
IMPRISONED!: RIGHTS OF THE INMATES

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ABSTRACT

Science says that humans are the most evolved variants of the Tetrapod. But there are certain aspects that create a huge difference between human beings and other tetrapod. Conscience it is! Our compassion and humanity make us HUMAN BEINGS, and when we run short of these basic moralities, no longer are we distinguishable from the wild. Such a heinous offence is 'torture'. When such an offence is committed inside the prison, widely known as the correctional home, then it becomes an act of sheer disgrace. It also gives rise to an interrogation *Quis Custodiet Ipsos custodes* (who will guard the guards)? Custodial torture is defined in normal parlance as the barbaric attitude of the police towards pre-trial or under-trial prisoners. The inhuman ways of interrogating the detainees violate the fundamental rights enshrined in Part iii of the Constitution of India. According to the 'International Covenant on Civil and Political Rights', the right against arbitrary arrest, the right to life, liberty and security, the right against self-incrimination, right to equality and non-discrimination are identified as the core of essential human rights. The Anti-torture bill was introduced in the parliament in the year 2010. Almost fifteen years have passed but there are no codified laws to prevent custodial tortures in the land of India. This paper provides kaleidoscopic view on the taxonomy of custodial brutality, the stance of the Constitution of India, and recommendations regarding the prevention of brutality in police custody. This paper endeavour to explicate the need of anti-torture laws in India.

Keywords: Constitution, torture, custody, fundamental rights, parliament, dignity, human rights, inmate.

INTRODUCTION

“To deny people their Human Rights is to challenge their very humanity.”

----- Nelson Mandela

There was a time when the laws were harsh and punishment meant torture. The methods of tortures have always varied at different eras. Starting from the ancient period to the modern age, the practice of custodial torture has been very prominent, especially in the medieval period. The Roman culture had nourished physical brutality as one of the methods of punishment for a prolonged time. Even in India, while ruminating the past, the rulers no matter if they were Mughals or the Colonial rulers, had always shown inhumanity towards the detainees. Physical torture would include assault and breach of dignity towards the inmates. There has been a concept of ‘Thoodasavary’, which means beating someone to death. This was a very common form of torture especially for the British rulers. Such acts of humanity were never addressed or challenged during the bygone period. In the contemporary time, India has gained its freedom and has become an Independent, Secular, Sovereign, Socialist, Democratic and Republic nation. But isn’t it a matter of disgrace that the nation which guarantees equal access to justice to all its citizens lack a specific codified law to curb custodial persecution within the nation? There have been several cases on severe tortures against inmates, reported and mostly under-reported. Hardly, there has been any major changes in the prison administration system regarding this inhuman barbarity. Violences such as physical assaults, sexual abuse and same-sex rape are some of the surging crimes that are taking place inside the prisons. Are not prisons supposed to be a place of re-formation and rehabilitation? The modern concept of prison states, ‘it is the correctional home where law-breakers get a chance to wash off their sins and start a fresh life with positivity in body and mind.’ Is this how a person can be reformed? A person might be accused of any serious crime or might be convicted for that matter, but he/she shall be punished only according to the act committed and judgement delivered by the hon’ble court. Police often try various throbbing methods to take out statement from the accused person. Sometimes the intensity of the torture becomes so unbearable that it leads to lifetime disability or even death. The prevention of custodial Torture Bill was introduced for the first time in the parliament in the year 2010. The bill had defined torture as “inhumane and had also proposed a punishment of almost ten years of imprisonment and fine”. But when it comes to codification of the anti-torture bill, it becomes absolutely zilch. Dr. A.S. Anand, J. very rightly defined in

the case of “*D.K Basu v. The State of West Bengal*”¹ that Custodial death due to intense brutality by the police is one of the most unacceptable crimes in a civilised and educated society which is governed by the rule of law.

What led to the speedy confession?

To make the investigation effortless and to fetch the confession post-haste, ‘severe torture’ is the only way. ‘Torture’, in common parlance, is an action of causing severe pain to someone either as a penalty or to pressurize a sole to commit some sort of actions without his/her tenacity. In the police custodies, numerous calibres of tortures are committed on the pre-trial and under-trial prisoners. The reason behind this barbarity is solely their confession. The Investigating Officer often crosses the limit of torture for divulging the information from the detainees.

