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Rights of Prisoners against Custodial Torture In India By: Shivam Jasra



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INTRODUCTION

The relationship between prisoners and human rights has always been erratic. There always have been conflicting opinions on the position about whether the prisoners are entitled to human rights or not. Some people have the opinion that, when a person becomes deviant and commits a crime, he should be deprived of all his rights. However, others are of the opinion that some rights remain vested in a person even after commission of a crime by that person^[1]. There are certain basic rights which the prisoners are entitled to which safeguard them from some abhorrent practices. One such detestable practice is 'Torture' which is used against the prisoners and under-trials to get confessions from them about a particular event.

Unfortunately, torture has increased alarmingly throughout the world. According to famous NGO 'Amnesty international', more than 100 countries have sanctioned the use of torture on their people.^[2] The word torture is defined as "intensive suffering, physical, mental or psychological, which is used to force someone to say or confess about something against his

or her own will”.

Use of torture on prisoners and undertrials has become an ordinary phenomenon in the police custody in India. The ‘Police’ which is the civil force of a state use torture to obtain information or confessions from the prisoners or under-trials. The use of torture has been strictly prohibited under the International Instruments and national laws of most of the countries. Many conventions have been signed on international level which prohibit torture and any other forms of inhuman and degrading treatment towards human beings.

This essay aims to establish that the people undergoing incarceration known as ‘Prisoners’ are also entitled to some of the basic rights even when some of their rights are curtailed. The essay will majorly focus on the “Right granted to Prisoners against Torture” under International Instruments and Indian laws. It will further discuss India’s obligation to protect prisoners from torture being a signatory to different International Instruments which prohibit torture specially ‘Convention against Torture’. Further, it will discuss that in India, how police, which is meant to safeguard people’s rights, is the biggest violator of peoples right against torture.

‘Part 1’ of this essay will discuss the nature of human rights and are these rights available to prisoners when they are undergoing incarceration and also the obligation of the state to protect these rights. It will further discuss the ‘Right against torture’ defined under International instruments and the Indian National Laws. ‘Part 2’ will deal with the meaning of Custodial torture and reports of International organizations which establish the prevalent use of torture in India. It will also discuss the political stand and role of judiciary to deal with torture in India. ‘Part 3’ will deal with the factors that lead to custodial torture in India in the form of police excesses and police being the biggest violator of this human right. Lastly, ‘Part 4’ will deal with the suggestions and reforms that are necessary to protect the rights of prisoners against custodial torture and how the current scenario can be improved, which will be followed by the conclusion.

1. HUMAN RIGHTS AND PRISONERS

“Life means not only physical existence. It means the use of every limb or faculty through which life is enjoyed. The right to life includes the right to a healthier environment”.

~ Justice P.N. Bhagwati

Human rights are best defined as the rights which every person inherits by birth. They are absolute as they come from eternity and goes to eternity. They can be understood as inalienable rights “to which a person is entitled to simply because of him being part of the human family”. Every human being enjoys these rights despite of their nation, location, language, religion, Ethnic or any other status.

‘Article 1’ of “Universal Declaration of Human Rights”^[3] states that “All human being are born free and equal in dignity and rights”. By reading this article in UDHR, it can be construed that every human being is equal in their rights before law and no exclusions are made even when a human being has committed a crime.

This suggest the nature of Human rights as being universal and they are granted to each and every individual irrespective of whether they are normal citizens or prisoners. It is significant to note that the idea of human rights is inter-related with the idea of human dignity.^[4] They are given to all people equally because of their humanity, irrespective of their race, nationality, caste, sex etc. All human rights are treated equal in importance and are inherent in all human beings.^[5]

These rights are not only recognized under national legislations of different countries but also under the “International bills of rights”, which consists of “Universal declaration of Human rights” (UDHR), “International covenant and civil and political rights” (ICCPR) and “International covenant on economic, social and cultural rights” (ICESCR) with 2 optional protocols.^[6]

1.1. Human rights as a legal right?

The answer to the question of whether human rights are considered as legal rights or not is ‘affirmative’. Human rights are considered as legal rights and the states because of their legal nature has a corresponding duty to protect these rights of each and every individual living in their territory. Most of the International instruments like ICCPR, 1966 and ICESR, 1966 states that it is “the obligation of the states to promote the universal respect for and observance of human rights and freedoms.”

