

Review

Historicity of Torture: An Analysis of Indian Democracy

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On the basic pillars of democracy like rule of law, human dignity, civic participation and good governance, torture is a fundamental assault. In the current scenario all democratic countries were engaged in torture and other cruel inhuman treatment in its counter terrorism operations. Torture can be justified for oppressive regimes and for the maintenance of law and order. Besides that, it was used to destroy external, internal as well as for security threat. In democratic countries, torture is also used when ethnic, religious or political divisions threaten the unity of state. India is considered as world's largest democracy. The country has civil society, free media and independent judiciary. Still the country is engaged in quotidian violence like torture, which is widely prevalent in the name of national security, investigation crimes, extracting information and punishing criminals. Torture is an instrument of state power in authoritarian system which applies all means to silence the political opponents or bend them towards rule of law. Nevertheless, torture occurs in the democratic countries in which rule of law is highly respected likely in maintaining peace and public order, national security and fight against terrorism. It is clear that in democracy when the rights of an individual have been weakened and are on the mercy of those who are in power, the result is that quotidian violence and other cruel punishments can occur. Torture is a brutal method of social and political control which relies on complex networks of technology, training, facilitators and perpetrators. It demands classified structures located within enclaves of barbarism in order to achieve its aim of inducing terror. Modern states have built burgeoning detention facilities like immigration centers, prisons and police cells that engage in torture and other cruel, inhuman treatments. The law enforcement agencies engage in torture and other cruel, inhuman and degrading treatment or punishment in the name of counter- terrorism, security threats and soon. The states use violence like methods to control and terrorize its people to maintain the status quo or to destroy internal or external political, ideological or military threats. The state uses torture and makes it clear that enhanced interrogation techniques makes a person from kidnapping to extraordinary rendition, from citizen to unlawful enemy combatant and from human to terrorist. The paper will analyze the torture in Ancient, Medieval and Modern periods and mainly focus on custodial torture in India and highlights the main provisions of torture bill in India. The study is exploratory in nature which merely intends to explore research questions and does not intend to offer a final and conclusive solution to the existing problem. It determines the nature of problem and hence cannot provide a conclusive evidence. It helps in developing a better understanding of the problem

Keywords: History of torture, discussion on torture, torture in democracy, torture in India and torture bill.

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INTRODUCTION

History of Torture

Torture has been practiced throughout history. The Romans, Jews, Egyptians and many other cultures include torture as a part of their justice system. Romans had crucifixion¹, Jews had stoning and Egyptians had desert sun death. All these acts of torture were considered as necessary (Physicians for human rights). In ancient world citizenship was the only way for the protection of torture, as citizens were given immunity from torture or could be tortured in rare circumstances. In ancient Greek, citizens were never subjected to torture; however slaves and foreigners were tortured as they were considered as non-citizens (Einolf 2007:107). The citizens of Athens were considered the people with love and having capacity of truth-telling. When they had to testify before a court, their reason was taken as seriously. The intolerant law court did not have trust on non-Greeks. To generate truth, a procedure was set up that would secure the accuracy of their testimony. The procedure was torture. The Greeks termed the coin *basanos* (torture), a way to verify truth of the testimony of those who could not be trusted (non-citizens) (Wisnewski 2010: 16-17).

The Roman Republic prohibited torture against citizens, except in case of treason. In the late Roman Empire citizens were divided into two classes, first; *Honestiores* known as first class citizens were free from torture and second; *Humiliores* or second class citizens were tortured in criminal cases. State authorities in the Roman period tortured Christians, as they refused to worship the emperor were considered to be a type of treason. They were of the view that the refusal of worship would make gods angered and in this regard they executed and tortured Christians in order to appease the gods (Einolf 2007:107).

In ancient period two terms merged into the history of torture *quaestio* and *tormentum*. *Quaestio* refers both to the court and to the investigative procedure, while as *tormentum* refers to punishment only. When these two terms were brought together, it came to be known as interrogational torture. In this way studies prevail that interrogational torture was mostly prevalent in the ancient period (Wisnewski 2010).