In several ancient texts, some intimation of ‘trial and torture’ can be traced. “Kautilya’s Arthashastra” depicts mainly four kinds of tortures along with seven kinds of whipping, six kinds of brutal retributions. There is a mention of tremendous physical tortures along with beating on the knuckles, knee, back and hands. But it is notable that only the guilty person was penalized, not the suspected or pre-trial or under-trial inmates (*Aptadosham Karma Karayet*). In the ancient laws of Roman Empire, only the *servus* i.e. the servants were tortured but later on, the perfidies were also subjected to intense torture. During the era of origin of Islam, the Shariat Laws were drafted and till today numerous countries follow the Shariat laws as the prime legislation. Some countries with Muslim majority follow the physical brutality as a form of punishment which includes mob lynching, public whipping, amputating fore or hind limbs. During the rule of Britishers in India, the custodial brutality took a surge. The current prison system in India is a clear bequeathal of the British rule. Torture is the laceration in the soul which is so painful that sometimes it can be seen but cannot be felt. It is a demoralization of rage and abomination. Tortures in a police custody can be somatic, psychiatric, sextual and also social in nature.

Stamping on the naked body with heeled boots or leather belts, beating with canes on soles of feet, slapping with clubbed hands on both the ears until the victim bleeds profoundly and lose

¹ D.K Basu v. state of West Bengal, (1997) 1 SCC 416.

consciousness, inserting electric wires in body, laying on ice slab in undraped condition, denying food, water and basic amenities are some of the barbaric physical tortures that frequently shake the lives of the detainees. Sexual violences in the custody are the most brutal and unacceptable way of torture as it not only curbs the dignity but also the self-respect of the inmates. When a normal human is detained for a period of time and they are continuously treated in an inhuman way, that individual becomes de-socialized and start un-learning the normal humanly behaviour. This process of 'un-learning' leaves a prisoner temporarily incapable of managing certain basic responsibilities of day-to-day life. Emotional tortures elevate the stress level of the inmates. It is often found that the confidants of the inmates are either harmed or abused to constrain the pre-trial or under-trial detainees so that they plead guilty even if they are not at fault.

Not only the direct compassion by the police but also the excessive consolation of the prison creates an intense suffocation in the life of the detainees. Congestion in jails, especially in the chambers of the under-trials is one of the most severe issues within the prisons of India. "The law Enforcement Assistance Administration National Jail Census of 1970, 52% of the pre-trial prisoners are detained without any trial. This situation led to over-crowding and shortage of space in the cells"². The unhygienic drinking water, insufficient nutritive diet, lack of fresh air, lack of sanitation and lastly improper medical aids and lastly, lack of justice have contributed in enhancing the maladies in the life of the inmates.

A Denial of Dignity and Dialogue

"Every person, whether the individual is under-trial or convicted, deserves to be treated with respect, fairness and dignity"³. The custody is a place for rehabilitation of the convicted individuals. But the pre-trial or the suspected individuals who are arrested by the police, are detained in the custodies for long and long period of time. They are severely tortured at every second by neglecting all the humanitarian principles. Now the question arises, who are these pre-trial and under-trial prisoners?

² Shubham Kashyap, Major Problems of Prison System in India, Times of India (9.11.2024 23:23pm), <https://timesofindia.indiatimes.com/readersblog/shubham-kashyap/major-problems-of-prison-system-in-india-40079/>

³ INTERNATIONAL COMMITTEE OF THE RED CROSS, <https://www.icrc.org/en/what-we-do/helping-detainees> (last visited on Nov. 11 2024)

Pre-trials, in normal parlance are those who are charged either under any F.I.R or there is a trace of any crucial evidence against them. Under-trials are either waiting for their trials, chargesheet against them or are waiting for the completion of the pending investigation. In both the cases, the prisoners are innocent in the eyes of law. Prison administration is a matter which is exclusively headed by the state, so, monopoly power lies in the hands of police. Being a monopoly power under state machinery, the police sometimes go on with their arbitrary power to curb the fundamental rights of the detainees. Prisoners who are forcefully devoid of personal liberty are termed as inmates.

