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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

CONCEPT OF CUSTODIAL VIOLENCE AND HUMAN RIGHTS

AUTHORED BY - JUNAID KHAN

Introduction

Regardless of viewpoint, no one contests the value of the criminal justice system to society. People are finally shielded from all significant harm caused to them by human acts by this law.

The main objective of criminal law is to maintain security and stability. Safety, in Bentham's view, is the main objective of the legal system. Law is necessary for security, and equality and material prosperity cannot be upheld in the absence of security. The criminal justice system, however, differs from other divisions of the law in that it imposes stigmatising punishments on violators of its laws, and convictions are counted as convictions.

The "huge stick" of punishment is used to enforce these standards and secure compliance in order to represent the fundamental societal norms that serve as the foundation of our lives. Only the traditional goals of the state were thought to be acceptable due to the police state ideology that is no longer in effect. The criminal code of today safeguards a person's fundamental rights from any deliberate interference by others.

Meaning And Definition Of Police, Custody, Custodial Violence And Human Rights

Pre-trial custody, often known as pre-conviction detention, typically has a legal and police component. Any additional detention must be authorised by a judge and cannot last longer than 15 days overall. Suspects are held in judicial detention in prisons apart from police jails and are permitted entry by a judge while the matter is being looked into or tried. On the basis of a specific court order, only investigative agencies are given access to such offenders who are being held in judicial custody.

In all other situations, the police and other law enforcement organisations like the Narcotics Control

Board, the Enforcement Department, the Central Authority for Excise and Customs, and if the offence resulted in death, must file the indictment within 60 days. If so, it needs to be delivered in 90 days. If an indictment is not delivered within the specified time frame, detainees have the right to be released.

Pretrial imprisonment can extend for months or even years, although in some cases, if charges are made in a timely manner, trials must be quick. If the offender is given at least half of the maximum punishment for the offence being tried, bail may be granted under Section 436A of the Criminal Procedure Code. Post-conviction detention, however, necessitates incarceration for the entirety of the term.

Dictionary Meanings

The terms "cruelty," "brutality," and "injury" are used to characterise the purposeful inflicting of severe bodily or mental suffering in order to punish, collect data, or elicit a confession. Torture and other types of common forms of torture are also included in this category. According to the definition, violence is any action that uses a lot of force or energy while inflicting physical hurt or harm. To torture someone is to subject them to severe suffering as punishment or to coerce them into saying or doing anything. Death follows acts of violence and suffering.

Torture is not defined by the Indian Constitution or any other criminal legislation, nevertheless. The purpose of torture is to inflict pain on the weak in order to make them bow to the strong's will. Society is negatively impacted by it. This crime ranks among the worst ever committed in a nation where the rule of law is upheld, and it poses a significant threat to societal order.

Today, the most repulsive feature of human society is what we refer to as "torture." When a judge gives the criminal justice system custody of an offender, he or she acknowledges that the system has authority over the offender and must use that authority to advance the offender's health. The phrase "custody" implies that protection and surveillance are required. The unpleasant signs of violence while in captivity are not even mentioned when it is used to indicate arrest or imprisonment. Even if it means being detained or arrested, there are no foreboding indicators of violence being captured.

Violence committed when a person is in custody is referred to as "violence in custody," regardless of whether it is legal or not. Subtle or severe types of violence might include beatings, rape, emotional or physical abuse, or even death.

3.3.2 Definition Under Custodial Crimes (Prevention, Protection And Compensation) Bill, 2006

The Custodial Crimes (Prevention, Protection and Compensation) Bill, 2006 defines custody crimes as "an offence committed against any arrested person or person in custody while that person was in the custody of a police officer or a public servant who has the authority under any law to arrest and detain a person in custody during that period."