The state has a positive duty and is obligated by the virtue of the above-mentioned instruments to protect the rights of individuals even when they are incarcerated and some of their rights are taken away by due process of law. Therefore, we can say that the state has an obligation to protect the rights of the prisoners even when they are lodged in prisons and are undergoing incarceration.

1.2. Who are Prisoners?

In simple terms, a prisoner can be defined as “a person legally committed to prison as a punishment for a crime or is awaiting a trial”. The ‘Merriam-Webster dictionary’ defined a prisoner as “a person who is deprived of his liberty and who is kept under involuntary restraint, confinement or custody.” He is deprived of his liberty and some of his rights against his will. The right to liberty is being taken away by the process of law when such person commits a crime by forceful restraints and confinements.^[7]

In India, There is no definition of the term ‘Prisoner’ under any national legislations. However, the Prisons Act of 1894^[8] under Section 3(2), classifies prisoners into 2 categories, Criminal and civil prisoners. Under Section 3(4), the act defines Civil Prisoner as any prisoner other than the criminal prisoner.

1.3. Recognition of Prisoner’ Right against Torture

It is established through different texts and judicial interpretations that committing a crime doesn’t reduce the status of a human being into a non-human being. It is not wrong to say that, even when a person is convicted and not entitled to all the rights he was entitled to before, he enjoys certain basic rights. Indian Supreme court has recognized in different Judgements that committing a crime and being a prisoner does not cease a person to be a human being.

The provisions for the treatment of prisoners has been recognized on international levels and are discussed under various International Instruments such as “Universal Declaration of Human Rights” (UDHR), “International covenant on Civil and Political Rights” (ICCPR), the “United Nations Standard Minimum Rules for treatment of Prisoners”, the “European convention for prevention of torture and inhuman or degrading treatment for treatment of prisoners”, “United Nations basic principles for treatment of prisoners” and “United nations convention against torture and other cruel, inhuman and degrading treatment” (UNCAT).

Even after giving so much importance to rights of prisoners by international communities and most of the states being the signatories to these international conventions, the rights of prisoners are violated in some form or another.

Even the Constitution of India, lacks specific provisions as to the rights which the prisoners are entitled to, however, the Indian Supreme court has been time and again, while deciding different cases, focused on the rights which the prisoners are entitled to at all times.

The attention of the Indian Supreme court was first drawn to the Rights of prisoners in 1983, while deciding the case of *T.V. Vatheeswaran v State of Tamil Nadu*.^[9] The court held that the basic fundamental rights that are provided under ‘Articles 14,19 and 21’ under Part III of the Indian Constitution are available to prisoners at all times as are given to the freemen. The court further stated that the walls of prisons cannot keep fundamental rights out.

The Indian Supreme Court while deciding different cases, included various other rights for the protection of prisoners while they were in custody under ‘Article 21’ of constitution: Right to life and liberty by expanding its scope. Rights granted to prisoners under the purview of Article 21 are: Right against custodial torture and death in police lockups^[10], Right to cruel and unusual punishment^[11], Right to free legal Aid^[12], Right to fair trial^[13], Right to Speedy Trial^[14] and Rights of Inmates of protective homes.^[15]

Therefore, it was established that prisoners are provided with human rights on both international level and nationally in India.

However, focusing on the first and the utmost important right of prisoners which is the ‘Right against custodial torture’, it will be better to divide the recognition of that right under two broad categories:

- Right against torture under International Instruments,
- Right against torture under Constitution of India and National Legislations

Rights against Torture under International Instruments:

On International levels, torture has always been condemned and has even supported the use or eradication of torture publicly. The use of torture has been prohibited under the customary international law as 'jus cogens', that has the highest standing in customary law and which supersedes all the treaties and customary laws that uses torture.^[16] The prohibition of torture has been further discussed under these instruments:

