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Custodial Torture and India: Legislative and Judicial Approach

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ABSTRACT

All civilised countries recognise and agree that torture is illegal and a crime against humanity. It now forms a part of international customary law. India is a signatory to the Convention against Torture, however it has not yet passed any local legislation to safeguard and prohibit the use of torture against its citizens. Dehumanizing jail conditions in India, torture committed by guards, and torture committed by police are all topics covered in this paper. Recent events have shown that the lack of legislation against torture has made it more difficult to extradite criminals from other countries. There is a thorough examination of the global viewpoint and a comparative analysis of numerous jurisdictions where the ban on torture is already a part of local legislation. Additionally, it covers the Indian Supreme Court's stance on torture. The purpose of this study is to highlight the relevance and urgency of India's anti-torture legislation. The rule against torture is a crucial prerequisite for upholding the constitutional culture, which is primarily intended to protect people's rights to dignity. The prohibition against torture must be a part of domestic law, according to international standards. Last but not least, the conclusion and recommendations made in the paper make it clear that the paper supports separate legislation on torture.

Keywords: Torture, Custodial Violence, Convention against Torture, Custodial Death.

I. INTRODUCTION

“When tortures, custodial violence, and fake encounters are equated with justice, the constitution becomes a victim too.”

Some police officers believe that the only way to obtain a confession is through violence and threats. In order to extract the knowledge from the guilty brains, they, therefore, employ every cowardly method at their disposal.

Methods of torture include beatings on the victim's bare foot, beatings to the backbone, laying the prisoner on ice slabs while naked, and forceful tooth extraction. N.V. Ramana, India's former chief justice, has voiced concern over the seriousness of violations of human rights committed by the country's police. He claimed that “the threat to human rights and bodily integrity is the

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highest in police stations.” Custodial torture persists worldwide, not just in India, despite the numerous laws that have been passed. As per the National Crime Records Bureau, 1888 custodial deaths have been reported over the past 20 years. However, 26 police officers have already been found guilty of causing deaths in custody.²

The horrifying occurrence involved the death in custody of a father-son pair by the name of JEYARAJ-BENIKS. It was claimed that they kept their shop open for a total of 15 minutes after the curfew. They were detained for 3 days and cruelly tortured for a relatively minor infraction. They passed away on the third day of the detention.

The passing of 46-year-old GEORGE FLOYD, an African-American black guy, was another astounding incident that quickly went viral around the globe. His death occurred on May 25, 2020, in Minnesota as a result of a white police officer crouching on his neck for an uninterrupted nine minutes. George was charged for using a fake \$20 currency in a store. Derek Chauvin, a white police official, kneeled on George's neck while he was lying on the road after being forcibly removed from the car, handcuffed, and told to stop by George. Despite George's repeated pleas to stop, the policeman kept doing so when he was escorted to the hospital, where he was pronounced dead by doctors.

II. POLICE BRUTALITY AN ENDEMIC IN INDIA

Every contemporary culture faces a major threat from the institutionalization of police brutality as an undeclared State policy. Aside from the obvious concerns it raises regarding rule of law and the human rights, it also poses a significant threat to the continued existence of democracy in a country where the Constitution is given the highest legal precedence. This danger is right in front of our eyes.

Though discussions of police reforms have been heating up elsewhere, in India they have not yet reached a level of substantive discussion. Public outcry is little, and in certain circumstances, police brutality even has strong public acceptance. This tragic turn of events is due to citizens' inaction in interacting with the State on important and pressing matters. Let's use numerous recent domestic happenings as a lens through which to analyze major topics critically.

- Inhumane, violent, and demeaning acts—all of which are regarded as third-degree types of torture—have been employed by the police on occasions.
- These incidents of police violence are not rare events, but rather appear to be a byproduct

² Custodial violence, CIVILSDAILY (2021), <https://www.civildaily.com/news/towards-a-more-humane-police-force/> (last visited Dec 7, 2022).

of the police administration process and have grown disturbingly regular in modern society.

- Incidents of custodial murders, extrajudicial executions, torture, and brutality toward protesters are instances of this sort of cruelty.