¹ Crucifixion was a type of capital punishment in which a victim was tied or nailed to a wooden cross and left to die. The origin of crucifixion is generally attributed to the Persian Empire and evidences indicate that this practice was employed by Barbarians such as Indians, Assyrians and Scythians (Green 2004: 60).

Torture in Medieval period

In medieval period, non-citizens were also subjugated to torture. In the twelfth century torture was used on citizens frequently both for ordinary criminal offenses and for the special crimes. John Langbein (1997) has argued that the unusual prevalence of torture in medieval Europe resulted in large part from the unusual characteristics of the medieval legal code. To find out a guilty person, the judges of the medieval period needed to have either a confession or the testimony of the two eyewitnesses to the crime. In medieval Europe a citizen accused of a criminal offense could only be tortured if the evidence against him/her seems probable (Langbein 1997).

The medieval courts utilized Roman law to develop their two rule system for proofs. If torture was to be used, it could not be used on just anyone at any time and to foe for any reason. There were some rules that were used as a means to govern the use of torture in the courts.

- Torture could occur only when proof can be obtained.
- Torture could not employ leading questioning.
- Torture has to be supervised by the judges who ordered it.
- On confession, a victim cannot be tortured, as confession is insufficient evidence for conviction.
- Any confession acquired through coercion was not admissible in court (Wisnewski 2010: 22).

Torture was also prevalent in the medieval societies of Ottoman Empire², Japan and Iran. The political authority of Ottoman Empire used torture in cases of the victim has prior criminal record. In medieval Japan, confession was required for a conviction and torture could be used in cases where circumstantial evidence indicated probable guilt. In the same way Iran also allowed torture only under strictly regulated conditions, where evidence already existed to indicate probable guilt (Einolf 2007:107-108).

²The Ottoman Empire was one of the greatest, extensive and long-lasting Empires in history. It includes the territories of the eastern Roman Empire, northern Balkans and north black sea coast. This empire was born before 1300 and endured until World War 1. The Ottoman Empire was based on the principles of Islamic state and had a responsibility to protect others in the exercise of their religion. The Christians and Jewish people were sometimes persecuted, tortured or killed for their faith in the Ottoman Empire. It has been said that the Ottoman Empire offered an effective model of a multi-religious political system to the rest of the world (Quataert 2000).

Torture in Modern Period

Torture exists mainly as a floating word of condemnation in the modern period. The modern type of torture is somehow different from classical torture, as it favors pain that intimidates the prisoners alone and may leave scars after they pursue their aim (Rejali 2007). The interrogators of the modern period still use the techniques of the medieval times. In modern period many new techniques were employed like electric shocks, sensory deprivation and water boarding (Forrest 1998).

In ancient and medieval period, torture was done openly in the public while as in modern period; state agents practiced torture in closed institutions on helpless prisoners. States parcel out the dirty work of violence, including torture to non-state actors in the modern period. If we look around the world there are so many examples that shows that how states used the dirty hands. The death squads in Latin America, which not only kill, but tortured people to a large extent. In Bosnian war³, the private and public agents work together and produced systematic violence including torture and mass rape (Ibid 2007).

Torture becomes an instrumental policy in the twentieth century and is directly related to the nature of the modern state. Edward Peters (1985) argues that torture arises in the modern period with the combination of two features. One is the vast power and the other is vulnerability to the state enemies. The vast power affects all aspects of life of citizens and the resources of the population, while as vulnerability stems from the high degree of interdependence of the political, economic and social institutions. To eliminate the threats of terrorism and insurgencies, the modern states used the method of torture (Kelman 2005: 128).