‘Somatic brutality by the police’ is a naked violation of the fundamental right of ‘LIFE’ of the pre-trial detainees. Barbarity is not only confined within physical torture but also there are celebrating ways of mental and sexual tortures which result to infringement of fundamental rights enshrined in the Part iii of the Constitution of India. The detainees are deprived of their fundamental rights of liberty⁴, speech and expression⁵, basic amenities, mandatory quality healthcare⁶ and most crucially, the personal security. The government of India including the statutes have duly promised and guaranteed almost all the basic rights to the prisoners but sarcastically, the police have regularly curbed the legal privileges of the detainees. It is often forgotten by the intimidator that the pre-trial and under-trial inmates are not mere living creature with blood and flesh but also, they are human with heart and soul.

What The Indian Laws Say About Custodial Torture?

With course of time, several laws and multiple amendments of the Constitution have resulted numerous changes in the Prison Administration System which ended with developing the standard of living of the prisoners. Beside the mother statute i.e. the Constitution, other procedural and customary laws including “the Evidence Act (1872)”, “the Code of Criminal Procedure (1973)”, “the Indian Penal Code (1860)”, “the Human Rights Act (1993)” etc. endeavour to the privileges of the prisoners.

Provisions as per the Constitution of India

“The fundamental rights enshrined in the Constitution of India are binding to all the citizens of

⁴ India Constitution. Art. 21.

⁵ India Constitution. Art. 19.

⁶ Paschim Banga Khet Mazdoor Samiti and Ors. v. State of West Bengal and Anor, (1996) 4 SCC 37.

India”. Article 20(3) of the Constitution provides a safeguard to the rights and privileges of the inmates. The Article says, “any person accused of some offences cannot be insisted to act as a witness against himself”. Through several judgements of the hon’ble Supreme court, it is deciphered that “the accused has a right to stay tranquil and he may or may not disclose his defence before the bench”⁷. “Article 21 of the Constitution interprets that nobody can be destituted of his or her existence and personal liberty without following the procedure that is established by law”. “Article 22 (1) & (2) of the Constitution enshrines safeguard against arrest and arbitrary detention”. It prohibits imprisonment of a person without any information on the ground of arrest. This has been established by the Supreme Court for several times⁸. In case of a criminal trial or investigation, there is an intense chance that the accused may result in depriving a person of personal liberty or right to life.

In one of the important judgements of the hon’ble Apex Court, it is explained by the bench of judges that “an intense cruelty and torture is absolutely unconstitutional”⁹. Also, the Constitution guarantees “the right to consult a legal practitioner of the inmate’s choice”¹⁰ as the laws provide a chance “to listen the either party (*Audi Altare Partem*)”. “Article 39A of the Constitution provides an access to legal aid to those who cannot afford legal representation mainly due to weak socio-economic condition”. The Constitution has mandated presenting the accused in front of the nearest magistrate within a period of twenty-four hours of arrest¹¹. During 1979, “a writ of Habeas Corpus” was filled in the hon’ble Apex Court of India on behalf of huge number of under-trial inmates who were waiting for the cumulation of their trials. A landmark decision by the Apex Court was deciphered that “speedy trial is a fundamental right which is guaranteed under Article 21 of the Constitution”¹².

Provisions as per Other Statutes -

1. Under the Code of Criminal Procedure, 1973

The under-trial inmates, according to the law, enjoy some extra rights which are hardly available to the convicted prisoners. “Sections 46(3) and 49 of CrPC” protect the under-trial

⁷ Yogendra Kumar Jaiswal & Ors. v. State of Bihar & Ors., AIR 2016 SCC 1474.

⁸ A K Gopalan v. State of Madras, AIR 1950 SC 27.

⁹ Inderjit v. State of Uttar Pradesh, AIR 1979 SC 1867.

¹⁰ State of Madhya Pradesh v. Shobharam, AIR 1966 SC 1910.

¹¹ State of Uttar Pradesh v. Abdul Samad, AIR 1962 SC 1506.

