

A STUDY ON CUSTODIAL TORTURE AND THEIR RIGHTS

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ABSTRACT

“To deny people their human rights are to challenge their every Humanity”

-Nelson Mandela, South African Civil Right Activist

This Article is emphasized on the custodial torture and their Rights. Whereas it says that Violence is the centre of any criminal justice system and it is the commencement of its actions. The instigation for this action and its nourishment are vested as a responsibility with the custodians of law. Torture is generally characterized as an instrument to impose the will of the strong over the weak by suffering. Police outrages are a normal highlight of the Indian Situation. Basic highlights of infringement of human rights are the torture of arrested persons, the vanishing of suspects who ought to have been in regular police custody, deaths in police encounters and at the police station, and undertrials detained in jails for years without trials. Custodial torture has been crunched to mistreated police control. For the custodial torture, the apex court has adopted an earlier ruling system that allowed to access the convicted prisoners in jail so the society at large would be notified reasons behind the detention and the conditions in which they served as a sentence.

The below study shows the various fundamentals rights of the prisoners and the various decisions of the Supreme court and High court revealed that the Indian judiciary has made a huge accomplishment in ensuring custodial human rights.

Keywords: Custodial, Torture, Human Rights, Police, Prisoners, responsibility, detention, sentence.

INTRODUCTION

Custodial Torture may be virtually a worldwide phenomenon that is inflicted upon the individual no matter sex, age, or state of health. During custodial torture, there are human rights violations become a very serious and alarming problem in aggregation countries like India. However, contradictory it's going to be sound it's a universal phenomenon that the police are criticized and condemned for committing acts which are just contrary to their cherished ideal duties. The essential reason behind such an unfortunate situation is that the powers which are given to the Police to hold out their legitimate and essential functions are capable of being abused by them to torture their fellow beings, destroy lives and property, and oppress and intimidate the weak.ⁱ

There is no proper discussion on the Custodial torture and their rights without understanding the meaning of “custody”, “violence” and “torture.”

Custody commences from the time of restrictions are imposed on the movement of the accused, and he kept under detention by the authorities. It includes situations where the detainee is named within the police headquarters for interrogation.ⁱⁱ Some cases amount to arrest, but it is not necessarily in all. Just in the case of *Niranjan Singh v Prabhakar Rajaram Kharoteft*ⁱⁱⁱ show the meaning of the custody in the purview of section 439^{iv} it observed that “No lexical dexterity nor precedential profusion is a return to the realistic conclusion that he who is under the control of the court or is within the physical hold of a political candidate with coercive power is in custody. This word is of elastic semantics but its core meaning is the law has taken control of the person.”^v As per Section 167(1)^{vi} which stated that ‘policy Custody’ can be granted for a maximum period of fifteen days only;^{vii} basically, police remand for interrogation.^{viii}

Torture usually denotes intense suffering, physical, mental, or psychological, aimed toward forcing someone to do or say something against his or her will. It goes under the names of “sustained investigation “inquiring” or “observing.” “Torture means any act by which severe pain or suffering, whether physical or mental is intentionally inflicted on an individual for such purposes as prevail from him or third -person data or an admission, punishing him for an act or for any reason based 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 an executive capacity. It does not include hurting or suffering arising only from, inherent in, or accompanying lawful sanctions.”^{xix}

This Report Describes intimately AI’s concerns about torture including rape and death in custody in India.^x Custodial torture is appeared to be extensive in areas where the government faces armed opposition in northern and north-east states where they often obtain confessions and gather intelligence, they also deter or to avenge attacks by armed groups. Adivasis (tribal people), Dalits (members of scheduled castes), and members of minority groups, e.g. Muslims, feature prominently among the victims. Women from these groups are frequently raped in detention. The connection between prisoners and human rights has always been erratic. There always are conflicting opinions on the position about whether the prisoners are entitled to human rights or not.^{xi} Some people have the opinion that, when an individual becomes deviant and commits a criminal offense, he should be bereft of all his rights. However, others think that some rights remain vested during an individual even after the commission of a criminal offense by that person.^{xii}

NATIONAL SAFETY V. HUMAN RIGHTS

Section 2 (d)^{xiii} of the Act defined human rights because of the rights concerning the life, liberty, equality, and dignity of the individual guaranteed by the constitution or embodied within the international convention and enforceable by courts in India. Human rights are, therefore those rights that belong to an individual because of being human to human dignity.^{xiv} There are rights that all men have privileged to use their rights no one can have the right to deprive other person rights without a grave affront to justice.^{xv}

The refusal of the fundamental human rights like the freedom from torture is supported on the grounds of national security. Some contended that the legislature must crush the psychological militants, extremists, and torture who put guiltless lives in danger and imperil the national security by their rough and antinational exercises. so, it is endowed with wide - running forces to handle such unprecedented circumstances.