Discussion on the Abolition of Torture in the Modern Period

During the early modern period the practice of torture remained legal. The European governments started to ban torture during the eighteenth century and in 1851, torture was declared illegal throughout the Europe (Einolf 2007). John Langbein (1997) argues that torture was

³ Bosnia war was ethnically rooted war that took place in Bosnia and Herzegovina from April 06, 1992 to December 14, 1995. The war in Bosnia- Herzegovina was one of the worst wars that uprooted half of the population. In summer 1991, the leaders of Croatia and Slovenia declared independence. The Serb- dominated federal army intervened the challenge and gives rise to the conflict. Bosnia was ethnically made up of Muslims (43%), Croats (18%) and Serbs (39%). In this war, the Serbs used rape as a systematic tool of torture in order to suppress the rebels (ICRC 1999).

abolished during seventh and eighteenth centuries because, the standard of legal proof were relaxed to allow convictions without eye witnesses testimony or confession. Lisa Silverman (2001) argues that due to shift in cultural ideas about the values and meanings of pain deprived torture of its moral foundation. Michael Foucault (1995) argues that torture was abolished because imprisoning methods becomes much more effective than corporal punishment in enforcing social control (Einolf 2005: 109).

The Enlightenment⁴ ideas about rationality and the value of human rights gained influence in Europe. With these ideas the sovereign's of Europe abolish torture (Ruthven 1978). However Langbein (1997) did not accept that torture was abolished in due to the spread of enlightenment ideas. He is of the view that that the change in standards of proof required for conviction. He says that when confessions in the early modern period became unnecessary, torture was abandoned. Liva Silverman (2001) explains that the changes in the sensitivity of the value of pain helped in spiritual growth. In the medieval and modern societies, torture was seen to be not only means of enforcing a confession but also a way to bring repentance and spiritual rebirth in the criminal. In the eighteenth the medical profession began to remark pain as totally negative, these views spread in the society and people considered torture as a spiritually and morally valueless practice and becomes a cause for its abolition (Einolf 2007:109-110).

Foucault (1995) examines that governments found more delicate and effective means instead of torture and corporal punishments. He argues that punishment emphasized the power of the sovereign over the subject's body. The governments realized that subtle methods could be more effective and employed a system of surveillance and discipline to gain the peoples loyalty (Ibid 2007:110).

The extent to which torture actually decreased in the nineteenth century is uncertain. The historical records are clear that torture was widely used throughout the world in

⁴The age of enlightenment comprises the developments of western civilization. The period begins from the death of Louis xiv (1715) until the death of Napoleon Bonaparte (1799). The enlightenment is a broad social, political, cultural and intellectual movement initiated by the renaissance and humanism of the fourteenth and fifteenth centuries and followed by reformation and the natural philosophy of the sixteenth and seventeenth centuries. The enlightenment marked the advent of the reign of rationality science, education and progress. The main aim of this movement was to lead humanity out of a long period of irrationality, superstition and tyranny of dark ages. The essence of the enlightenment was best formulated by Immanuel Kant (Murphy and Visnovsky 2006: 2- 3).