Meaning of Torture-

The intentional infliction of pain on another person's body or mind is known as torture. In other words, it is an act committed against another person against that person's will. It should be remembered that torture is always carried out by someone who has power over the victim, such as the police who have control over the accused, and the jail staff who have control over the inmates.

According to Oxford English Dictionary “Torture is the action or practice of inflicting severe pain on someone as a punishment or in order to force them to do or say something.”

As per the Merriam-Webster dictionary, “torture means the act of causing several physical pains as a form of punishment or as a way to force someone to do or say something.”

Article 1 of the Convention Against Torture, 1984³ defined torture as “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.”

A bill was introduced in the Indian Parliament in 2010⁴, but unfortunately, it was not passed, the proposed definition in that bill defined torture as “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

³ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Art. 1. (Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984, entry into force 26 June 1987).

⁴ Prevention of Torture Bill, 2010, No. 58, Bill of Parliament, 2010 (India).

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.”

III. INTERNATIONAL LAW ON TORTURE

When discussing the prohibition of torture from a global perspective, the General Assembly and the UN have launched several efforts. The world community has enacted a sufficient number of anti-torture laws, which can be categorized into four groups: universal anti-torture legislation, regional anti-torture laws, United Nations protocols and guidelines addressing the prevention of torture, and committee against torture commentary. Torture and other cruel, inhuman, or humiliating treatment or punishment are strictly prohibited. This provision, stated in Article 5 of the Universal Declaration of Human Rights⁵, has is applicable everywhere. Article 7 of ICCPR provides “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”⁶ UN Declaration against Torture,⁷ Rome Statute of International Criminal Court,⁸ UN Convention Against Torture,⁹ and UN Optional Protocol¹⁰. There are several legal frameworks on torture at the regional level, including Article 5 of the American Convention on Human Rights (also known as the Pact of San Jose), Article 5 of the African Charter on People's and Human Rights, and Article 3 of the European Convention on Human Rights which both prohibit and punish torture.

UN Mechanism Regarding Torture-

The United Nations has been crucial in the fight against torture and other forms of incarceration violence. Since its founding, the United Nations has introduced a number of international instruments, including the “Universal Declaration of Human Rights (UDHR) of 1948”, “ICCPR of 1966”, “the United Nations Basic Principles of Justice for Victims of Crimes and Abuse of

⁵ Universal Declaration of Human Rights, 1948.

⁶ International Covenant on Economic, Social and Cultural Rights, 1966, Art. 7.

⁷ Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Adopted on 09 December 1975 by General Assembly resolution 3452 (XXX).

⁸ Article 7(2) (e) of The Rome Statute of the International Criminal Court 1998, define the term torture. It says that “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 or incidental to, lawful sanctions.”

⁹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984.

¹⁰ Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 2002.

Power (UNBPVC 1985)”, “the UN Convention Against Torture and Other Cruel, Human, and Degrading Treatment and Punishment (CAT 1984)”, “the United Nations Optional Protocol of Convention Against Torture and Other Cruel, Human and Degrading Treatment and Punishment (OPCAT 2006)” and “International Convention for the Protection of all Persons from Enforced Disappearance (ICPED 2007)”, “the United Nations Standard Minimum Rules for Treatment of Offenders, 1955”, “United Nations Code of Conduct for Law Enforcement Officials, 1979”, “the United Nations Minimum Rules for non-Custodial Measures (the Tokyo Rules)”, “the United Nations body Principles for Protection of all Persons from any forms of Detention or Imprisonment, and the United Nations Basic Principles on use of Force and Firearms for Law Enforcement Officials 1991”.

