt to any person; or
- ii) danger to life, limb or health (whether mental or physical) of any person, is said to inflict torture:

Provided that nothing contained in this section shall apply to any pain, hurt or danger as aforementioned caused by any act, which is inflicted in accordance with any procedure established by law or justified by law.”³²³

Custodial torture:

Custody means “protective care or guardianship of someone or something”.³²⁴ Legitimate dialect explains custody as, point where a person loses his/her freedom of movement as deprived of by law implementing bodies, for instance in the course of carrying prior to booking, or through arrest, prosecution and imprisonment.³²⁵ Predominately torture by police officials in custody imposes a direct attack on basic human dignity, principally over once life and personal liberty.³²⁶

2. GROUND REALITY OF PREVALENCE OF TORTURE IN POLICE CUSTODY IN INDIA

Primary focus of Indian Constitution has been to upkeep the human dignity of individuals. Torture, however, contravenes and is an affront to such basic rights of the citizens acknowledged therein. Ill-treatment of prisoners or suspects taints whole idea of civilized nation and lack of core legislation regulating power of police encourages the men in *Khaki* to abuse the law and thereby

³²³The Prevention Of Torture Bill, 2010, sec. 3

³²⁴<http://www.oxforddictionariesom/definition/english/custody>, visited 25.10.2015

³²⁵ Y S Bansal, Murali G and Dalbir Singh, *Custodial Deaths-An Overview of the Prevailing Healthcare Scenario*, J Indian Acad Forensic Med, 32(4), p 315

³²⁶Gupta, Raj Kumar, *Human Rights And Custodial Crimes*, HUMAN RIGHTS YEAR BOOK, 2010, p 118

violate well established principles of rule of law by considering themselves equivalent or at times above it.³²⁷

It's a nastiest crime prevailing in any civilised society. Torture in police custody is the harsh reality that world is facing today. Incidents of such heinous crime can be traced in our society, despite the fact that such inhuman act, time and again has been criticised by Universal declaration on Human Rights, other International Conventions, Indian Constitution and Judiciary.

In India, custodial torture has been an integral part of police investigation and mode to extort information from accused/suspect. The methods of torture generally include hanging one upside down, putting on ice slabs and thrashing badly, hitting with rods leading to multiple fractures, burning, applying heavy rollers upon their bodies, and also giving electric blows. One such horrible incident came into lime light in 1980's, in Bhagalpur jail in Bihar where 30 under trails were put to extreme torture by police officials, who blinded them by piercing their eyes with needles and pouring acid into their eyes, ignoring all together a well settled principle of criminal law that one should be treated innocent until guilt is prove. Another such incident took place in Varanasi and Ghazipur (UP), where suspects of ordinary penal offence suffered from multiple fractures by brutal thrashing at hands of police official's as reported in the 1981 by the Indian Press.³²⁸

However, with change in societal scenario and with human dignity is gaining importance worldwide and an intolerant and stringent attitude towards such act of police officials is the need of the hour.

Present Statistics: From 2001 to 2010, the National Human Rights Commission (NHRC) recorded 14,231 i.e. 4.33 persons died in police and judicial custody in India every year. A large majority of these deaths are a direct consequence of torture in custody. These deaths reflect only a fraction of the problem with torture and custodial deaths in India as not all the cases of deaths in police and prison custody are reported to the NHRC.³²⁹

³²⁷State Of Madhya Pradesh v. Shyam Sunder Trivedi And Ors, (1995) 3 SCALE 343

³²⁸Supra note 4

³²⁹ASIAN CENTRE FOR HUMAN RIGHTS, TORTURE IN INDIA, 2011, Asian Centre For Human Rights, p 1.

The Asian Centre for Human Rights (ACHR) has consistently underlined that about 99.99% of deaths in police custody can be ascribed to torture and occur within 48 hours of the victims being taken into custody. Maharashtra recorded the highest number of deaths in police custody with 250 deaths in 2001-2010.³³⁰

3. INTERNATIONAL DOCUMENTS AGAINST TORTURE

Preamble to UN Charter states to “reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”.³³¹ Protecting human rights is the utmost important agenda of every civilised society. Various international instruments stated here under were drafted with view to serve aforesaid purpose and to curb torture.

3.1 *United Nations Convention Against Torture, 1984*

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, was adopted by UN General Assembly on 10 December 1984 and came into force in 1987.