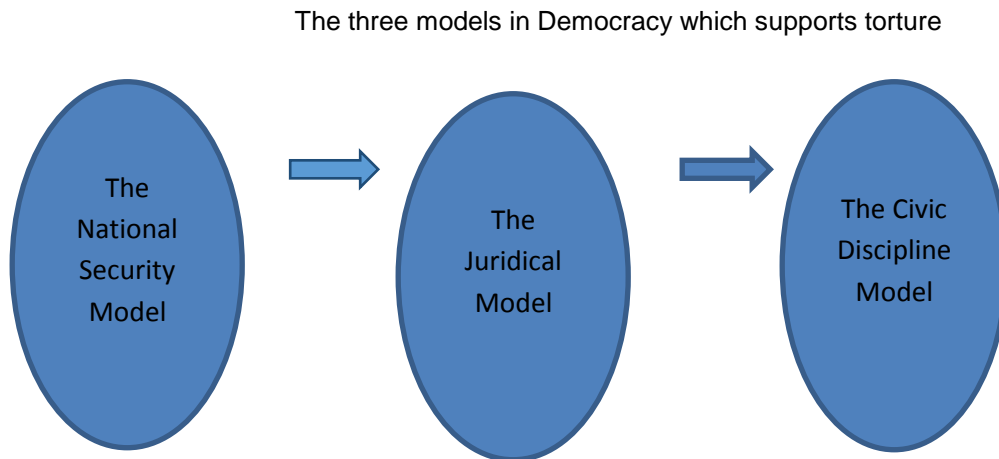


Figure 1. The National Security Model

the twentieth century. Amnesty international report (2000) estimates that one hundred thirty two countries use torture. The rise of communism and fascism increased torture greatly. The Fascism and Nazism in Italy and Germany used torture and other techniques against political opponents, prisoners and outsider groups like Jews (Einolf 2005: 111). While as communist's regimes in the Soviet Union and Eastern Europe used torture widely against political opponents (Amnesty International 2000).

Both communists and non-communists states in Africa, Asia and middle-east has used torture against political opponents, the rise of various movements in the twentieth century like Mau Mau⁵ rebellion, national political agitation in Kenya and the rise of nationalists and communist movements in Vietnam increased in the use of torture against rebellions. The democratic countries have also used torture against prisoners of war and other non-citizens. The examples are French used torture in Algeria, the Israeli's have used against Palestinians, the British have used against north- Ireland, USA against Iraqis and other prisoners in the global war on terror (Danner 2004). India, the democratic country also uses torture in most of the states particularly in the state of Jammu and Kashmir. The police and sand adopted various methods like torture, rape and indiscriminate killings in order to create terror among the people (Schofield 2010).

⁵Mau Mau rebellion or Kenya emergency was basically an anti-colonial movement that waged a guerrilla war against the British. This movement led to the declaration of a state of emergency between 1952 and 1960. Mau Mau became the symbol of people's bravery to get rid from colonialism and make ways for self-determination (Mwangi 2010: 88).

Torture in Democracy

Torture has been characterized in democratic as well as in authoritarian states. Greeks, Romans, Renaissance republics and modern democratic states have all practiced torture. The Athens was considered as first democrats were also involved into practices of torture. Democracy is a form of government based on representation, freedom, transparency and participation while as in authoritarian states the leaders are self-appointed. These leaders justify their rule by using military expertise against those who are opposing them. Democracy and torture did not go together. The democratic states are open to public and public does not like to be tortured. Some citizens believe that it is necessary for public safety (Einolf 2005).

Rejali (2007) argues that there are three ways that torture happens in democracies, first, torture may arise because of security organizations overcome the democrats. This happens mostly in war zone areas of democratic states. Second, torture may arise because of judicial system put a great emphasis on confessions. Third, torture may arise because neighborhoods want civic order on the streets whatever the cost. These three processes generate powerful demand for torture in democracy. These three ways corresponds to these sketches which are shown in Figure 1 (Rejali 2007: 46). In democracy, legislatures make laws and supervise the elections. They establish administrations to form these tasks. The bureaucracies are categorized and closed institutions. The legislatures do not have sufficient will or skill to do the right things during a political emergency. The authorities turn towards torture. The best example is French army in Algeria were soldiers use any means to get the information including torture (Rejali 2007: 46- 47).

In National security model officers practice torture as a

part of a proactive strategy to combat an enemy in an emergency. Victims may be local or outsider and are taken on suspicious activities. The main aim of the torturers in this model is not confession to crimes nevertheless in information. The other examples of this model include Americas torture during Philippine insurgency, Turkish forces in the Kurdish region, British in North Ireland, Russian army in Chechnya and the Indian army in Kashmir (Ibid 2007:49).

The Juridical Model

The juridical model is an important model as it arises from home. In this model, torture arises because a judicial system privileges confession. Europe underwent a major legal revolution in the late middle-ages. The church adopted a new system of proof and banned trials. In this system lawyers evaluated evidence and put together a case. For this they revived the Roman practice of torture (Rejali 2007:49).