The Prevention Of Torture Bill, 2010

In order to ratify the 1975 United Nations Convention Against Torture, a measure was filed in Parliament (CAT). By defining torture as "severe injury" or a threat to life, limb, or health, the measure seeks to make acts of torture committed while a person is being held in custody unlawful. The bill's definition of "torture" restricts the use of force during interrogation to get a confession, differing from the Criminal Arrest and Torture Act (CAT)

Special Rapporteur On Torture

Sexual attacks against women in detention include rape, threats of rape, genital groping, nudity stripping, intrusive dressing room searches, and sexual assault, according to the UN Special Rapporteur on Torture (2008). There are frequently other types of sexual assault included as well, such as insults. Many governments and societal institutions use harsh beatings and mental torture on people to achieve a variety of objectives, including humiliation.

Violence, which can take three various forms of her: physical, mental, and emotional, is the most frequent technique used to tear and bend an inmate. The majority of individuals reflexively consider some therapies to be improper. Culture may have an impact on others. International processes require proof, not just an opinion, that the incident qualifies as assault or abuse in the context of a prison.

Types Of Custodial Violence

To achieve their objectives, the government authorities employ a number of methods to instigate or carry out acts of custodial violence.

Psychology Torture

The victim's self-assurance and spirits are lowered using the following techniques:

- a) Disinformation and torturous communication techniques that are used on purpose.
- b) By coercion or threats, in which the victim is forced or intimidated into engaging in or witnessing behaviours that cause emotional distress. The sufferer is forced to pick between two terrible possibilities that are physically and mentally agonising, causing the victim to break societal taboos, making them see other victims' pain, etc.
- c) By depriving the victim of basics including food, water, sleep, and access to the bathroom, which results in confusion and disorientation. Sensory deprivation of light and sound, social deprivation brought on by prohibiting visitors from gathering, religious ceremonies from being observed, and imprisonment in solitary confinement, among other things, all affect a victim's sense of time and location.
- d) Pharmacological methods, such as utilising various drugs to aid in torturing a victim, cover up the torment's effects, or both.
- e) Threats and humiliations directed at those who are being held, their family members, or friends.

Physical Violence

Techniques that result in pain, discomfort, and dysfunction throughout the body are considered physical torture. Not killing the victim is the aim of torture. Additionally, the tormentor makes sure the prisoner is concealed during a routine inspection. The torturers, however, cannot be trained to do their crimes in a way that makes it hard to identify them. Despite precautions, physical abuse always leaves a trace that is eventually found. Because of breakthroughs in medical knowledge, internal damage can still be discovered years after a torture happens.

The common methods used to physically injure or torture captives include the following:

- a) Causing weariness and deformity.
- b) Suffering excruciating pain that causes the afflicted to dread instant death.
- c) Setting the mattresses of the sufferers on a wet floor.
- d) Making the children stand in the heat or in the sun when they are entirely naked.
- e) Cuts and scratches are made on numerous body parts using sharp objects.
- f) Hitting him with anything sharp or forcing him to walk barefoot on a glass or uneven floor.
- g) Twisting or striking the joint might rip its ligaments, causing agonising agony.
- h) Supporting oneself by holding the victim's wrists, feet, or hair. The most frequent hybridizations involve species like falanga, electric shock, heat, and cold.
- I) Twisting or pricking fingers, ears, or hair; ripping out nails; and impairing hearing by simultaneously striking both ears with both hands.
- j) Apply irritants to sensitive areas and open wounds, such as table salt, chilli pepper, etc.

Sexual Violence Sexual assault victims face serious social and psychological repercussions. It starts with sexual assault and degrading comments that go against the victim's common sense. It results in rape and sodomy.

Human Rights

Neither the Indian Constitution nor any UN declarations or treaties provide an official definition of the word "human rights." But these liberties, which we cannot survive without, are typically regarded as being basic to us as humans. These rights are granted to us just for being human. These fundamental human rights have been acknowledged for as long as human civilization has existed.