To keep an eye on domestic human rights standards, the UN has established several committees, bodies, and special reporters, such as-

- UN Committee Against Torture UN
- Subcommittee on Prevention of Torture
- UN High Commissioner for Human Rights
- UN Human Rights Committee
- UN Voluntary Fund for Victims of Torture
- UN Special Reporter on Torture
- UN International Day for Victims of Victims of Torture on 26th Jun

IV. HISTORY OF CUSTODIAL TORTURE IN INDIA AND LEGISLATIVE PROVISIONS

Torture in prisons is nothing new in India. Torture and other types of police harassment in India have a long history, stretching back to the Vedic period (2000-1400 B.C.). It used fire testing and one-on-one battles. During the Epic era (1400–800 B.C.), police tortured prisoners. Torture, in its many forms, was widely practised during the legal and philosophical eras (800-320 B.C.). Torture methods such as amputation, shredding by wild animals, trample death by bulls and elephants, and limb burning are all detailed in Kautilya's Arthashastra. Manu, the legislator of the day, believed that torturing offenders was an effective deterrent. Humanitarianism and law enforcement reached new heights during the Buddhist era (300 B.C.-300 A.D.). In no circumstances was torture of any kind permitted. During the Mughal period, neither a civil code nor a body of criminal law existed. Torture was frequently used as a means of obtaining confessions.

The application of violence by officials during the British era, notably Kotwals, led to death sooner or later. The British government established a Torture Commission in Madras Presidency in 1855, and its report committee concluded that police torture was widespread throughout the region. As a result of this commission's definition of torture, the Police Commission was established in 1860. Then, in 1861, the Police Act became legislation and the Torture Law took effect. Following independence, the State and the Union Governments created a number of Police Commissions to investigate in the early 1970s and the early 1980s. A number of states, including Kerala,¹¹ Bihar,¹² Punjab,¹³ Maharashtra,¹⁴ West Bengal,¹⁵ Delhi,¹⁶ Madhya Pradesh,¹⁷ Tamil Nadu,¹⁸ and Assam,¹⁹ have established commissions. Two commissions were also appointed by the central government.

Police brutality was widespread between 1975 and 1977 when there was a state of emergency. In 1979, the National Police Commission advised the government to take action to protect the police from improper political and executive influence. Instances of rapes and fatalities while under the custody of the police should be subject to a legal investigation.

There are two different sorts of custody in India: judicial custody and police custody. Most often, torture occurs while a person is being detained by the police, who abuse their authority by instilling fear in the public's mind. In all nations, it is legal for the police to use physical force when necessary. This authority is essential to the work of a police officer and cannot be included in his or her legal duties. The police must keep the community safe by stopping murders, armed robbers, repeat offenders, and arsonists. Therefore, the police's response to violent defiance of arrest by an accused person's gang, etc., is to apprehend them. However, it is undoubtedly wrong for the police to treat those who are in their care brutally while disobeying all applicable laws. In a democratic society, the people, not the police, are the real rulers. Simply said, the police are a representative of the government that answers to the people. Therefore, the police are also responsible for their actions.

The Conference of Inspectors-General of Police in 1960 adopted a code of conduct for the Indian police that addresses this same issue. It is hereby declared in clause I of this code of conduct that the Indian police force has taken an oath to safeguard and protect the rights of all

¹¹ Kerala Police Reorganizing Police Committee, 1959.

¹² Bihar Police Commission, 1961.

¹³ Punjab Police Commission, 1960-61.

¹⁴ Maharashtra Police Commission, 1964.

¹⁵ West Bengal Police Commission, 1961.

¹⁶ Delhi Police Commission, 1966-68.

¹⁷ Madhya Pradesh Police Commission, 1965.

¹⁸ Tamil Nadu Police Commission, 1971.

¹⁹ Assam Police Commission, 1971.

Indian citizens as guaranteed by the Constitution of India. Clause 2 states that the police should refrain from interfering with the judiciary's authority by making decisions about specific cases because they are primarily a law enforcement agency. Clause 3 declares that since the judiciary is responsible for punishing the guilty, police should never do so. However, the police in India lack a feeling of responsibility. There is an increasing propensity for police to behave illegally. Horrifying instances of horrific incarceration torture are the outcome. In a society with a rule of law that guarantees all of its people, among other things, justice, liberty, and equality, death as a consequence of torture while in police custody is, in fact, one of the worst types of crimes. Such incidents are an insult to human dignity as well as a severe threat to an orderly, civilized society.²⁰

In India, there is no exhaustive law that deals specifically with custodial torture, and the provisions relating to custodial violence are contained in multiple laws. The provisions are not very stringent in themselves and the police keep misusing these provisions from time to time.