In democracies torture enters through a legal system that highly values the confession of the accused. In this model victims are considered as ordinary criminals, whether if they were political opponents and were presented as criminals. Time does not matter in this model and officers takes long time to secure a written confession. In 1920's, American police used hotel rooms for suspects up to thirty eight days for torture. In Russia, police are using duty rooms and other places for torturing the suspects until they confess. This model mostly works in Japan and Italy, were a legal environment reinforced by cultural outlook creates an over confidence on confession by using aggressive methods including torture against citizens. The East Asian democracies with comparable judicial frame works and cultural temperaments are similarly defenseless to torture as in Italian city-states and republics (Ibid 2007: 50- 55).

The Civic Discipline Model

In the absence of a permissive legal context or national emergency there are cases where torture occurs in democracies. The Athenians were first democrats, who also practiced torture in a different way. The task of arresting and prosecuting people fell to ordinary citizens. In the Athenian society, the accused offers challenges that if *I am not true torture my slave*'. The slaves were an important part of the society. In practical terms, the Athenians believed that slaves were more likely to tell truth under torture. Legalizing the torture of slaves was made good for civic discipline. It promotes civic virtue and reduced evil in a decentralized democracy, one without police force or large bureaucracy (Rejali 2007: 55- 57).

In modern period democratic states are unable to

provide public security. Torture generates different disciplinary orders, sharpening differences among human beings. The modern democratic states are as weak as Athenian democracy. Today torture victims include not simply terrorists and criminals but children's, women's and immigrants. Torture is playing the same role as it was in ancient Greek by inducing civil discipline and shaping civic order in liberal democracies. Torture is happening among huge cities with large population (Austria, Belgium, France, Italy) and established democracies like USA, Venezuela and India (Ibid 2007:60).

Torture in Indian Democracy

The term democracy means different things to different people depending on the exponent's philosophical, ideological, political, cultural, social and economic perspectives. The Vienna declaration on human rights states that democracy is based on the freely expressed will of people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. The UN General Assembly report 1995 states that democracy is not a model to be copied from certain states, but a goal to be attained by all peoples and embraced by all cultures and take many forms depending upon the characteristics and circumstances of societies (Bassiouni 1998: 2-5).

The basic rights of democracy are life, liberty, freedom of expression, judicial access and review and non-discrimination. These rights are contained in the universal declaration of human rights. The international convention on civil and political rights, the international convention on social, economic and cultural rights, convention of human rights and fundamental freedom and its protocols have significantly strengthened the fabric of democracy (Ibid 1998: 7).

Democracy and its pluralist characters involves accountability to the electorate, the obligation of public authorities to obey with the law and justice administered impartially. No one will be above the law but all are equal before law. In democracy every individual has right to freedom of thought, conscience and religion, freedom of expression, freedom of association and peaceful assembly and freedom of movement. Besides that in democracy no one will be subject to arbitrary or detention, subject to torture or other cruel inhuman or degrading treatment or punishment. Vienna declaration on human rights states that democracy, development and respect for human rights are inter dependent and mutually reinforcing. The international community should support the strengthening and formation of democracy and respect for human rights in the entire world (Ibid 1998: 9-10). (See Figure 2)

India has done reasonably well in terms of democratic

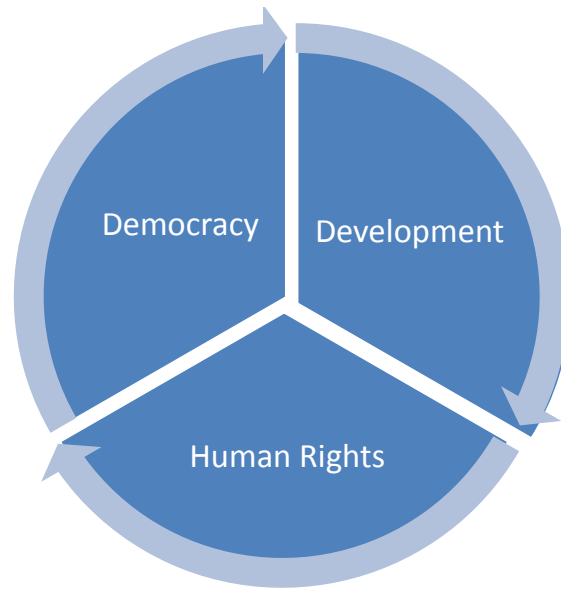


Figure 2. Democracy, Development and Human Rights

institutions and is very impressive in the international perspective. India is a multi-ethnic society, coercive and is afflicted by ethnic, religious, caste and linguistic divisions that often erupt in violence (Beer and Mitchell 2006). India which is considered as world's largest democracy are frequently imprisoning people without trial, torture and kill citizens.