Article 1 to the convention gives a broad and extensive definition of torture. Article 2(1) imposes obligation on its parties to take effective measures to prevent torture in territory under jurisdiction of state concerned. Further, Article 2(2) ensures that even in exceptional circumstance, whether a state of war or a threat of war, internal political instability or any other public emergency, cannot be invoked as a justification of torture. Article 10, 11 and 15 of the Convention provides for protection against custodial torture.³³²

³³⁰Ibid, Uttar Pradesh(174); Gujarat(134); Andhra Pradesh (109); West Bengal (98); Tamil Nadu (95); Assam (84); Karnataka (67); Punjab (57); Madhya Pradesh (55); Haryana (45); Bihar(44); Kerala(42); Jharkhand(41); Rajasthan(38); Orissa (34); Delhi (30); Chhattisgarh (24); Uttarakhand (20); Meghalaya (17); Arunachal Pradesh (10); Tripura (8); Jammu and Kashmir (6); Himachal Pradesh (5); Goa, Chandigarh and Pondicherry (3 each); Manipur, Mizoram and Nagaland (2 each); and Sikkim and Dadra and Nagar Haveli(1 each)

³³¹The United Nations Charter, Preamble

³³²**Article 10**-Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons. **Article 11**-Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and

3.2 *Optional Protocol to the UN Convention Against Torture, 2006*

The [Optional Protocol to the Convention against Torture](#) (OPCAT) was enforced on 22 June 2006 as a necessary addition to the UN Convention against Torture. The purpose of the protocol is to "establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment."³³³ Each state that ratifies the OPCAT is obligated by Article 17, for creating or maintaining at least one independent national mechanism for torture prevention.

3.3 *Rome Statute of the International Criminal Court:*

The Rome Statute established the International Criminal Court. The Rome Statute was adopted on 17th July, 1998 and came into force on 1st July, 2002. The Rome Statute described 4 major crimes: genocide, crimes against humanity, war crimes and crime of aggression. India is not a signatory to the Statute.

For the purpose of this Statute, 'crime against humanity'³³⁴ means any of the following acts which *inter-alia* includes 'torture' when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. As per the Statute, 'Torture' means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.³³⁵

treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture. **Article 15**-Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

³³³Optional Protocol to the United Nation Convention against Torture, Art. 1, Jun 22, 2006

³³⁴Rome Statute of the ICC, Art. 7(1) (f), Jul 17, 1998

³³⁵Id, Article 7(2)(e)

The Statute also provides for the Rights of persons during an investigation.³³⁶

4. SAFEGAURDS DESIGEND UNDER INDIAN LEGAL REGIME TO TACKLE CUSTODIAL TORTURE

Indian police, time and again has been accused by public, media, accused/suspect, their families for practising torture even in petty cases despite various provisions prevalent to curb misuse of power by police officials and guidelines issued by Apex courts in numerous cases. Not having core legislation dealing with torture is a big drawback with which India suffering today, but, it would be misleading to state that judges or legislators ignores victim's rights altogether. Law Commission of India and committees like the Malimath Committee focused upon reforming the Criminal Justice System focusing on subjects such as protection of witnesses, awarding damage etc.³³⁷

➤ *Statutory Safeguards:*

○ Constitutional Mandates

Indian Constitution³³⁸ does not specifically define “torture” nor have exclusive provision prohibiting it, but glimpse of it can be drawn from various provisions where in human dignity has been given utmost importance. Article 21 soul of our constitution read with Article 14, 38, 39 and 39A ensures distributive justice guaranteed by the preamble.

Article 20 grants protection against arbitrary and excessive punishment to an accused (citizen or not)

- a) No ex-post facto law, i.e. No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act.
- b) No double jeopardy: No person shall be prosecuted and punished for the same offence more than once
- c) No self-incrimination: No person accused of any offence shall be compelled to be a witness against himself

³³⁶Id, Article 55(1)

³³⁷Subhrdipta Sarkar. "The Quest for Victims' Justice in India", Human Rights Brief 17, no.2 (2010): 16-20.