1. **Provisions under the Constitution of India 1950-** Articles 20–22 all deal with torture in one way or another. Retrospective application of criminal law is prohibited under Article 20(1) because it constitutes torture and other harsh treatment of people. Due to the prohibition of double jeopardy in Article 20(2), no one may be prosecuted or sentenced for the same offense twice. According to Article 20(3), no one may be forced to testify against themselves. But this article is violated very frequently; in the police station, a person is tortured to admit it against himself. Article 21 guarantees the right to life and personal liberty and states that these rights may not be taken away from anyone unless a legal process has been followed. Since torture is an act that affects both the physical and emotional health of the victim, it is also related to torture and is prohibited by law. The person making the arrest must adhere to the instructions in Article 22 about the arrest. A person who is about to be detained should be notified of the reason behind the arrest and given the option to speak with an attorney of her choice. Within 24 hours of being detained, everyone should be produced before the magistrate.
2. **Provisions under Indian Penal Code 1860²¹-** The authority or officer who unlawfully detains or holds a person in custody is subject to the penalties outlined in Section 220. According to Sections 330 and 331, persons who cause serious harm to another person in order to compel a confession or information about the commission of an offence are

²⁰ Mahipal V. State of Delhi, 2016 (1) Current Criminal Reports at 117 (Del) (DB).

²¹ Act No. 45 of 1860, w.e.f. 1st Jan 1862.

punishable. The IPC expressly criminalizes torture in Section 330.

3. **Provisions under the Code of Criminal Procedure 1974²²**- Section 50 gives the individual who is going to be arrested several rights and the person making the arrest some obligations. The victim of torture who files a report is entitled to a medical test under Section 54. According to Article 56, everyone who has been arrested must be brought before a magistrate as soon as possible. According to Section 57, an apprehended individual may not be held for longer than the 24-hour limit specified in Section 167, as well as under Article 22 of the Constitution. A mandatory magisterial inquiry into an accused person's death while they were in police custody is provided by Section 176. Persons who are unlawfully detained are entitled to compensation under Section 358.
4. **Provisions under the Indian Evidence Act 1872²³**- No confession given to a police officer, according to section 25, can be used against someone who is suspected of committing a crime. Section 26 provides “No confession made by any person whilst he is in the custody of a police officer unless it is made in the immediate presence of a Magistrate, shall be proved as against such person.” Citizens typically view police rapes as a stain on the law enforcement community, If police are involved in rape cases while they are holding suspects in custody, they are primarily responsible for safeguarding the protection of women and children. Section 376 of the IPC was modified in 1983²⁴, and a minor change was made, stating that a police officer, public employee, or member of a jail or hospital staff who rapes a woman while she is in their custody will be punished for the crime for a maximum of ten years, as opposed to seven years in other circumstances. The Indian Evidence Act was also amended in 2013, and section 114A about the presumption of consent was added. This section states that the court shall presume that the victim of the rape did not give her consent.
5. **Initiatives by Law Commission of India**- Since the initial Law Commission of India (LCI) was established in August 1955, a total of 18 Law Commissions have been established, and as of 2017, the Government of India has received reports from all of them totaling 255. The question of whether a confession given to a senior police officer should be admitted in court was raised²⁵ (a confession recorded by the superintendent

²² Act no 2 of 1974, w.e.f. 1st April 1974.

²³ Act No. 1 of 1872, w.e.f. 1st Sept 1872.

²⁴ Act No. 43 of 1983, w.e.f. 25th Dec 1983.