In India, the practice of torture has been wide-spread and predominant since from many centuries and is unchallenged and unopposed. The law enforcement agencies applied it in the name of investigating crimes, extracting confession and punishing individuals. The poor and the vulnerable sections of the society are victimized in India and the process of disorder and lawlessness are promoted. This contributes to prevalence of torture in India. (Hand book on torture).

India signed the UN convention against torture (UNCAT)⁶ in 1997 however, ten years later the CAT has not been ratified and the conventions against torture's

⁶The convention was adopted by the U N General Assembly in December 1984 and came into force in June 1987 after the ratification by the twentieth state-party. In September 2010, there were 147 state parties to the convention. The U S ratified the convention in 1994. The convention against torture is monitored by the committee against torture (CAT) a body of ten human rights experts, elected by state parties to four year term. All state parties to the convention are required to submit a report on implementation within one year of ratification and every four years after that. The CAT meets twice a year in Geneva, in April/May and November (UNCAT).

protocols remain unsigned. Unfortunately at domestic level there is no legislative definition of torture, nor is there any law which identifies torture as a crime. The supreme court of India has acted to condemn torture by developing jurisprudence that outlines best practices for police and other state actors, but the state legislature has not responded by codifying these practices into law. The three elements like fear among victims, institutional paralysis and legislative inaction have raised the creation of a culture of impunity, which safeguards that torture remains prevalent across in India (Torture and Impunity in India 2008: 3- 4).

Custodial torture and other abuses by the enforcing agencies are not only peculiar but are wide spread in India. The article 21 of the Indian constitution states that that "no person shall be deprived of his life or personal liberty except to the procedure established by law". The expression of life or personal liberty has been held to include the right to live with human dignity and includes guarantee against torture and assault by the state and its law enforcing authorities. While as article 22 guarantees protection against arrest and detention and declares that "no person who is arrested shall be detained in custody without being informed of the grounds of such arrest and he shall not be denied the right to consult and defend himself by a legal practitioner of his choice". This article also states that a person arrested and detained in police custody shall be produced before the magistrate within a period of twenty four hours. Section 50 of the criminal procedure 1973 enjoins that authorities should communicate the person who was arrested without

Table 1. Number of deaths in police custody in India

year	Number of deaths
2001- 2002	165
2002- 2003	183
2003-2004	162
2004- 2005	136
2005- 2006	139
2006- 2007	119
2007-2008	187
2008- 2009	142
2009- 2010	124
2010- 2011	147
Total	1504

Source: Torture in India (2011).

warrant about the full particulars of the offence for which he is arrested and also ensures that to inform the arrested person that he should be released on bail (Tarunkumar 2012).

Torture and killing by police and security forces of individuals held in their custody becomes epidemic among the followers of law all over the country making India a pariah of classes among civilized nations. The coming of British indeed bring certain changes in criminal jurisprudence however, they were not successful to eliminate torture in custody. By the mid of the nineteenth century, incidents of torture in police custody in India became so wide-spread that they attracted the attention of liberal politician's, who demanded an end of such practice (Banerjee 2001: 723- 734).

From 2001-2010, the national human rights commission (NHRC) recorded one thousand five hundred and four deaths in police custody in India. A large number of these deaths are a direct consequence of torture in custody. (See Table 1 & 2)

The deaths in police custody are present in almost every state of India as per the reports of National Project of Preventing Torture (2008) millions of people fall prey of custodial torture. The deaths in custody are increasing and Maharashtra is on the top in custodial deaths. The ACHR has consistently underlined that about 99.99% of deaths in police custody can be credited to torture and occur within forty hours of the victim being taken into custody.