The deviation from certain rights and freedom is liberties is inevitable in such circumstances. Besides, Rights and freedom are not outright, altogether liberated from any limitation, for that

would prompt insurgency and confusion. Man can make the most of his privileges in the state where common and social request exists. He can't make the most of his privileges in a state of disorder. The ownership and delight in all rights depend upon sensible conditions, for example, general wellbeing, harmony, and request, ethics of the network, respectability, and national security. Such sensible grounds of the limitations on the individual's central rights discover a place in practically all constitutions of the world, including the Indian Constitution of India.^{xvi}

Nobody would disapproval of such sensible limitations on the privileges of man. There have been various attacks on the person's privileges and freedoms by the state for the sake of national security, for example, reallocation or nationalisation of private property; surveillance through wire-tapping and mail opening; discretionary hunt and seizure; self-assertive capture and confinement for the inconclusive period; suspension of habeas corpus; summitry preliminaries and execution; the refusal of bids to the legal executive; resort to torment; political internment; fixation grounds and even liquidation of suspects/charged people in authority; along with these lines there shows up enmity between the privileges of man and national security. Individuals' privileges may not keep going long when the nation is at risk because of either outer assault or genuine inside issue. In a word, human rights can't keep going long without national security. Then again, the hardship of a person's essential thing rights by the tyrant or tyrannical systems for quite a while breeds outrage, dissatisfaction and thwarted expectation which at last prompts resistance and interior unsettling influences shaking the very establishment of national security. So, question is - how far and what amount can the person's privileges be relinquished to advance national security. This inquiry can't be addressed appropriately except if national security is appropriately comprehended and is recognised from the security of the system.

Like an individual, each state has the characteristic right of self-protection. This privilege is accessible to the state in any circumstance which compromises its reality. In like manner, the state may practice unusual forces during a crisis and go wrongly from its ordinary commitment to secure and implement the human privileges of its residents. This privilege of the discrediting of the state is recognized under many worldwide instruments.^{xvii} There are human rights that must stay unaffected during the open crisis. There are some rights which can't get suspended like: the right to life, and opportunity from torture being two of them, discover an area in worldwide human rights instruments.^{xviii}

The state can practice the privilege of discrediting to meet the danger to national security. The regularly national security is indistinguishable either with a person's or system's security and states frequently change from their commitments against human rights to guarantee the individual's security. The International Commission of Jurists notes.^{xix} There is a tendency for some government to regard any challenge to their authority as a threat to "the life of the nation". This is true regimes that do not provide any lawful means for transferring political power and which in consequence are inclined to regard any criticism of the government as an act subversive of public order.^{xx} In this manner what is required is to recognize national security from the individuals to be discredited under the global law to guard and defend the national security yet not people's Security.

National security should not become an excuse for the denial of basic and non-derogable rights like the right to life and freedom from torture. Under no circumstances, however, grave it may appear, should these "non-derogable" rights be allowed to derogate. Because once there is a derogation for a justifiable cause, there is always a tendency among the wielders of power, to order to perpetuate their power, to continue the derogation of human rights either in the name of national interest or the security of the state. History is full of examples of the disastrous consequences of such derogation.^{xxi}

National Human Rights issues fresh guidelines regarding the custodial death:^{xxii} In order to streamline the procedure intimating the of custodial deaths, the National Human Rights Commission has delivered fresh guidelines to all state governments. The Commission has delivered general instruction in 1993 that during 24 hours of the occurrence of any custodial death, the commission must be given notification about it. These notifications were to be followed with the post- mortem reports, Magistrate Inquest reports, or with videography reports of the post-mortem, etc. However, it has been found that there was a substantial delay in sending reports, which the future gets delay in processing the cases of custodial violence in commission and getting the interim relief, so this a reason to conclude that custodial death is taken place due to custodial violence. There are approx. total cases of death in police custody were pending which given below: (In year 1999-2000)

States	Approx. Figures
Maharashtra	28
West Bengal	19
Uttar Pradesh	17
Madhya Pradesh	12
Andhra Pradesh	11
Gujarat	11
Tamil Nadu	9

For Reason of Pending of Cases, the Commission has now instructed that all reports including post-mortem or videography and magisterial inquiry must be sent within two months of happening of any event. The post-mortem reports have to be sent in a certified way which is designed by the commission which has already been circulated to all the concerned authorities. In every case of the custodial death, the magisterial inquiry has to be done as directed by the commission and it should be completed as fast as possible but in such a way that within the two months deadline of report is also made available.