³³⁸ THE CONSTITUTION OF INDIA, 1950

Article 21 declare that “no person shall be deprived of his life and personal liberty except according to procedure established by law”

The word “personal liberty” was taken into account by SC for the first time in *A.K Gopalan v. Union of India*³³⁹ observed that “personal liberty” to mean literally only liberty relating to or concerning the person or body of the individual. Further in *Francis Coralie case*³⁴⁰ Court observed that " any act which damages or injures or interferes with the use of any limb or faculty of a person, either permanently or even temporarily, would be within the inhibition of Article 21”

Article 22 grants protection to persons who are arrested or detained and requires that a citizen arrested under any law has to be informed of the grounds for his arrest, and guarantees right to consult and be defended by a legal practitioner of his choice. Each detainee has to be produced before nearest magistrate within 24 hours of arrest.

Article 32 is the soul of our Constitution, it enable persons to move to SC directly in case of violation of Fundamental Rights. In case of any such violation SC or HC³⁴¹ can issue any of these writs namely *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*.

○ **The Indian Evidence Act, 1872:**

Right from the days of British rule there has been a general doubt of the police powers particularly in cases of police custody. Even a mere look at the Evidence Act which was enacted in the year 1872, shows the total mistrust of the statements, etc. recorded during police custody. Section 25 to it provides that no confession made to a police officer, shall be proved as against a person accused of any offence. Similarly section 26 provides Confession by accused while in custody of police not to be proved against him, unless it is made in the immediate presence of a Magistrate.³⁴²

³³⁹ AIR 1950 SC 27

³⁴⁰Francis Coralie Mullin v. The Administrator, Union Territory of Delhi & Ors.,1981 SCR (2) 516

³⁴¹THE CONSTITUTION OF INDIA, Art 226.

³⁴²Supra note 1

○ **The Indian Police Act,1861:**

Sections 7 and 29 of the Act provide for dismissal, penalty or suspension of police officers who are negligent in the discharge of their duties or unfit to perform the same.

○ **The Indian Penal Code, 1871**

After the controversial Mathura Rape case³⁴³, an amendment was brought about in Section 376 of the IPC. Sec. 376(1)(b) penalises custodial rape committed by police officers. This was a welcome change made to the section in question as it finally condemns the acts of police officers who misuse their authority.

Sections 330, 331, 342 and 348 of the IPC have, apparently been designed to deter a police officer, who is empowered to arrest a person and to interrogate him during investigation of an offence from resorting to third degree methods causing 'torture'.³⁴⁴

➤ *Judicial Pronouncements:*

In *Saheli, A Women's Resources Centre v. Commr. Of Police, Delhi*³⁴⁵ the Supreme Court held that it is well settled that the State is responsible for the tortuous acts of its employees.

In the instant case, it was apparent, from the report of the Inspector of the Crime Branch, the counter-affidavit of the Commissioner of Police and also from the fact that the prosecution has been launched in connection with death of the child who was done to death on account of the beating. The mother of the child was, therefore, held entitled to get compensation of Rs 75000/-

In *State of Maharashtra v. Ravikant S. Patil*³⁴⁶ One Ganesh Kolekar was murdered on 2nd August, 1989. During the investigation, the police suspected that the respondent herein was a party to the said murder. A local paper carried in its issue of 17th August, 1989 a news item

³⁴³Tuka Ram And Anr v. State Of Maharashtra, 1979 SCR (1) 810

³⁴⁴Supra note 15 at 273

³⁴⁵ AIR 1990 SC 513

³⁴⁶(1991) 2 SCC 373

which stated that an under trial prisoner, would be taken in a procession or a parade from Faujdar Chavadi Police Station through the main squares of the city for the purpose of investigation. On 17th August, 1989, the respondent herein was handcuffed and both his arms were tied by a rope and he was taken through the streets. The respondent herein filed a writ petition seeking damages. The High Court also having noted this decision observed that the court can order payment of compensation either by the State or persons acting on behalf of the State. Having so observed, the High Court, however, held Shri Prakash Chavan, Inspector of Police personally liable and directed him to pay the compensation. The Supreme Court while referring to the *RadulSah case*³⁴⁷ in which the Supreme Court directed the State to pay compensation to the person illegally detained. The Supreme Court took the view that in the instant case also a similar order as one passed in *RadulSah's case*³⁴⁸, will meet the ends of justice.