Torture Bill in India

Torture is widespread and institutionalized in India. The National Human Rights Commission (NHRC) has recorded the most custodial deaths of the persons being tortured to death in police and prison custody. The cases of custodial torture are increasing in India. In order to stop torture, India has signed the United Nations

convention against torture (UNCAT) in October 14, 1997 and stated that ratification will follow soon. However fourteen years later, India is yet to ratify the UNCAT. On May 06, 2010, India passed the prevention of torture bill (bill no. 58 of 2010). It was passed by the Lok Sabha however, remains pending in the Rajya Sabha from August 31, 2010. The Government had referred the bill to a parliamentary select committee. The parliamentary select committee headed by Ashwani Kumar, who presented a revised prevention of torture bill in December 2010 after calling for inputs from participants and evidence from various experts (Torture in India 2011, Soni and Bagchi 2010: 125).

The prevention of torture bill consists of three main elements like definition of torture, punishment for torture and limitations or awareness of offences.

Definition of torture

Clause third of the bill defines torture to be an intentional act committed by anyone who is a public servant or being assisted by a public servant or with the permission or acceptance of a public servant for the purposes of obtaining information or confession and which causes grievous hurt⁷ to any person or danger to life, limb or

⁷ Grievous hurt is defined in section 320 of Indian penal code 1860. These are emasculation, permanent privation of sight of either eye, permanent privation of hearing of either ear, privation of any member or joint, destruction or permanent impairing of the powers of any member or joint, destruction or permanent disfiguration of the head or face, fracture or dislocation of a bone or tooth and any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain or unable to follow his ordinary pursuits (Soni and Bagchi 2010: 127).

Table 2. State-wise cases of deaths in police custody from 2001- 2011 is given below

State/UT	01-02	02-03	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	Total
Maharashtra	27	26	32	23	20	21	25	25	20	31	250
Utter-Pradesh	11	16	18	7	18	11	32	30	16	15	174
Gujarat	8	17	20	15	20	7	16	13	9	9	134
Andhra Pradesh	16	10	10	13	11	5	9	12	9	14	109
West Bengal	17	16	13	11	8	7	8	5	8	5	98
Tamil Naidu	7	17	12	9	7	16	6	7	8	6	95
Assam	10	15	6	4	7	8	12	9	6	7	84
Karnataka	9	16	4	9	5	8	5	3	3	5	67
Punjab	7	9	7	6	6	1	7	5	3	6	57
Madhya Pradesh	7	1	3	2	4	10	10	5	8	5	55
Haryana	5	6	2	2	4	2	9	6	6	3	45
Bihar	2	4	9	3	1	2	8	5	4	6	44
Kerala	4	4	4	6	5	3	6	2	6	2	42
Jharkhand	4	6	3	5	4	3	3	2	5	6	41
Rajasthan	5	6	5	0	7	3	2	4	4	2	38
Orissa	7	1	1	3	2	2	6	2	3	7	34
Delhi	5	2	3	5	3	3	6	0	0	3	30
Chhattisgarh	4	3	2	5	2	3	2	1	1	1	24
Uttarakhand	3	1	2	3	1	1	5	0	0	4	20
Meghalaya	3	3	3	2	0	1	3	1	1	0	17
Arunachal Pradesh	2	2	2	0	1	1	0	2	0	0	10
Tripura	1	1	0	1	1	1	1	1	0	1	8
Jammu and Kashmir	0	0	0	0	1	0	3	0	0	2	6
Himachal Pradesh	1	0	0	0	0	0	1	0	3	0	5
Goa	0	0	0	0	1	0	0	0	0	2	3
Chandigarh	0	0	0	1	0	0	1	1	0	0	3
Pondicherry	0	1	1	1	0	0	0	0	0	0	3
Manipur	0	0	0	0	0	0	0	0	0	2	2
Mizoram	0	0	0	0	0	0	0	0	0	2	2
Nagaland	0	0	0	0	0	0	0	0	1	1	2
Sikkim	0	0	0	0	0	1	0	0	0	0	1
D& N Haveli	0	0	0	0	0	0	0	1	0	0	1
Total	165	183	162	136	139	119	187	142	124	147	1504