In some cases, of the custodial death the accused body is sent for the examination. However, the report takes some time and therefore, the commission has clarified that the Post-mortem reports and other documents should be sent to the commission. The all above instruction were sent in a letter addressed to the home secretaries of all states and union territories, all Directors General of Prisons and all Directors General of Police by Shri N. Gopala swami, Secretary General of the Commission, on 5 January 2001.^{xxiii}

RIGHTS OF THE SUSPECTED/ACCUSED PERSONS

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The article stated that the individual should not be treated in the abuse or inhuman behavior or they should not give any severe punishment.^{xxix} The inclusion of a ban on torture in this core human rights instrument opened the ways of entering this right in the extensive network of other international and human rights treaties.^{xxx}

International Covenant on Civil and Political Rights: The inclusion of the provision prohibiting torture in the UDHR made its space in this convention which was adopted by the United Nations in 1966. 'Article 7' of this Covenant states that: "No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment."^{xxxi} This provision is like Article 5 of the Universal Declaration of Human Rights. This provision aims to protect not only the person from physical abuse but also the dignity and mental integrity of the person.^{xxxii}

Convention against torture and other cruel, Inhuman or degrading treatment or punishment: The UN General assembly adopted this convention in 1984, intending to make the struggle against the use of torture more effective in all countries. Approximately 136 countries ratified the convention. India signed the convention in 1977 and is amongst few countries that have signed the convention but never ratified it.^{xxxiii}

Under India Law: Indian Law gives certain rights to the detainees or accused persons while in custody. These rights are so fundamental to such an extent that nobody can legally disregard them. Unlike the International Covenant on Civil and Political Rights, the Indian Constitution does not specifically provide any right against custodial torture. However, certain fundamental rights enumerated in Part III of the Constitution are also available to them. These rights are mainly contained in articles 19, 20, 21,22, 32, and 226 of the Constitution. Besides these constitutional rights, they enjoy certain other legal rights under the Indian Penal Code, Criminal Procedure Code, and the Indian Evidence Act. Various police and prison Acts and manuals also carry certain rules and regulations against custodial torture. In the Indian Supreme Court, there are several cases quoted not only to acknowledge these rights but expanded their scope through the process of judicial activism giving the new and liberal interpretation.^{xxxiv}

Protection under the Indian constitution: The main rights of an accused which have been recognized and guaranteed by the constitution stated as under the Right to life: This is one of the fundamental rights of the prisoners/ suspects/ accessed is the right to life. It is the basis of all human rights and the sanctorum of the constitutional temple. If there were no privilege to live, there would be no reason for having the other rights.^{xxxv} In an article of the International covenant on civil and political rights, states about charactercesis the right to life as ‘inherent’ to emphasize its primacy.^{xxxvi} It further makes the right to life non- derogatory.^{xxxvii} The Right to life is conferred by the Constitution under Article 21.^{xxxviii} Before the sanctioning of the 44th Amendment Act of 1978, the right to life along with other fundamental rights was a derogable right.^{xxxix}

In ADM Jabalpur case,^{xl} the Supreme Court took the view that if the President had declared a state of emergency in the country and has also suspended the right to move the court for the enforcement of any right, the right to life under Article 21 could also be suspended. This right is one of the luminary provisions in the Constitution and is a part of the scheme for fundamental rights occupies a place of pride in the Constitution. The article mandates that no person shall

be deprived of his life and personal liberty except according to the procedure established by law. This cherished right, i.e., freedom of Person Life and Liberty plays an important role in the life of every citizen whereas, Freedom of Person Life and liberty also includes human dignity.^{xli} The 44th Amendment Act engrafted an exception viz., that such declaration suspending the right to move any court for the enforcement of fundamental rights shall not cover article 20 or 21 of the Constitution.^{xlii}

In Gopalan case,^{xliii} the court had to decide whether the phrase "procedure established by law" meant a "fair and reasonable procedure" or a mere semblance of procedure prescribed by the state for the deprivation of life and personal liberty of the individual. It held that the "law implied as a law made by the State and the courts were not fit to enquire into the sensibility to or in any case of the law." The court rejects to ratify the plea of the defence that the procedure established by law should meet the standard of reasonableness under Article 19. This judgment was a setback to the right to life and personal liberty.^{xliv}