¹² Hussainara Khatoon v. Home Secretary, State of Bihar, AIR 1979 SC 136.

inmates who are not accused of any particularly severe crimes that are punishable in the worst possible way like capital punishment (death penalty) or life-imprisonment.

“The right to get information regarding the ground of arrest and the procedure of bail is secured under section 50 and section 56 of CrPC”. Section 57 deciphers that the accused or the suspect is to be presented in front of the magistrate within a time period of twenty-four hours after the arrest. Section 54 provides safeguard against custodial barbarity by providing a mandatory physical examination by a Medical Officer. If the under-trial prisoner dies for some reason, then it is investigated by the magistrate. This is guaranteed by section 176 of CrPC. Lastly, section 358 provides remuneration or compensation if any person is falsely arrested which is devoid of any ground.

2. Under the Indian Penal Code, 1860

In a landmark judgement of the hon’ble Supreme Court it is deciphered that the sections 330, 331, 341 & 348 have been framed to dissuade the police officers who overuse their power to torture the accused or the under-trial inmates¹³.

3. Under the Evidence Act, 1872

Section 24 provides that any confession made by brutality or by intense torture would not be a relevant one in case of a criminal proceeding. Section 25 held that any type of statement related to confession by the inmates in front of the police is not accepted as the evidence in the court of law. In a landmark judgement of the hon’ble Supreme Court, it is held that “if the FIR is given by the suspected to the police officer and amount to a confession, proof of the confession is prohibited by section 25”¹⁴. Section 26 deciphers that the statement made in the police custody is not reliable until it is proved during the cross-examination or any judicial scrutiny¹⁵. Section 132 goes hand in hand with Article 20(3) of the Constitution. It describes that no one can be compelled to provide witness against himself. The ambit of section 132 was clearly explained by the supreme court in the case of *R Dinesh Kumar v. State & Ors*¹⁶.

¹³ State of Madhya Pradesh v. Shyam Sundar Trivedi, (1995) 4 SCC 260.

¹⁴ Aghnu Nagesia v. State of Bihar, AIR 1966 SC 119.

¹⁵ Smt. Selvi v. State of Karnataka, AIR 2010 SC 1974.

¹⁶ R Dinesh Kumar v. State & Ors., AIR 2015 SC 1816.

4. The Protection of Human Rights Act, 1993

The protection of human rights act was passed by the parliament in on the year 1993 as a response against cruelty towards human beings. Section 2 (1)(d) of this act depicts a clear definition and the meaning of human rights. It was framed mainly to maintain the standard of human rights inside the nation.

What the world says about custodial Barbarity?

“A person is behind the bars that doesn’t mean that he is no more a human”. The right to freedom from intense torment is entertained throughout the world as it provides safeguard to all the individuals from physical, psychological and sexual brutality. Numerous human rights instruments have worked throughout the world and have set rules that strictly adhere to ‘prevention from torture’. Universal human rights commission has set a proper definition for ‘torture’ along with set of rules and regulations to control cruelty and degrading humanitarian behaviour. United Nation Human Rights Commission has set the definition for ‘torture’, which says, “Any act by which intense pain or suffering, whether somatic or mental¹⁷, “Article 3 of the European Convention on Human Rights has held that no human in this world shall be subjected to inhuman behaviour or severe punishment”. The declaration is binding to all and it extends to the inmates who are behind the bars for whatever the crime they have committed. This is an absolute right and any infringement of this right at any circumstances would not be justifiable. “Article 5 of the African Charter on Human and Peoples’ Rights explains that every individual has the right to lead a life with freedom and respect”. All forms of exploitation that ultimately result to cruelty and a threat to dignity, shall be prohibited¹⁸.

There are currently 165 states who follow the binding principle of CAT i.e. “The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”. These states are bound to follow the two mandatory rules of CAT. They are-

- i. The state should take proper actions by criminalizing the action of torture along with proper sanctions to regulate the inhuman barbaric activities for the sake of

¹⁷ United Nations Human Rights, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading> (last visited Nov. 12, 2024).

¹⁸ African Union, https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf (last visited on Nov. 12, 2024).

humanity.