²⁵ 48th Report of Law Commission 1972 and 69th Report of Law commission of India 1977.

of police or a higher-level official). However, a thorough examination of this issue in 2003²⁶ revealed that "it is true that confessions made by and before senior officers of the level of superintendents of Police may be recorded and treated as admissible, subject to certain conditions, under the provisions of certain special Acts dealing with terrorism or organized crime (such as TADA, POTA, or MCOCA, the Maharashtra Control of Organized Crime Act). We do not believe that the orthopedist exception should be extended to those accused of all crimes. That would contravene article 14 and significantly undermine sections 24 and 25 of the Evidence Act of 1872 as well as article 21. The exception cannot override the law." A draft version of the 1973 Code of Criminal Procedure, with special provisions for the safety of the women in custody, was proposed by the Law Commission of India in 1989.²⁷ The Law Commission of India noted in 1994 that the victims of custodial offences are typically the weakest members of society, women, children, and the destitute.²⁸ The Indian Evidence Act of 1872, the Indian Penal Code of 1860, and the Code of Criminal Procedure of 1973, among others, should be amended to include preventive, punitive, compensatory, and remedial actions. The report's main recommendation was to fix the compensation amounts at Rs. 25000 for bodily injury and Rs. 1 Lac for fatalities. This was an original method of restorative justice that dealt with crimes committed while a person was in custody and was centered on individual accountability. The Law Commission of India advocated amending the Cr.P.C., 1973, and made a number of recommendations for the security and welfare of people held by the police in 2001.²⁹ The law commission interpreted Article 20(3) of the Indian Constitution and the right to silence in 2002.³⁰ It noted that the principle that no person can be coerced to produce evidence against him, which is also a part of Article 20, follows naturally from the right to silence. Law commission in 2017, made the following suggestions in its 273rd report-

- India should ratify the UN Convention in order to overcome the challenges involved in extraditing convicts.
- Amendments to the Indian Evidence Act of 1872 and the Criminal Procedure Code of 1973 should be made to accommodate clauses relating to compensation and placing the onus of proving innocence on accused personnel.

²⁶ 185th Report of law Commission (2003).

²⁷ 135th Report of Law Commission of India on Women in Custody 1989.

²⁸ 152nd Report of Law Commission of India on Custodial Crime 1994.

²⁹ 177th Report of Law Commission of India on Law relating to arrest 2001.

³⁰ 180th Report of Law Commission of India on Right to silent 2002.

- An extreme penalty, such as life in jail or a large fine, is needed to deter the danger of custodial torture.
 - Courts should consider a variety of factors in each instance, including the victim's mental anguish and the nature, purpose, extent, and manner of the injury before deciding on compensation. The victim's socioeconomic status will be taken into account by the courts as they make sure that the cost of the victim's treatment and rehabilitation is covered by the compensation.
 - Effective protection against potential threats, violence, or mistreatment for torture victims, complainants, and witnesses.
 - The State should be held accountable for any harm its agents inflict on citizens, and the Constitution's guarantees of rights must take precedence over the notion of sovereign immunity.
6. **Prevention of Torture Bill, 2010-** On Oct. 14, 1997, India became a signatory to the “Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” but has not yet ratified it. India cannot ratify the Convention without passing a law. The Prevention of Torture Bill, 2010 was proposed in the Lok Sabha on April 26, 2010 by the Minister of Home Affairs, Shri P. Chidambaram, to implement this convention under Article 253 of the Constitution. The bill was approved by the Lok Sabha on May 6, 2010. The bill was then sent to the select committee led by Shri Ashwani Kumar in the Rajya Sabha for revision. The committee turned in its report on December 6, 2010. Deliberating in depth on the bill's many provisions, the committee also heard from a variety of specialists and groups, including eminent lawyers, academics, government officials, and members of civil society. The committee takes note of the bill's guiding principles and goals, which include enabling India to ratify the "United Nations Convention against Torture and Other Cruel or Degrading Treatment or Punishment" adopted by the UN General Assembly on December 9th, 1975, to demonstrate its unwavering dedication to the defense and preservation of human rights as guaranteed by the Indian Constitution.³¹ Following India's reluctance to abolish the Armed Forces (Special Powers) Act, of 1958, the Bill expired with the dissolution of the 15th Lok Sabha, and it has not been reintroduced since. The Prevention of Torture

³¹ Shri Ashwani Kumar presided over the Select Committee that drafted this report on the 2010 Protection of Torture Bill. On December 6th, 2010, the Committee presented its findings to the Upper house of Parliament, recommending a number of modifications to India's anti-torture statute and the implementation of the United Nations Convention against Torture, which India has signed but has yet to ratify.