Custodial torture is also a legal offense under the Indian Penal code, criminal procedure code, and the code of the police. In the Indian Penal Code, it lays down the third-degree treatment or torture which causes hurt to any person while in custody is an offense punishable with 10 years of imprisonment.^{xlv} There are various police acts at the state level that prescribe the custodial torture and direct the station house office or police – chowki in charge to keep suspects safe from any abusive behavior while in police custody.^{xlvi}

Right Against Self- Incrimination: torture intends to extricate admission from the suspect for the wrongdoing he is alleged to have committed. He is exposed to different consistent torture until he breaks down and finally makes the confession statement. However, he has a right to decline to respond to all self-incriminatory inquires. According to the Indian evidence Act^{xlvii}, the Doctrine of presumption of Innocence is the basis of Indian jurisprudence, which is a very important right for the accused or suspected person. The Right against self-incrimination is again listed in the covenant under Article 14(3)(g).^{xlviii}

In Indian Evidence act^{xlix} and the Criminal Procedure Code¹ also prohibit forced confession or testimony as inadmissible in the court of law and protect the suspected or accused person against confession. In this manner, the privilege against self-incrimination is guaranteed under international law and municipal law. However, this right is violated by police in most of the

underdeveloped nations, including India. Once caught, police consider even an innocent person a criminal, and each method of the torture is utilized to extricate confession for the alleged crime, though the involuntary confession made before the police is inadmissible in the court of law.

Right to be informed on the grounds of arrest: The accused person must be guaranteed under the International Covenant on Civil and Political Rights.^{li} In the constitution of India,^{lii} it is shown on what grounds the person is arrested provides that “No individual should be arrested without informing his grounds on what he has been arrested”.

In Ajaib Singh Case,^{liii} the right guarantee by the Constitution to an accused to know the grounds of his arrest enables him to prepare for his defence. The delay in informing the grounds of arrest must be justified by reasonable circumstances. In the Shobharam case^{liv} it was held that this ‘right cannot be dispensed with by offering to make bail to the arrested person.’

In D.K. Basu’s case,^{lv} it has laid down certain guidelines that should be followed by the police and other officers arrested a person during an investigation. The Right is given to the arrested or accused person is an opportunity to apply for bail or to file a writ petition for his release or to prepare the other defence on time.

Right against ex-post Facto operation of Criminal law: The Concept of Ex-past facto law provided under the constitution of India and is also recognized under the international instrument i.e. Universal declaration of human rights provides that ‘No individual should be held culpable of any offense on account of any action or omission, which did not constitute as a penal offense, under federal or international law at the time when it was committed.’^{lvi} In the same manner, The International Covenant on Civil and Political Rights provides that ‘No individual shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense, under Federal or international law, at the time when it was committed.’^{lvii}

In the Kedar Nath case,^{lviii} an ex-post-facto law is a law that imposes penalties retrospectively, i.e., on acts already done, and increases the penalty for such acts. Clause (1) of Article 20 imposes a limitation in the law-making power of the legislature and prohibits the legislature to make retrospective criminal laws.

Right to Speedy Trial: This right is protected under the constitution of India^{lix} and the Civil procedure Code^{lx}. Though there is no specific procedure either in the constitution of India or in the Civil Procedure Code for protected under the speedy trial, the Supreme court of India has held that these rights are implicit under the Constitution.^{lxi}

In Hussainara Khatoon's case,^{lxii} the Supreme Court found that prisoners were kept in jails in violation of directory provision of Section 167 (2) of the Code of Criminal Procedure, without they having been produced regularly before the magistrates, or without being remanded by the magistrates, often for periods longer than the maximum term for which they could be sentenced on conviction and without their trial having been started. Even though many among them were charged with bailable offenses, they had not been released because for reasons of lack of legal aid bail applications had not been made on the behalf, or they being poor themselves were could not furnish bail. The Supreme Court further held that 'the right to a speedy trial is a fundamental right implicit in the right to life and liberty of the person.'