- ii. There should be no exception to the law of torture whatever the circumstances that arise¹⁹.

Countries like the U.S.A, the U.K, China, Russia, France and other notables have already implemented CAT to abolish the practice of inhumanity and cruelty towards human beings.

In the U.K, the common law system prohibits the practice of torture. The principle of section 134 of the Criminal Justice Act 1988 was introduced when the U.K joined the CAT convention in the year 1984. The section speaks that during the official duty of any public officer, if he intentionally causes someone severe pain, then it absolutely amounts to an offence.

The United States of America became a member of the CAT on 1992. According to the rules of CAT, the USA constitutes every act of torture as a serious criminal offence.

The Russian Federation joined the CAT in its first optional protocol. Article 21(2) of the Constitution of Russia deciphers that no individual shall be subjected to torture, any kind of violence or cruelty. Without any voluntary consent, no human can be subjected to any scientific experiments or other medical testing.

China ratified the CAT in the year 1988. The government of China has made a series of reforms in the criminal justice delivery system to counter the brutality and torture in the nation.

After ratifying itself in CAT, France has made a series of amendments in its legal system to combat torture and extreme level of barbarity that is prevalent throughout the nation.

¹⁹ United Nations Human Rights, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading#:~:text=Article%204-,1.,2.> (last visited on Nov.12, 2024).

The Constant Struggle of Judiciary to combat Custodial Torture

In the “criminal justice system”, the police, prison, prosecution, the court etc. are intertwined with definite functions. Thus, any kind of derogatory attitude towards the under-trial or pre-trial prisoners can be traced either by direct or indirect interference of the judicial system. The hon’ble courts of India have encountered several cases relating to arrest, prison mal-treatment and custodial brutality. With course of time, the hon’ble courts have delivered several judgements which ultimately resulted in development of some aspects of the justice delivery system. In the landmark case of *Joginder Kumar v. State of Uttar Pradesh*²⁰, the hon’ble court held that no arrest shall be made arbitrarily because this causes harm to the dignity and reputation of the individual. The arrest must be just and reasonable. This case also fetched the conclusion that arrestees have the right to inform someone regarding his/ her arrest and this process should be documented by the police officer. The case of *D.K. Basu v. State of West Bengal*²¹ has paved a different way in the system of arresting the accused. Eleven guidelines were set up which are to be followed mandatorily during the arrest of any accused or suspected. In another important judgements, the hon’ble bench in the Supreme Court delivered that death in the police custody must be seriously viewed and if binding evidences are found, then the sanctions would be merciless²². The apex court of India closely observed the miseries of the prisoners including the mal-treatment inside the prisons and ordered for urgent reforms in the case of *Rama Murthy v. State of Karnataka*²³. In the landmark case of *Sube Singh v. State of Haryana*, the apex court observed the intensity of “third degree torture by the police” along with brutal way of interrogation. Also, the apex court suggested preventive measures to tackle such inhuman barbarity²⁴.

Interrogation does not mean cruelty or intense physical torture. The supreme court, in the case of *Bhagwan Singh & Anr v. State of Punjab* (death in police custody), deciphered that torturing a person using third degree method is contradictory to law. It is absolutely a brutal and inhuman way of torture²⁵. The hon’ble court decided that “fundamental rights cannot be curbed if a

²⁰ *Joginder Kumar v. State of U.P.*, AIR 1994 SC 1349.

²¹ *DK Basu v. State of West Bengal*, (1997)1 SC 416.

²² *Gauri Shanker Sharma v. State of U.P.*, AIR 1990 SC 709.

²³ *Rama Murthy v. State of Karnataka*, AIR 1997 SC 1739.

²⁴ *Sube Singh v. State of Haryana*, AIR 2006 SC 1117.

²⁵ *Bhagwan Singh & Anr. V. State of Punjab*, AIR 1992 SC 1689.

person enters the prison. Although, the inmates may encounter some sort of diminution in some rights due to imprisonment”²⁶.