Bill, of 2010, aims to establish penalties for torture carried out by government agents. The definition of torture in the bill is "grievous hurt" or "risk to life, limb, or health." Torture complaints must be filed within six months of the alleged act. Before a court may consider a complaint, the competent authorities must approve it.

7. **Prevention of Torture Bill 2017-** The Law Commission was provided with the Bill by the NDA Government in May 2017 to receive feedback on the proposed changes to the IPC. Several changes were suggested by the Law Commission to bring the UN Convention against torture into force. The Commission also developed legislation for the Government to present in parliament. It has been since October 2017 when the Government received the draft Legislation and the recommendations of the law panel.³² The Law Commission suggested both a new type of law and revisions to the Criminal Procedure Code of 1973 and the Evidence Act of 1872.³³

There have been two attempts to enact a law against torture in parliament (in 2010 and 2017), but neither has been successful. The 2010 Bill, which had already passed the lower house and been referred to the selection committee in the upper house before the dissolution of parliament, fell into disuse. After the BJP-led government took office in 2014, the bill was effectively shelved. The identical Bill, with minor modifications, was also introduced in 2017. On January 22, 2019, the Supreme Court gave all the states and UTs notice that they needed to file an opinion on the Bill.

V. THE APPROACH OF INDIAN JUDICIARY TOWARDS CUSTODIAL TORTURE

Although the Supreme Court's ruling or verdict has not been implemented, the judiciary has played a crucial role in protecting those who have been tortured while in detention. Even though Article 141 states that a Supreme Court order or decision is binding on all courts, the execution of such an order or judgment must follow the same procedures as laws passed by Parliament.

Any kind of coercion employed by the police to obtain information from the accused—be it implicit or explicit, physical or mental, direct or indirect—violates Article 20(3)'s rule against self-incrimination.³⁴ An excessively cruel or severe form of punishment is unconstitutional.³⁵ After the petitioner was found not guilty in a full-dress trial, the Supreme Court rejected his claim of sovereign immunity and granted him compensation since he had been unjustly

³² Pradeep Thakur, AMENDMENT TO PREVENTION OF TORTURE BILL REMAINS IN LIMBO: INDIA NEWS - TIMES OF INDIA THE TIMES OF INDIA (2018), <https://timesofindia.indiatimes.com/india/amendment-to-prevention-of-torture-bill-remains-in-limbo/articleshow/65202546.cms> (last visited Dec 8, 2022).

³³ 273rd Report of the Law Commission of India, 2017.

³⁴ Nadini Satpati V. P.L. Dhani, AIR 1978 SCC 1075.

³⁵ Inderjit Singh V. State of Uttar Pradesh, AIR 1979 SC 1867.

imprisoned for more than fourteen years.³⁶ In “Sheela Barse v. State of Maharashtra”,³⁷ the Supreme Court issued a number of directives to prevent custodial violence against women and the arrest of those responsible, including the establishment of separate women's jails that are supervised by female constables and interrogations conducted in their presence. The police may have the right to question anyone they suspect or to make an arrest based on reliable information, but any such arrest must be made in line with the law, and questioning someone does not necessarily entail hurting them.³⁸ Torture, along with other forms of cruel, inhumane, or humiliating treatment or punishment, are all expressly forbidden by Articles 21, 32, 142, and 226 of the Indian Constitution. It is a recognized treatment. The defense of sovereign immunity must be explicitly and definitively rejected before the court can give relief. The International Covenant on Civil and Political Rights' Article 9(5) was also mentioned.³⁹ A police officer must be cautious and not make an arrest on suspicion that a crime has been committed; otherwise, they risk violating the constitutional rights of the accused.⁴⁰ In “D.K. Basu v. State of West Bengal”,⁴¹ the Supreme Court launched the development of custodial jurisprudence, addressing issues such as torture of the arrested, violations of fundamental rights, the entitlement to restitution from the state, and the inadequacy of section 330 of the Indian Penal Code as a form of punishment. In this case, the court also gave many principles surrounding the arrest and the rights of the arrested, such as the requirement that the arrestee's questioning is documented in a register and that the person arrested be notified of his rights, including the ability to select the counsel of his choice and get free legal aid. When a citizen's fundamental rights are violated, the defense of sovereign immunity is ineffective.⁴² Despite these Supreme Court directives, police continue to hold people against their will and torture them while doing so. According to the 135th Report of the Law Commission, which was cited by the Supreme Court in “Munshi Singh Gautam v. State of Madhya Pradesh,” the Indian Evidence Act of 1872 should be amended by adding section 114-B, which would establish a rebuttable presumption that injuries sustained by a person in police custody may be regarded to have been inflicted by the police officer. The results of brain fingerprinting and polygraph testing have been ruled to be unlawful under Article 20 (3).⁴³ The accused has the right to remain silent and withhold his defense prior