1. Universal Declaration of Human Rights (UDHR): After the atrocities of World War II, the UN general assembly while drafting this core international instrument inserted the provision for "Prohibiting the use of torture" under its 'Article 5'. The article stated that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". The inclusion of ban on torture in this core human rights instrument opened the ways of entering of this right in the extensive network of other international and human rights treaties.
2. International Covenant on Civil and Political Rights (ICCPR): 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 to cruel, inhuman or degrading treatment or punishment."^[17] The provision was identical to Article 5 of the UDHR. The Human Rights Committee in General comment No. 20 went on further to comment on article 7 of ICCPR and stated that the aim of this provision is to protect not only the person from physical abuse but also the dignity and mental integrity of the person. The convention was signed and ratified by 153 countries to prevent use of torture in their jurisdictions.
3. Convention against Torture and Other Cruel, Inhuman or degrading treatment or Punishment (UNCAT): The UN General assembly adopted this convention in 1984 with the aim of making the struggle against use of torture more effective in all countries. In total, 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.

Right against Torture under Constitution of India and National Legislations:

As mentioned earlier, in India, no specific provision has been expressed to safeguard the rights of individuals against torture. It is a shame on the legislature of India, that even after 2 decades of India signing the 'Convention against Torture', still no specific legislation or enactment has been enacted to ratify the convention. Nothing has been done by the legislature till now to enact the prohibition of torture laws.

The Indian Constitution does not state any provisions relating to torture, however, the Indian Supreme Court, while deciding the scope of the fundamental rights granted to every individual under Part III of the Indian constitution asserted that "each and every individual has the right to life and he should live it with human dignity" which includes that torture should not be used on a person which affects his right to live with dignity. Therefore, the Indian judiciary while deciding different cases has played a major role in granting the prisoners their rights.

Under the National legislations, "Indian penal code 1890", under "Sections 330 & 348", makes the act considered as torture as penal, with 7 and 3 years of imprisonment, but when this offence is committed by a police officer on duty, it is not applied. Therefore, these provisions falls short of covering all the prospects of torture as defined in the Convention against torture.

2. RIGHTS OF PRISONERS AND UNDER-TRIALS AGAINST CUSTODIAL TORTURE IN INDIA

Torture is defined as "intense suffering, physical, mental and psychological, the main aim of which is to force someone to make him give some information. It also means breaking down due to severe physical pain and extreme psychological pressure."^[18]

Torture has been used for time immemorial and is used by majority of the countries which can be traced from the past.^[19] This concept is based on two facets: 1) That we all have imaginations, 2) Bodies of Human beings are susceptible to pain. In other words, we can interpret the two facets by saying that we can always envisage what is likely to happen when someone will inflict torture on us and we don't like to get hurt.

The adoption of UDHR and a ban on torture under its 'Article 5' lead to the advocacy in relation to torture on International levels. However, it took more than 3 decades after the coming into force of the Universal declaration that the UN general assembly thought of adopting the "Convention against Torture". The "UN Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment" was adopted and was opened for ratification and succession on 10 December 1984. India signed the convention in 1997 without any declarations or ratifications. The convention defined 'torture' as:

The convention 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 has or a third person has committed or is suspected of having committing, 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*”.[20]

Even when the definition of torture under the convention was broad and it included both mental and physical suffering, the exclusion of pain or suffering arising out of lawful sanctions created a serious loophole in the definition of torture. This still allow the use of torture in the signatory states till the time they are ‘lawful’ and states have given the people using torture the authority to exercise it. This can be considered as a serious flaw in the definition of torture and this loophole should be removed at the earliest.

Practice of torture while in custody has become a global phenomenon which is used on individuals regardless of their sex, age and state of health. Third world countries like India mostly faces this worst form of human right violation. Custodial torture, which is also known as extra-judicial killings rose in India between the period of 2002-2007. The main abuser of this human right against custodial torture was considered as the police and jail authorities who were actually given the duty of protecting the rights of every human being. The brutal atrocities by these agencies are even today increasing menacingly day by day. Every month, there is a new case of custodial death because of police torture reported to the Media and press. The following reports of international organisations proves it:

According to the Asian Centre of Human Rights, in India, there are at least 4 custodial deaths per day from 2002-2007.[21] In total 7468 persons, have died or were killed in prison or in police custody between 2002-2007. However, it can be suggested that the gravity of torture is much more worse than the statistics in India which was provided by the organisation. The main reason of non-reporting of crimes of custodial torture in India is because the main culprits of this crime is the police themselves. The police rarely lodge complaints against their own co-employees and the victims also do not report complaints due to the fear of reprisals. Due to this, more than 50% of the cases of torture in custody remains unreported in India.