From the cases, it is concluded that the brutality in the police custodies is not an unknown fact to the hon’ble benches of the courts or to the government. Several cases have been recorded in past few years where death can be traced due to the intense custodial barbarity. The apex court has deciphered several judgements in this regard which has probably uplifted the condition of the inmates officially. But the practical scenario is something different. There is still a quarry that whether the inmates are safe or they are fighting to death inside the four walls of the custodies?

Anti-torture Law: Need of the Hour –

It has been “seventy-seven years since India has gained its independence”. The nation has developed and has made significant improvement in the field of science, innovation, technology, medicine, and other major domains. The laws of the country have evolved through several amendments since then. But till today, there is a major need of reformations in numerous aspects of the Prison Administration system. In India, any specifically drafted, enacted and satisfactorily implemented Custodial Anti-torture laws are still not prevalent. Even though The Prevention of Torture Bill was passed in the lower house of the parliament in 2010 but the bill is still pending for its verification in the upper house. The most triggering thing about the entire Judicial system of India is that there is no codified anti-torture law. There has been a lot of measures and initiatives taken from the government’s side but none of them could be implemented because of some or the other reasons.

It begins with 14th October, 1997, when India signed the United Nations Convention Against Torture (UNCAT). After this ratification there was further proposal of a bill against tortures. In the year 2010, on 26th April the Prevention of Torture Bill was introduced in Lok Sabha. Though it got approved in Lok Sabha it became a matter of dilemma in Rajya Sabha. The members of Rajya Sabha were a bit sceptical about letting the bill get passed. They laid many rhymes and reasons and ultimately it was decided that passing this bill was a big step forward. Thus, the bill was sent for review by NHRC.

²⁶ Sunil Batra v. Delhi Administration, (1978) 4 SCC 409.

Amongst all these political and legal debates who are the ones suffering since ages? The inmates who have been accused of crimes are humans too no matter how grave the crime is that they have committed. There are laws under IPC (Indian Penal Code 1860) and BNS (Bhartiya Nayaa Samhita, 2023) to punish their actions. It does not mean in any ways that they will be tortured. There are several other ways to record statements so this cannot be a justification or a defence for their inhumane act. Application of strict laws is the need of the hour. Rajya Sabha had argued that it was too early to decide for such a big amendment. Is that really so? It is unimaginable how the prisoners are living their lives in such a hell. Far away from the mainstream society they are living a life where necessity of life with dignity is described as audacity. Does the government so impaired about it?

The Constitution of India has always favoured fundamental and human rights over anything else. At this point, if there is a discussion about reformations and correctional homes, the first thing that should strike the mind is the miseries that inmates are constantly fighting with.

A Brief Whisper of Persuasion

A major problem in the prisons of India is the delay in trial of the under-trial or pre-trial inmates for long period of time. This eventually cause unnecessary detention or arrest of the detainees. It is found that an accused person who is arrested before being convicted by the court, has to face severe brutality during the interrogation periods. Also arresting due to petty issues such as theft or public disorder or any non-violent minor mal conduct is often overwhelming. The judicial system can take initiatives to re-consider and re-thinking about the punishment measures for trivial wrongs. Several times it happens that, due to the longevity of trials the accused person has to remain imprisoned for really long period of time. This period of long wait gives birth to lifetime trauma and taint. One is not supposed to serve in jail until and unless proved guilty. There are other aspects of custodial torture that needs to be treated as early as possible. A cell full of too many evil minds can result to heinous outcome. It might require the government to develop infrastructures of jails as it will result into a better ecosystem for the prisoner's abode.

The "Maslow's Hierarchy of Needs" depicts about the needs of the human which are prerequisite for their existence in this world. The base level of the hierarchy consists of the basic needs, i.e. food, shelter and clothing. The successive levels contain safety and security,

love and compassion, respect and dignity and the apex level depict self-actualization. So, there can be sarcastic utterance that the inmates are served food with so much of love, care and dignity that they start feeling the custody as the most secured place for their self-fulfilment.

“All criminals should be treated as patients and the jail should be hospitals admitting this class of patients for treatment and cure. No one commits crime for the fun of it. It is a sign of a diseased mind. The cause of a particular disease should be investigated and removed.”

