Custodial Torture and State Liability

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ABSTRACT

In India, rule of law is inherent in each and every action and right to life and liberty is prized Fundamental Right adorning highest place amongst all important Fundamental Rights, instances of torture and using third degree methods upon suspects during illegal detention and police remand casts a slur on the very system of administration. Article 21 of the Constitution provides: “No person shall be deprived of his life or personal liberty except according to procedure established by law”. The Supreme Court has clearly held, “Even convicts, prisoners and undertrials have right under Article 21 and only such restrictions can be imposed as permitted by Law”. Still persons condemned by law to imprisonment and custody are hardly ever given their rights. While Article 21 says no person is to be deprived of his life or personal liberty, the exception being except according to the procedure established by law the majority of people are denied of their rights and the law makers from time to time have taken the law in their own hands and used it to their own ends, resulting in harsh punishments for persons who haven’t even been convicted or imprisoned. The Constitution safeguards the Fundamental Rights of a prisoner excepting those which cannot possibly be enjoyed owing to the fact of incarceration. Even then we see the police taking the law in their own hands and using methods which infringe on the Human Rights of that person and not using the necessary directions issued by competent authorities and Statutes. Custodial torture is universally held as one of the crudest forms of Human Rights abuse. The Constitution of India, the Supreme Court, the National Human Rights Commission (NHRC) and the United Nations forbid it. But the police across the country defy instructions issued by these institutions. Therefore, there is a need to strike a balance between the
individual Human Rights and societal interests in combating crime by using a realistic approach. Thus, keeping in view the above aspects; the present studies has focussed on to study and analyze extensively the prevalent practice of custodial torture in India by law enforcing agencies, its various forms and the reasons behind it. It also examines the various International Conventions, Constitutional and Legislative provisions in India concerning the issue so as to assess the implementation of universally accepted international norms for treatment of offenders in the Indian legal system. Further, the study explores the legal framework in USA, UK and Canada on the issue so as to make a comparative study. After that the study assesses the role of judiciary, Human Rights Commissions and NGOs in prevention of custodial torture. This study then examine the state liability for custodial torture committed by the law enforcing agencies and point out lacunae in law and suggest appropriate amendments to plug loopholes and make the law more effective.