The Universal Declaration of Human Rights was decisively ratified and proclaimed by the United Nations General Assembly on December 10th, 1948. The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights both come into force on January 3, 1976, and on March 23, 1976, respectively, providing the Articles a legal framework. India joined two international treaties on April 10, 1979, after depositing its documents of accession and signing the Universal Declaration of Human Rights.

Police

Even in the event of natural or man-made calamities, the police can keep the calm of the community by working day and night. The formal and official functions and obligations of the police are set forth through laws and executive orders. The public, however, owes the police a bigger duty. The police, who are the most noticeable part of the government, are available all year and have various responsibilities that are not required by the law. Police battle crime and uphold order using their authority.

Only if they behave morally, legally, and compassionately will they be able to carry out their duties successfully with the assistance and collaboration of the general public. People don't want to engage with the police because of the general perception that they frequently travel abroad to uphold the law. a breach of human rights. When someone is arrested, they have less freedom.

International Convention On Torture

The scope of the definition is broad as it takes into account both the physical and mental pain or suffering of the victim. However, "pain or suffering merely resulting from inherent or supplemental lawful sanctions" is expressly excluded from the definition.

Under the Convention, "torture" can continue where and within the limits of local law. This means that "legal" torture can continue in countries that have ratified the Convention. Violence committed in custody is a deliberate violation of human dignity. There are many reasons for the increase in violence in prisons of all kinds. When someone is caught and put in jail, they are treated cruelly to force them to tell the truth. This type of treatment lowers self-esteem, and when the suffering becomes unbearable, prisoners may commit suicide.

Under the pretence of upholding law and order, guardians or guardians frequently murder prisoners. This cruel treatment causes the majority of convicts to pass away. Especially if individuals pass away while being held in prison, the police are solely to blame for these tragedies. Prisoners who have been detained or kept in facilities or facilities under the control of law enforcement or prison officials frequently die.

Custodial Violence: A Human Rights Approach

Many questions are raised by the idea that deaths and violence committed in institutions are among

the worst crimes ever done in human history. Unjustified deaths and other atrocities committed while in detention have an effect on law and order, calm, and community ways of life. Public perceptions of society's safety are impacted by police violence and other crimes.

When horrible crimes are committed frequently, people are more affected. Torturing suspects has been deemed inhumane, demeaning, and cruel by law enforcement, and defendants' human rights have been maintained by courts all around the world. All laws that affect courts should be prohibited. These crimes are conducted within the confines of a police station, prison, or jail when the victim is utterly defenceless under the pretences of "power" and "unity."

A nation's level of civilisation can be determined by the methods utilised to carry out its criminal laws. In recent police investigations, third-degree torture and custodial fatalities have occupied increasing space, and the harm done to individuals in prison is frequently severe.

For inmates, all fundamental rights are upholdable but are constrained by incarceration. A someone dies while they are in the care of the police, a court, or another agency, which is known as a "custodial death." Police personnel who violate someone's human rights can be held accountable because they are a part of the legal system and not above it.

India has a clear history of violating human rights on all fronts. It is absolutely shocking that a state whose responsibility it is to uphold and defend human rights has turned into the main perpetrator. Human rights activists and civil rights organisations have often criticised the federal and state administrations for failing to uphold fundamental rights and human dignity. Nevertheless, despite all of these initiatives, there are still more human rights breaches and more state-sponsored violence, which puts people's lives and liberties in peril.

There is nothing new about police and other legally designated authority breaking the law. Nevertheless, despite all of these initiatives, there are still more human rights breaches and more state-sponsored violence, which puts people's lives and liberties in peril. Police have a lengthy history of breaching the law in our situation. Their success story of not completely honouring human rights carries on to this day. Basic rights and dignity are violated when violence is done when an individual is in detention.

When police go above and above and abuse suspects, inmates, and detainees while they are awaiting

trial, the reputation of a civilised nation is damaged. The "khaki" man appears to be above the law as a result of these deeds, and occasionally even appears to be the law itself. The very foundations are being threatened, and entire civilizations risk experiencing consequences that could lead to their near extinction.