- By Mahatma Gandhi²⁷

The bars of the prison do not restrict the fundamental needs of the imprisoned human. Nutritive fooding of sufficient amount, proper drinking water, fresh air, proper clothing, medical aids and quality health facilities are to be provided to the under-trial or pre-trial inmates. The pre-trial prisoners should be kept in separate cells inside the prison. They should not be mixed up with the convicted serious offenders. This can result into contamination of the minds of the pre-trial inmates.

The cells should be classified as per the gender, sex, intensity of allegation of crimes and most importantly, the psychological status of the detainees. It should be considered that the correctional home for the prisoners is actually a detention centre for the pre-trial inmates. So sometimes, the accused are restricted from working or doing any job within the prison. Idle mind gives birth to evil thoughts. So, making the pre-trials occupied with works by offering minimum wages can be an effective way to solve the psychological fatigue of the inmates.

There should a proper check on the interrogation and investigation process as severe torture whether somatic or psychiatric can result to negative socialization. Negative socialization affects the person heavily when he comes out of the prison. The unlearning of the basic humanly behaviour and the normal way to practising a societal culture gradually affect the mind which results into serious psychological complications. The arbitrary action of the police along with severe brutality should be checked and controlled by the supervising officers including the judicial magistrate. The inhumane aggression that is bestowed upon the inmates is absolutely condemnable.

²⁷ Vol. 5, Shriman Narayan, Selected Works of Mahatma Gandhi 395-96 (Navajivan Publishing House 1968)

Also, a constant health check-up (both physical and mental) needs to be done to detect any injuries or tortures that the inmates might have gone through while their stay inside the jail. The women need special care along with treatment during the menstrual phase. The person who are already affected by any communicable disease or any congenital disorder, should be kept under regular surveillance of a medical officer or a registered nurse.

When an individual is suspected of any crime, then he is arrested by the police but it lies on the decision of the court to either acquit or convict that particular individual. During the time of custodial confinement, the pre-trial inmate should be allowed to meet with his family very frequently. A sudden distancing from the family members or the loved ones can affect the psychological status of the detainee.

The prison should not turn into a hell for the prisoners. Sometimes, the under-trial prisoners cannot bear the fees of a lawyer to represent them in the court of law. So, there should be a stretch of legal aid services in the prisons. No one can be denied justice. So, ensure justice, equality and dignity of an individual, *pro bono publico* in the custodies is a remarkable one.

Conclusion

The issues relating to custodial miseries have been addressed along with some probable recommendations to effectively combat with the custodial violences on the pre-trial inmates and to vindicate the principles of human rights. Custodial barbarity is a naked violation of human rights and the right to live with dignity. But the unfortunate situation that is prevalent in our nation is that mainly the financially weaker sections of the society are facing a persistent problem in seeking justice. There are several laws that are drafted to abolish custodial torture but in reality, these laws have turned into a piece of paper. There is a huge number of lacunas in the system of prison administration and in the justice delivery system. The slow and leisurely performance of the judiciary often elasticates the tenure of a trial which ultimately affects the life of the inmates. Custodial tortures, psychological stress, barbarity of the police and a constant stress of getting imprisoned affect the living standard and dignity of the pre-trial inmates. Countries with less per capita income and scarce infrastructure along with increasing population face problems related to custodial torture as there remain only a few numbers of investigating officer who are occupied with intense work load.

Several landmark judgements of the hon'ble Supreme court have clearly depicted the stance

of the Supreme court in abolishing custodial brutality. The apex court has established multiple times that the “custodial torture is a clear infringement of human rights and it breaches the fundamental rights of all the detainees which are guaranteed by the Constitution of India”. Besides providing compensation to the victims, the government has a huge responsibility for the introduction of the Anti-torture Act as early as possible so that there can be a way to get out of this century old practice of custodial cruelty. The inhuman cruelty in the custodies clearly give an open threat to the Constitution of India. The somatic, psychiatric and sexual brutality in the custodies by the police during interrogating the pre-trial inmates give rise to the question which was once coined by Justice V.R. Krishna Iyer that “who will police the police?”²⁸

²⁸ Prem Chand (Paniwala) v. Union of India, AIR 1981 SC 613.