Right to Consult a legal Practitioner: In the Nandini Sathapathy case^{lxiii} Under the Constitution of India states that "The Individual shall have a right to consult and as a defended they have a right of legal counsel of his own."^{lxiv} similarly, the International Covenant on Civil and Political Rights also provides the right to the accused person.^{lxv} This right begins as soon as he is taken into police custody about criminal or quasi-criminal proceedings. Later the Supreme Court in one of its rulings extended the operation of this right, 'to any accused person under circumstances of near custodial interrogation.' The court held that while undergoing interrogation in the police custody he has the right to have his lawyer by his side.^{lxvi}

In the Indian Constitution, there is no specific provision which provides the right to free legal aid to the accused person. In the Janardhan Reddy case^{lxvii} the Supreme Court specifically held that 22 (1) Constitution does not provide the accused person the right to the services of a legal practitioner at the state cost. There is a directive principle of state policy in Article 39-A which requires the state to provide free legal aid by suitable legislation or schemes so that opportunities for securing justice were not denied to a citizen on account of his economic or other disabilities.

However, a directive principle of state policy is not enforceable in a court of law and therefore it does not confer a constitutional right to the accused person to secure free legal assistance at the cost of the state.

In *Hoskot*^{lxviii} and *Hussainara Khatoon* case,^{lxix} the apex court held that a procedure which does not make legal services available to an accused person who is too poor to afford a lawyer and who would, therefore, have to go through the trial without legal assistance, cannot be reasonable, fair and just procedure guaranteed under article 21. The court thus spelled out the right to legal aid of the poor accused person from the language of article 21.^{lxx}

Right to be produced before a Magistrate within 24 hours of Arrest: This Right is very important and valuable for the arrested person which is guaranteed under the constitution of India.^{lxxi} Under, the Civil procedure Code, 1973^{lxxii} it also requires the police to produce the suspected or accused person before the nearest magistrate within 24 hours of the arrest. The magistrate should judiciously exercise his discretionary power, taking into account the full details and circumstances of each case. He should determine from the accused whether he has been kept in the custody for over 24 hours or not and whether he has been tortured by the police.

If there is evidence of torture, he should refuse to commit him to police remand. If the circumstances do not cause the police lock-up, the accused should be sent to the judicial lock-up as most of the torture for extorting confession takes place after getting the accused in police remand.^{lxxiii}

Bar against handcuffing: Suspected or accused persons in handcuffs are paraded on the road by the police while taking them to the court of jail. They are made to stand handcuffed in the court for hours waiting for their turn. This makes them feel humiliated and puts them in a lot of inconveniences. A person is to be innocent unless proved guilty beyond doubt by the court is an axiom of our legal system. But a person stands punished by this humiliation, though he may be subsequently acquitted by the court.^{lxxiv}

The Supreme court examined the validity under the provision of the constitution i.e. right to personal liberty. In the *Prem Shankar Sukla Case*^{lxxv} held that Handcuffing is prima facie inhuman and, therefore, unreasonable, is over harsh and at the first flush, arbitrary. Absent fair procedure and to inflict 'irons' are to resort to zoological strategies repugnant to Article 21.^{lxxvi}

By the landmark judgment delivered in the Nilebati Behera case ^{lxxvii} compensation of Rs. 1,50,000/- was awarded by the Supreme Court to the mother of the accused who died in the police custody because of beating.

For the continuance of handcuffing, police must get judicial approval. In case the court does not approve, handcuffs must be removed. It also directed that the magistrate concerned to enquire from the accused whether he has been subjected to handcuffs or other "iron" treatment, and if he has been, the escorting authority should be asked to explain the action forthwith in the light of this judgment.^{lxxviii}

JUDICIAL INITIATIVES IN TACKLING CUSTODIAL TORTURE

Treatment of women in custody:

Women in custody are at risk of physical and sexual abuse. The women very facing very abusive modes of torture like pressing lighted cigarettes on sensitive parts, inserting iron rods or sticks along with chili powder in their private parts, torturing the children in presence of mothers, etc. They are subject to the hazard of molestation and rape not only by the custodial staff but also by the male inmates of the jail.

The constitution of India ^{lxxix} allows the union and the state to make special provisions to safeguard and protect the interests of women. In the year 1976 they make fundamental duty of every citizen to renounce practices derogatory to women.^{lxxx} For women's court took a very serious action regarding rape in custody or harassment and also Looking upon safety and security of women in police lock-up, for this the Supreme Court directed that a woman judge should be appointed to carry out a visit to police stations to see that all legal safeguards are being given to the women in the custody.

The Supreme Court directed ^{lxxxi} that (i) a Female suspect must be kept in different lock-up under the observation of a female constable. (ii) Interrogation of females must be carried out in the presence of female police persons. In the Dr. Upinder Baxi case ^{lxxxii}, and the Christian Community Welfare Council of India and Other cases ^{lxxxiii} the court issued detailed procedures to ensure enforcement of the human rights of women and girls in police and prison in custody.