Amnesty International in its report of 2017-18[22], stated that the count of the death in judicial custody for the said year accounted to 894 and deaths in police custody accounted to 74. According to the report, Uma Bharti accepted that she ordered the police to torture the rape suspects when she was the chief minister of Madhya Pradesh. This can be seen as a reflection of the loophole in the definition of “torture” under the “UN Convention against torture” because it allows torture by state authorities when it is lawful and allowed by the state.

Amnesty International further mentioned some latest cases of custodial torture in Indian prisons which eventually lead to the death of the prisoners. In August 2017, a women prisoner at Byculla jail in Mumbai, died after she complained about the food provided in the prisons. A team was formed including parliamentarians to visit the Byculla prison who reported that the prisoners confessed that they were regularly beaten. In November 2017, The High court of Delhi set up a committee that visited Tihar jail, Delhi and found out that 18 prisoners were beaten in prisons because they objected to their pillow covers being taken away.

In September 2017, The Indian government accepted the recommendations of United nations to ratify the “UN Convention against Torture”, which India signed in 1997. After a month, India’s Law Commission released a report recommending that the government ratify the Convention and enact a law to criminalise torture. This lead to the Introduction of Prevention of Torture Bill, 2017. This bill is important for India to ratify the convention, however, till now, India has not taken any steps to ratify the UN Convention.

Custodial torture in India is so common that the general public has accepted it as a normal routine interrogation conducted by police on account of a crime committed by an individual. Only when the most grievous cases of custodial torture are reported, there is nothing more than a momentary shock in the society which eventually results in a public outcry. Only after this public outcry and appeals, the government takes the notice of the situation of prisoners and under-trials in prisons because they are left with no other option. Even when the government is to take action against the guilty officers, the highest punishment the officer gets is a suspension. After the incident fades away from the public memory, the guilty officer resume their services.[23]

The politicians in India generally tend to deny and ignore torture in Indian prisons. Only when a grave case of custodial torture is brought in front of the nation, they take temporary steps to address the problem. Recently, Vijay Mallya accused of defrauding the Indian Banks, told the UK Courts about the reality of Indian prisons and use of torturous methods by the Indian police to get confessions and information from prisoners.^[24] Responding to it, Ms. Sushma Swaraj, minister of External affairs of India, as always, rejected the contentions made by Vijay Mallya in his depositions. She even criticized the court of United Kingdom who took a stance to verify the conditions of Indian prisons. She actually responded in the similar way, how all the politicians in the Indian government respond to the bad conditions of the Indian prisons by ignoring it.

The National Human Rights Commission (NHRC), India was formed specially for keeping a check on gross human rights violations. The National Human Rights Commission and the courts in India have been dealing with cases of custodial torture and Deaths from time immemorial.^[25]

NHRC in its Report of 2016-17,^[26] stated that, "Custodial violence and torture is so rampant in this country that it has become almost a routine. The commission even regarded crimes like rape, molestation, torture, fake encounter in police custody as manifestations of systematic failure to protect human rights of one of the most vulnerable and voiceless categories of victims. Therefore, NHRC commits to ensure that such illegal practices are stopped and human dignity is respected in all cases."

The Commission also stated in the report that it dealt with 4851 cases of custodial death in the year 2016-17, which included majority of deaths that is 4356, in judicial custody, where only 495 cases of deaths were in police custody. This shows that most of the people who died during the said time in judicial custody were under-trial prisoners and the police abused their power and tortured the person in custody to such extent that it lead to their death.