Source: Torture in India (2011).

health (physical or mental) of any person is said to inflict torture. The bill only covers the acts that causes grievous hurt or acts which endangers life or health. While as the convention of UNCAT extends its definition to acts which causes severe pain and sufferings. In this way the definition completely fails to take into account the width and ambit of the definition provided in the UNCAT (Soni and Bagchi 2010: 127).

Punishment for torture

Section four of the prevention of torture bill 2008 states that the public servant any person [a] for the purpose of extracting from him any confession or any information which may lead to the detection of an offence or

misconduct. [b] On the ground of his religion, race, place of birth, language, caste or community or any ground what so ever, shall be punished with imprisonment of either description for a term which may extend to the ten years and shall be also liable to fine (Chakma: 33).

The bill equates crimes by law enforcement personnel, including torture with normal crimes and did not address deaths in custody as a result of torture. The bill also does not consider that if a person was subjected to torture for some other reason than those mentioned in section four [a] [b] would not be punishable under this section. The punishment of imprisonment for maximum ten years according to section four of the bill is very inconsistent. The law enforcement or public servant are entrusted with the responsibility that there should be no violation of law and when they are themselves involved in it, the

punishment awarded them should be much higher (Soni and Bagchi 2010: 130).

Limitations or Cognizance of offences

The section five of the prevention of the torture bill provides that 'notwithstanding anything contained in the code of criminal procedure 1973, no court shall take cognizance of an offence under this act unless the complaint is made within six months from the date on which offence is alleged to have committed' (Soni and Bagchi 2010: 131 & Chakma: 34).

The limitation of the complaint of an offence from the beginning date is unreasonable. In custody, various crimes are committed which makes the victim very vulnerable. The victim loses their self-confidence and it takes time to recover. It may not be expected that a victim of torture can stand up and fight back immediately. The bill fails to address the requirement of article two of the UNCAT that 'no exceptional circumstances what so ever, whether a state of war or a threat of war, internal political instability or any other public emergency may be invoked as a justification of torture'. In practice, the government of India allows for extraordinary circumstances to be invoked to prevent action of torturers through the need for prior permission as stated in the section six of the prevention of torture bill (ibid).

CONCLUSION

In the history of world's democracies, torture has a long history. The followers of all religions practiced it as a part of their judicial system. From ancient time, torture is still prevalent in our society under various names like examining, questioning and investigation. In earlier period, torture was only confined to non-citizens however, in modern period any one can become the victim of torture. The interrogators of the modern period still uses the techniques of medieval period and made an increase in them like electric shocks, sensory deprivation and rape were further introduced among the techniques. In modern period, torture becomes a dirty work which is practiced in secret or closed institutions on helpless victims.

In world's largest democracies, torture remains a major issue. From abuses to the political violence India has a long way to go towards protecting the basic rights of its citizens. In India, police are providing first hand evidence not only of warrant arrests, illegal detentions, torture and deaths of thousands of citizens. For the majority of abuses, the lack of accountability created an atmosphere of impunity.

The killing in custody becomes the habit of police in India and remains same as it was in colonial India. Besides having the constitutional and other provisions for

the safe guarding the life and liberty of the public growing incidence of torture and deaths in custody has become a serious matter. During the period of investigation, the incident of human rights takes place when the system resorts to third degree methods of torture. The increasing incidence of torture and deaths in custody has assumed such alarming proportions that it is affecting the creditability of rule of law and the administration of criminal justice system.

The custodial torture is considered as a naked violation of human dignity and degradation which destroys to a very large extent the individuals personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilization takes a step backward.

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