In *Mehboob Batcha and Others*^{lxxxiv} the Court observed, “Crimes against women are not ordinary crimes committed in a fit of anger or for the property.” The Court further held that the horrendous manner in which the victim was treated by policemen was shocking and atrocious, and calls for no mercy.

Harassment and ill- Treatment:

Holding that Protection of Prisoners within his rights is the part of the constitution of India.^{lxxxv}

In *Sunil Batra Case*,^{lxxxvi} Krishna Iyer, J. observed that ‘even prisoners under death sentence have human rights which are not debatable and even the dangerous prisoner has Fundamental freedoms that cannot be dealt away’ while administering down the act of putting bar fetters for under trials and provisions regarding solitary confinement. The act of cops in giving third-degree treatment to an accused person while in their custody and thus killing him is not referable to and dependent on the delegation of the sovereign powers of the state to such police officers to enable them to claim any sovereign immunity.^{lxxxvii}

In *Dr. Mehmood Nanyar Azzam Case*,^{lxxxviii} observed that when an accused is in custody, his Fundamental Rights are not abrogated in toto. His dignity cannot be allowed to be comatose. The right to life is enshrined in Article 21 of the Constitution and certiorari, it includes the right to live with human dignity and all that goes along with it. The restrictions imposed have the authorization of law by which his enjoyment of fundamental right is diminished but his basic human rights are not get crippled so that the police officers can inhumanly treat him. On the contrary, they are under obligation to protect their human rights and prevent all forms of atrocities.

Unhygienic Conditions in Lock Up:

The Right to a healthy and clean environment is included in the constitution of India^{lxxxix} in the *Indu Jain case*,^{xc} the supreme court ruled that the death of a detained person because of unsanitary conditions in Jail would amount to custodial death and could make officials liable for prosecution. In court on its Motion case^{xcii} the apex court held that “The balance between different activities of the State is the very foundation of the socio-economic security and proper enjoyment of the right to life.”

MONETARY COMPENSATION TO VICTIMS OF ABUSE OF POWER

There occurred one more progressive and welcome change the supreme's versus Custodial torture during the last decade. It has been granted the Monetary compensation to the torture victims for the violation of their rights in the constitution of India. ^{xcii}

The judiciary has to function as a watchdog to ensure that not only the legislature enacts custodial laws as per the constitutional and statutory rights, but also to ensure that the executive exercises powers during interrogation, arrest, pre- and post-trial custody. There is a broad range of custodial rules and wide variation which makes the judiciary complex and almost daunting. Particularly the Supreme Court and High Courts in several spheres of custodial justice, there are the areas where there the accused or suspected persons are getting ill-treated and the judiciary remains in the dark. ^{xciii}

In Nilebati Bahera Case ,^{xciv} the Supreme court observed that ‘ The Court is not helpless and the wide powers given to the Supreme Court by Article 32, which itself a Fundamental Right, imposes a constitutional obligation on the Court to produce such new apparatuses, which may be important for doing complete justice and enforcing the Fundamental Rights ensured in the Constitution which empowers the award of monetary compensation in cases. Therefore, the High Courts and the Supreme Court as protectors of civil liberties not only have the power and jurisdiction but also the obligation to fix the harms damages brought by officials of the State to Fundamental Rights of citizens’’ ^{xcv}

CONCLUSION

It may be submitted that human rights are available to every individual, whether he is a civilian or a criminal. The jail bars can't keep out the essential privileges of a person. It has also been established that the prisoner while in the custody of police in India is entitled to ‘Right against Custodial Torture’ under article 21 of the Constitution of India. The judiciary must remember that in most situations the accused rights are getting deprive because of the lack of judicial

power. Therefore, the Judiciary should accept its primary obligations for securing to every citizen Justice.

The Indian judiciary, especially the Supreme Court of India, has played an important role in expanding the prison jurisprudence in India. The Indian Courts have become poor and the have become oppressed because of this situation the various decisions reflect the Indian courts which are deeply sensitized to the need of doing justice to the large masses of the people to whom justice has been denied by the heartless society of generation. The country's criminal justice system suffers from the substantive and procedural defences because once the citizen is arrested, he could be held in the custody for the years before his case come up for the trial. Those who are capable they get to negotiate with the improper justice. But those who are an ordinary citizen for them it is a very stuff situation to get the right justice.

It may be concluded that, the people should be educated about the prohibition on custodial torture so that, they can raise voice against the same. The Indian government should also provide the proper training to the police and other law officials regarding the custodial torture.

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