The electronic media also raises awareness of these concerns so that the greatest number of people can think about and react to such situations. This puts pressure on the governments and concerned officials to punish the guilty and close any gaps in the law's application that may exist.

Inhumane and unlawful actions, as well as violence in detention, continue to be a concern despite several rules, public awareness of the issue, advancements in education, and major societal gains over time. If every person is to be granted liberty or rights in the genuine spirit of the Constitution, this brutal reality must be removed from our reality. The unalienable rights of all citizens should be respected by everyone, whether they are civil servants or not, and they should never be infringed.

Individual liberty is a valuable and prized right that is significant in every citizen's life. There are inherent protections against violations of the right to life, the right to personal liberty, and the right to a dignified existence. It is understandable why the locals are outraged. Every time the law is broken, more people call for justice, which justifies taking prompt corrective action. In many nations, including India, the physical and psychological torture of people has long been accepted as a legal or efficient kind of inquiry or interrogation. Governments must set the example because they are the all-knowing, all-present teachers. Laws are disrespected and everyone is urged to uphold them when the government begins to break them.

In a civilised society, custody is one of the most significant and challenging human rights concerns. Detainees' fundamental human rights are flagrantly violated under all detention circumstances, legal or otherwise. Organizations like the police, law enforcement agencies, reserve intelligence agencies, coast guards, central reserve police, border security forces, central security forces, traffic police, and mounted police are responsible for the majority of human rights violations in jails. This is brought on by an overabundance of personnel who are involved in judicial or military administration, such as law enforcement.

To maintain competent state legislatures, a number of procedures are available under the terms of the Indian Constitution, the mandates, the rules and regulations created by their own bodies to regulate

them, or the laws issued by the Indian Parliament. In some locations, it helps to reestablish order and harmony in society. The Indian Evidence Act of 1872, the Criminal Procedure Code of 1973, the Civil Procedure Code of 1908, the Prison Manual, the Police Manual, and the Indian Penal Code of 1860 are further legal documents. Individual Rights The Prohibition against Torture and Other Inhuman or Degrading Treatment, as well as other national and international conventions, provide further protection for people who are detained.

He is a lawless group with a violent history that rivals that of one organised force, said A.N. Mulla, a former judge on the Allahabad High Court.

Public order refers to the police's authority to maintain local calm, although this authority must originate from the statute that created the police organisation. It's not enough to just enforce the law. Law is the source of its authority, and law may only be administered legitimately and not unlawfully. The rights of perpetrators, victims, and witnesses must all be balanced, according to the police. The power to regulate behaviour in accordance with social law strengthens the police charter in a democracy.

While the police limit freedom and foster a sense of freedom between citizens and the police, democracy places an emphasis on freedom. generate conflict Police officers are viewed as superior to ordinary individuals, just as preachers. He is in charge of maintaining the rule of law and the criminal justice system. He has the option of applying the law there or not. He must uphold and exhibit the highest ideals of humanity. The public relies on the police to act and never anticipates a refusal or abandonment from the police. Police must conduct themselves with courtesy, consideration, and humanity.

The police department was used as a uniformed social worker for the impoverished and was therefore meant to provide "rapid aid" to civilian concerns. Only a mindset of regard for human dignity, acceptance of human rights, and obedience to norms and rules can bring about this. From antiquity until the middle ages, rape and other horrifying acts that have an impact on the victim's total presence were common in India. Both psychological trauma and physical abuse rob the sufferer of their capacity to reconstruct their own bodies and their selves. All societal segments, especially government officials, must make a determined effort to change their attitudes.

It is crucial to create an environment free from all types of barriers so that officials can fulfil their duties with dignity (legal, administrative, financial, etc.). Appropriate training and orientation must

be provided in order to lessen the forces' aberrations.



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