³⁶ Rudal Shah V. State of Bihar, AIR 1983 SC 1086.

³⁷ AIR 1983 SC 378.

³⁸ Bhagwan Singh V. State of Punjab, (1992) 3 SCC 249.

³⁹ Nilabati Behara V. State of Orissa, AIR 1993 SC 1960.

⁴⁰ Joginder Kumar V. State of Uttar Pradesh, (1994) 4 SCC 260: AIR 1994 SC 1349.

⁴¹ (1997) 1 SCC 416: AIR 1997 SC 610.

⁴² State of Andhra Pradesh V. Challa Ramakrishna Reddy, AIR 2000 SC 2083.

⁴³ Smt. Selvi V. State of Karnataka, AIR 2010 SC 1974.

to the trial.⁴⁴ The dignity of the person arrested is significantly threatened by an unlawful arrest, and the law does not prevent the abuse of authority that results in suffering and trauma.⁴⁵

VI. CONCLUSION

The majority of torture in India is carried out by the jail staff, police, armed forces, and other law enforcement agencies; yet, there are numerous laws in place to prevent such torture, and they are simply not being put into practice. The legislation prohibiting torture was established by several means, including the Indian Constitution, other enactments, the Law Commission, and the Supreme Court. However, there have been numerous instances of torture occurring when a person was in the custody of the police or a judge. India must enact separate legislation against torture in order to ensure that it is successfully implemented. However, because there are currently multiple documents in India that contain prohibitions against torture, it is exceedingly challenging to do so. For instance, in the D.K. Basu case, the Supreme Court issued some instructions surrounding arrest and questioning and ordered all the States and the Center to publicize these guidelines through radio and television, but neither the State nor the Center had done so as of yet. Therefore, distinct legislation on incarceration torture should be created with effective sanctions in order to ensure effective execution.

There are 171 states that have ratified the UN Convention against Torture as of June 2021. Only India has not ratified the pact since it was signed on 14 October 1997; the other BRICS countries have all done so. China ratified the Convention on October 4, 1988, after having signed it on December 12, 1986. On September 23, 1985, Brazil became a signatory to the Convention, and on September 28, 1989, it became a ratifying member. South Africa signed the Convention on June 29, 1993, and ratified it on December 10, 1998. The greatest democracy in the world, India, should ratify the Convention as quickly as possible due to both India's regard for human rights and the fact that other members of its common group have already done so. Regarding the separate laws against torture, the BRICS nations of South Africa and Brazil both have such laws that are intended to prevent and end torture. South Africa passed the "Prevention of Combatting and Torture of Persons Act" in 2013 and Brazil passed federal legislation in 2015 creating a National System to Prevent and Combat Torture. China and Russia both have domestic laws that forbid and punish torture. The Indian Constitution of 1950, the Criminal Procedure Code of 1973, the Indian Evidence Act of 1872, Indian Penal Code of 1860 and other texts also provide domestic legislation for India, but these laws lack an enforcement mechanism, making

⁴⁴ Yogendra Kumar Jaiswal *V. State of Bihar*, AIR 2016 SC 1474.

⁴⁵ Dr. Rini Johar *V. State of Madhya Pradesh*, AIR 2016 SC 2679.

them ineffective. India must therefore enact a separate law against torture, just as fellow BRICS members South Africa and Brazil did.