Even the Indian Supreme Court, in the recent case of **Munshi Singh Gautam vs. State of Madhya Pradesh**^[27] summarizes their grief concern about this problem of torture in Indian prisons by police. The supreme court stated that:

"The dehumanising torture, assault and death in custody which have assumed alarming proportions raise serious questions about the credibility of the rule of law and administration of the criminal justice system... the concern which was shown in *Raghubir Singh case* more than two decades back seems to have fallen on deaf ears and the situation does not seem to be showing any noticeable change. The anguish expressed in the cases of *Bhagwan Singh v State of Punjab*, *Pratul Kumar Sinha v State of Bihar*, *Kewal Pati v State of UP*, *Inder Singh v. State of Punjab*, *State of MP v Shyamsunder Trivedi* and the by now celebrated decision in the landmark case of *D K Basu vs. State of West Bengal* seems 'not even to have caused any softening of attitude in the inhuman approach in dealing with persons in custody'."

The above-mentioned statements by the NHRC and the Indian Supreme Court clearly indicates the presence of the use of torture in India. However, It is clear to suggest that even after the formulation of guidelines by the Apex court in different cases and conclusion of various judgements that using torture is a 'violation of fundamental right under Article 21' of the Indian Constitution, the state and the police has still been continuing with the use of torture on the prisoners in their custody.

Prevention of Torture Bill, 2017

India, being a third world country, signed the "Convention against Torture or Other Cruel, Inhuman, or Degrading Treatment or punishment" (UNCAT) back in 1997. Even after 20 years of signing the Convention, Indian has not ratified it, which is considered as the most important aspect of commitment and implies that India will take steps legally to make Indian Laws in accordance to this UN Convention.

In 2008, A bill on Prevention of torture was introduced for first time in the Parliament for their approval. After its review, it was decided to send the bill to the select committee because of its lacking provisions. The select committee after reviewing the bill made a draft which was represented to the Upper House of parliament in 2010, however, it got stuck over there ever since.

A former union minister of law in 2016, filed a petition in the Supreme Court of India for the India's compliance to UNCAT and to make the dead bill of 2010 come to life. During the hearing in the apex court, the Law Commission of India submitted its 273rd report^[28] which recommended the government to ratify the UNCAT and further proposed the "Prevention of Torture Bill, 2017". On their recommendations, the Bill was again introduced in 2017 and it is still being discussed in the parliament. The bill has become nothing more than a political agenda to gain votes and it was recently seen on the manifesto of Congress party for the upcoming Lok Sabha elections of 2019. Congress party promises the public to pass this bill once they come to power.

3. POLICE AS PERPETRATORS OF TORTURE

There can be no discussion on the subject of custodial torture without an understanding of the term 'Police' in India. The police have existed in the society from time immemorial. The Police generally means the 'civil force of the state' which is responsible for detection of crimes and preventing them in their territory to maintain public order and peace in the society.

Cambridge International Dictionary,^[29] defines the term 'Police' as "the official organisation that is responsible for protecting people and property, making people obey the law, finding out about and solving crime, and catch people who have committed a crime". Thus, we can say that police is actually the guardians of the rights of the human beings.

However, from the last decade, it has been observed that the police which existed for protecting the human rights of people and maintenance of law and order are themselves violating these basic rights of the individuals.^[30] The police are vested with powers as the civil force of the state for the protection of general public which are misused by them. They take cover of these powers when such human rights violation are brought in front of the people. Till now, general public and to some extent, the police thought that suspects in a crime has no rights whatsoever. This belief lead to many people not going to courts when their rights are violated by the police.

In India, the first visible point of contact for the people in event of a crime is the 'Police'. It is the only agency having the widest possible contact with the people. Therefore, it should be the responsibility of the police to do their duty and protect the rights of people rather than violating it themselves.