The Hon'ble Supreme Court in *Raghubir Singh v. State of Haryana*³⁴⁹ and *Shakila Abdul Gafar Khan (Smt.) v. Vasant Raghunath Dhoble and Another*³⁵⁰ took note of these observations while deprecating custodial torture by the police.

“Custodial violence, torture and abuse of police power are not peculiar to this country, but it is widespread. It has been the concern of international community because the problem is universal and the challenge is almost global. The Universal Declaration of Human Rights in 1948 which marked the emergence of a worldwide trend of protection and guarantee of certain basic human rights stipulates in [Article 5](#) that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Despite this pious declaration, the crime continues unabated, though every civilized nation shows its concern and makes efforts for its eradication. If it is assuming alarming proportions, now a days, all around it is merely on account of the devilish devices adopted by those at the helm of affairs who proclaim from roof tops to be the defenders of democracy and protectors of peoples' rights and yet do not hesitate

³⁴⁷RudalSah v. State of Bihar &Anr. AIR 1983 SC 1086

³⁴⁸Ibid

³⁴⁹ AIR 1980 SC 1087

³⁵⁰(2003) 7 SCC 749

to condescend behind the screen to let loose their men in uniform to settle personal scores, feigning ignorance of what happens and pretending to be peace loving puritans and saviours of citizens' rights.”³⁵¹.

In *Khatri (II) v. State of Bihar*³⁵² also known as Bhagalpur Blinding case, the Supreme Court answered in the affirmative the question of granting compensation to the victims who suffered police atrocities by saying that if compensation was not granted to the victims, then Article 21 of the Constitution would be a mere rope of a sand. Finally, three police officials were found guilty due to their involvement in the gruesome and of blinding of the under trials.

In *Kishore Singh v. State of Rajasthan*,³⁵³ the apex Court held that the resort to third degree methods by police violates Article 21 of the Constitution and issued directions to the Government to take appropriate actions to educate the police officials to respect for human beings. The court further observed that the police rely on fists than on wits, on torture more than on culture and the police by doing such acts cannot control crime. In the observation of the court, nothing is more cowardly and unconscionable than a person in police custody being beaten up.

In *GauriShanker v State of U.P.*³⁵⁴ three police personnel were charged with offences arising out of the death of one Ram Dhiraj Tiwari in police custody. The Supreme Court of India held that death in police custody must be seriously viewed otherwise we will take a stride in the direction of police raj, It must be curbed with a heavy hand. The punishment should be such as would deter others from indulging in such behaviour. There can be no room for leniency.

³⁵¹Munshi Singh Gautam&Ors v. State of MP, AIR 2005 SC 402

³⁵² AIR 1981 SC 928

³⁵³1981 SCR (1) 1995

³⁵⁴ AIR 1990 SC 709

Delivering the landmark judgment in *D.K. Basu v. State of West Bengal*³⁵⁵ the Supreme Court laid down certain “basic requirements” to be allowed by the police during arrest and detention to prevent custodial torture.

1. Police personnel carrying out the arrest and handling the interrogation of the arrestee should bear visible and clear identification tags as to their names and designations.
2. The police personnel conducting such arrest must prepare a memo of arrest at the time attested by a witness and countersigned by the arrestee and send memo to the Magistrate.
3. Arrestee shall be entitled to inform one friend or relative known to him.
4. The time, place of arrest and venue of custody of an arrestee must be notified by the police.
5. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
6. Examining arrestee at the time of arrest and major and minor injuries on his/her body.
7. The arrestee should be subjected to medical examination every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory, director, Health Services should prepare such a Panel for all tehsils and the districts as well.
8. Copies of all documents including the Memo of arrest referred to above should be sent to the ilaqa Magistrate for his record.
9. The arrestee may be permitted to meet his lawyer during interrogation though not throughout the interrogation.
10. Information regarding the arrest and the place of custody of the arrestee shall be communicated by the officers causing the arrest, within 12 hours of effecting the arrest and should be displayed on conspicuous notice board.

In *Rabia @ Mamta & And v. NCT of Delhi & ors*³⁵⁶ Hon'ble Delhi High Court observed that custodial torture is a dark reality in India that is governed by the rule of law. The court further held that the main reason why custodial deaths are endemic in India on a large scale is that the police

³⁵⁵ AIR 1997 SC 610

³⁵⁶ W.P (CRL) 2349/2015, date of judgment 20/10/15

feel that they are immune from the rigours of law and are confident that they will not be held accountable even if the victim does in their custody. The court also observed that custodial violence requires to be tackled from two ends, that is, by taking measures that are remedial and preventive and efforts should be made to remove the causes of such occurrences.