It is now common that the police have been criticised globally for their manifest excess of powers and duties which they were entrusted to. This unfortunate situation is because the powers granted to the policemen to carry out their legitimate and essential functions are used to torture and oppress the weak. Brutality in the custody of the police is one of the main reasons that have tarnished the image of police. Torture and deaths of prisoners in custody have now become an intrinsic part of police investigation.^[31]

In India, an attempt was made to gather information on the cases of police's violation of human rights of prisoners by the "National Crime Record Bureau" (NCRB) and NHRC. The NCRB's crime in India Report 2008, showed that during 2008, 253 cases were reported throughout the country of Human Rights violation by police. Even after this huge number of incidents were reported against the policemen, no inquiry was done against them and they were not charged with it. The violations included 'Illegal Detention', Torture, Fake encounters etc. It was also reported that only 14 policemen were charge-sheeted out of a big number of 253 cases and only 8 policemen were convicted.^[32]

For obvious reasons, the Police doesn't use the word torture. Torture is given different names by police such as "sustained interrogation", "questioning" and "examining". While doing such interrogations, the police always abuse their powers and the result of it is brutalisation or death of the accused. It is hard to find a police station in India, where the police personnel does not use torture as a daily practice while interrogating individuals in their custody.

Some of the common methods used by the police personnel to torture the individuals in their custody can be divided into two heads that is : Physical torture and Psychological torture^[33]. Physical torture includes punching, kicking, slapping, positional torture, crushing injuries, burning parts of the body by instruments, stabbing with knife, electric shocks, mutilating body parts, exhaustion, forced labour and starvation. However, police also uses ways to psychologically torture an individual by threatening to harm him or kill his family member, forced witnessing or showing the torture of other person, denigrations or humiliations, violation of religions etc. However, there is no exhaustive list of all methods of torture and torturers continue to develop new methods of torture and ways to hide it.

The problem why most of the cases of custodial torture goes unreported is because people in India knows that police is the first contact when there is a violation of their rights. When the people see police as being the violator of their rights, they don't know who should they approach. The people are afraid of going to courts and other bodies such as NHRC because they feel that their action, will lead to reprisals and malicious prosecution charges from the police as they are in a position of power.

As exact statistics of torture and deaths in police custody are not available because of most of the incidents being unreported, some cases are brought to light by the media because of its grave nature. The incident that shook the nation in 1980's was the "Bhagalpur blinding's case"[34] where 33 prisoners in Bhagalpur jail were blinded by the police officials. One other incident worth mentioning is the N.L. Patel case, who was the Chief Judicial Magistrate beaten up by the police officials and handcuffed when taken to the hospital. All these cases have caused a nation-wide cry.

Why Police use torture?

The use of torture repeatedly by the police in India has casted a public stigma on it. There is a hatred against the police, which has become an outstanding features of Indian police life today.[35] The main question posed by the Indian media and the general public at large is why the police uses torture? Is that only to make a person confess about a crime or because they know no other way than torturing the people to make them confess when they are in there custody.

The Amnesty International Report[36] tried to sort out the rationale behind the use of torturous methods by Indian Police. The Report stated that, there are many reasons why police officials use torturous and barbaric methods. First reason, would be the bad working conditions of the police in India. The policemen doesn't receive proper training before getting the job and very few facilities are available to them. They get encouraged to use torturous methods because they think that they will get a raise and promotion quickly if their detection figures are improved.

The second reason which shocked everyone was the "Police act of 1861" which still governs working of police in most of the states in India. The Act was legislated by the British while they were ruling India and the act was majorly formed according to the 18th century. This act continues to this day even after India's transition to a sovereign state from a colonised nation. The Indian government is obliged to respect the rights of the people and protect their freedoms, however, the provisions of the outdated act fails to apply to the current society and police eventually leads to misusing their powers.

The third reason was the "excessive interference" of political parties in the process of investigation. The report highlighted the 'political influence' in all aspects of police workings, for example, recruitment of police and forcing police to use wrong investigation methods to deliver to public when there is a grave offence and which involves public outcry.

Therefore, the Report laid down stressed on these three major reasons of police using torture during examining the individuals in their custody. From all the reasons stated in the Amnesty International report, it is clear that there are some basic loopholes in the police administration encouraging police to opt for tortuous methods of investigation. Therefore, these outdated act should be repealed and a new act should be enacted.

4. WHAT CAN BE DONE?

The recommendations made by various International organisations to prevent the incidents of custodial torture should be overviewed by the Indian government. The fact remains that present era is the era of human rights and the state is bound by a positive duty to protect these rights.

The first and the most important suggestion about what India should do to tackle the use of torture by the police officials is the ratification of the 'UN Convention against Torture'. Indian government signed this convention is 1997, however, never ratified it. The ratification process needs a passing of a law Prohibiting the use of torture in India. The NHRC and Indian Supreme court has recommended again and again to enact a special legislation on torture. The UN Committee on the Convention against torture explains that a "special law will necessitate that torture and ill-treatment is defined and criminalised distinctly from assault or other crimes by alerting everyone, including perpetrators, victims and the public to the special gravity of the crime of torture". The 273rd report of Law Commission, which was presented to the supreme court should be brought in the parliament for discussion. However, looking at the history of politician's denial as to use of

torture and long delay in passing of such legislation, change in the present scenario still looks like a dream. If India ratifies the “United Nations convention against torture” to which it is already a signatory since 1977, India would be held accountable for every case relating to torture in front of the UN and it will automatically help India to tackle these cases.

The second suggestion would be the amendment of the “Police Act of 1861”, which contains provisions that were only meant to suppress and violate people’s rights. Police has been time and again accused of using torture on prisoners while they are in their custody and on under-trials when they are brought in for interrogation relating to a particular offence. The old and outdated police act consists of several loopholes that give them the favour to abuse their powers and get away with it. Records showed above states that very few of the police officials have been punished for the violation of prisoners human rights. Therefore, A new reform should be brought to change the working of police.

The third suggestion would be to reduce ‘political interference’ as much as possible. The interference of politicians in India to make the accused of a heinous crime accept commission of the act as soon as possible lead the police to resort to the use of torture and other brutal methods to make them confess.

The fourth suggestion would be to make the public aware and reach the masses of a country through media because India has a population of 1.4 billion people. The people should know what remedies are available to them when their basic human rights are violated and whom to approach to file a complaint against police. Making the public aware of their right specially against torture will compel the police of the state to think about using third-degree methods on an individual randomly.

The fifth suggestion would be to give full powers to the NHRC, India for investigation without help of the police, including the power to initiate investigations on its own, to receive communications and to hear complaints against the police officials on its own.

CONCLUSION

Therefore, we can conclude by saying that human rights are available to each individual, even when he is a civilian or a criminal. The prison bars cannot keep out the basic rights of an individual. It has also been established that the prisoner while in custody of police in India is entitled to ‘Right against custodial torture’ under ‘Article 21’ of the constitution. However, looking at the current scenario in India and reports of the National Human Right commission and other NGO’s such as amnesty international etc, it is clear that this right of prisoners are still violated in Indian prisons on a daily basis even when the politicians deny it.

The Indian government being a signatory to the “United Nations convention against Torture” has failed to perform their obligation to protect this right of individuals including prisoners. Every month a new case is being reported in India relating to death in police custody because police torture. The Indian government till now has not ratified the “United nations convention against torture” and even after the introduction of ‘Prevention of Torture Bill, 2017’ in Indian parliament, no such legislation was passed. This shows the voluntarily delay of the Indian government to ratify the convention, the main cause of which is to prevent themselves to be answerable to the United nations for the torture cases.

Thus, it could be concluded that to stop the use of torture in India, the Indian government need to ratify the UN convention and pass the ‘Prevention of Torture bill’ that was first introduced in 2010. It further needs to amend the rules and “Police Act of 1861”, to stop the police to be a major violator of individuals right against custodial torture. Only this is the way, the use of torture can be prevented in India.

References:

[1] Rachel Schon, ‘What Human Rights Do Prisoners Have?’, (Human Rights News, Views & Info, 19 July 2016) <<https://rightsinfo.org/prisoners-still-afforded-human-rights/>> accessed 24 March 2019.

[2] ‘Stop Torture’ (*Amnesty.org*, 2019) <<https://www.amnesty.org/en/get-involved/stop-torture/>> accessed 24 March 2019.

[3] Universal declaration of Human Rights, <<http://www.un.org/en/universal-declaration-human-rights/>> accessed 24 March 2019.

[4] H. O. Agarwal, *International law & human rights* (20th edn, Central Law Publications 2014).