These requirements are primarily meant for the prevention of custodial violence but it may be submitted here they are equally viable for prevention of arbitrary arrest and detentions.

5. ANALYSIS OF THE PREVENTION OF TORTURE BILL, 2010

The Prevention of Torture Bill, 2010 was introduced in the Lok Sabha as Bill no. 58 of 2010 by Sh. P Chidambaram, the then Minister of Home Affairs, Govt. of India. The said Bill was introduced to provide punishment for torture inflicted by public servants or any person inflicting torture with the consent or acquiescence of any public servant and for matters connected therewith or incidental thereto.³⁵⁷ The Statement of Objects and Reasons provides that the reason to introduce the Bill is to ratify the U.N. Convention against Torture as India is a signatory to the same and was obligated to make laws in conformity with the convention. The meaning of torture provided under section 3 of the Bill did not contain a number of provisions as articulated in the definition given by virtue of Article 1 of the U.N. Convention.

The definition of torture (a) is inconsistent with the definition of the torture in the U.N. Convention against torture, (b) requires intention of the accused to be proved, (c) does not include mental pain and suffering, (d) does not include some acts which may constitute torture.³⁵⁸

The court cannot take cognizance of any offence if previous sanction for prosecution is not obtained against a public servant.³⁵⁹

³⁵⁷The Prevention of Torture Bill, 2010, Preamble.

³⁵⁸Mayank Kapila & Sarthak Kapila, *The Prevention of Torture Bill, 2010: Kantian versus Utilitarian Reasoning*, Pragmaan: Journal of Law, Volume 3, Issue 1, June 2013. p. 34

³⁵⁹The Prevention of Torture Bill, 2010, Sec 6.

The Bill does not conform to the Precedents and leading judgments³⁶⁰ of the Hon'ble Supreme Court as it does not provide any provision which enables the victims of torture or the family member of the deceased victim who succumbed to the evil of torture in custody or otherwise to claim compensation. Whereas the convention against torture also categorically provides that the member countries must ensure that the victims of torture have a right to compensation.³⁶¹

6. CONCLUSION

The legal custody though by virtue of law empower police to arrest accused/ suspect and put them behind bars, but it is no manner authorising these officials to abuse the due process of law by taking law into their own hands. Being an under-trial does not eliminate the basic rights of humans. Law sets procedure, adherence to which is the duty of all irrespective of one's designation. Fear of being punished on breaking law should prevail amongst police officials as well, especially in country like ours that preach the principle of rule of law.

Cases stated in previous chapter depicts there still exists fear of power of *Khaki wardi* in India. Despite independence practises of colonial era wherein power prevailed over weak still subsist. Flashing of such cases day in and day out creates fear in mind of civilised society and convert these officials into villain that are supposed to curb crime and keep our society safe as per the due process established by law.

Probable solutions to this inhumane practise could be:

- Central and State governments should evolve mechanism wherein police is allowed to perform its duty to curb crime present in any form, ensuring privileges and rights of a common man are not infringed.
- Further, police training programs should take place more frequently concentrating on teaching them what ethical and moral duties they too hold to society.
- Any complaint of torture in police custody should not be taken lightly rather court should try to deal with it stringently that would rebuild trust of public in our justice delivery system.

³⁶⁰Sube Singh v. State of Haryana, AIR 2006 SC 1117; D.K. Basu v. State of West Bengal, AIR 1997 SC 610.

³⁶¹Convention against Torture and Other Cruel, Inhuman or Degrading Treatment Or Punishment, Dec 10, 1984 Preamble

- Adopting special legislation is what India needs today wherein - detail definition of torture, provisions relating to punishment, ensuring compensation to victims, also procedure setting accountability of official accused etc. should be specified. By such Act it must be made a penal offence.
- India signed UN convention against torture in 1997, it's been long 18 years yet we fail to ratify it as 2010, Bill is just a document whereby our government attempts fulfil its obligation. We need to take into account the fact that torture is not a mere domestic affair it's a global issue and thus legislation should not be a mere eye wash, rather it should be coherent covering all possible aspects and meeting international standards.

