



RIGHTS OF WOMEN AGAINST CUSTODIAL RAPE- CONSTITUTIONAL ASPECT

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Introduction

The Constitution of India puts a required obligation concerning the State to maintain and guarantee observances of the essential human privileges of every last individual whether an ordinary individual or a convicted detainee or an under trial detainee or a kept individual under the care of an approved individual. Human rights are total and indefeasible rights accessible to a man which can't be canceled or relinquished. The Indian legal has assumed an essential part in securing the privileges of people comprehensive of discouraged people who have lost all expectations. Human rights are those negligible rights that people need against the state or the other open expert by the excellence of their being individuals from the human family regardless of some other thought.

A person keeps on having his nobility, sense of pride and human rights notwithstanding amid any sort of detainment or detention. No individual or an expert has a privilege or qualified to subject such a man to Torture, unfeeling, or corrupting treatment or discipline. Detainees' rights have turned into an essential thing in the plan for prison and different reforms.¹

Protection under the Constitution of India

Part III comprising of Articles 12 to 35 of the Indian Constitution contains the non-derogable Fundamental Rights, encircling the connection between the individual and the State and deciding the breaking points of State activity. State's activities can't abrogate the

¹ Professor (Dr.)Paramjit S. Jaswal, Dr. GIS Sandhu, Dr. Shveta Dhaliwal, Political Science & Global Governance: A Multidisciplinary Approach (2012) P.188.

certification of crucial rights given to us by the Constitutional designers. The privilege to life which has numerous traits including custodial rights and the privilege to fairness are accessible alike to nationals and noncitizens.

Other basic rights are accessible to subjects of India alone. Part III is a composite code restricting state or State-like activity to law and authenticity. The Supreme Court of India and the high courts of India can issue writs to secure essential rights. The privilege to move such courts is itself a major right. The Indian legal has expansively deciphered Article 21 requiring all state activities to be simple, reasonable, and sensible. This colossal translation has been connected to the managerial system and also a criminal due process. Article 21 has been perused as a directive against Torture and unfeeling treatment. The prohibitions imposed by Article 20 of the Constitution² are straightforwardly applicable to criminal procedure.

Article 20(1) restricts the review task of reformatory enactments. Article 20(2) makes preparations for twofold peril for a similar offense. Article 20(3) gives that no people blamed for any offense might be constrained to be an observer against himself. These three provisos may seem, by all accounts, to be managing three distinct points or aspects. Yet, there is an ongoing idea going through every one of them specifically the nervousness to guarantee that the different features of the criminal equity framework - substantive, procedural, and evidentiary might not be utilized to persecute the charged individual. The normal subject is that the organization of the criminal equity framework ought not to be so planned or actualized as to devastate the more profound and good estimations of equity itself.

Article 20(3) is most straightforwardly pertinent and another imperative defends against custodial brutality and Torture. It ensures the privilege against self-incrimination. While the insusceptibility under Article 20(3) doesn't reach out to necessary creation of material items or impulse to give example compositions, marks, finger impressions, or blood tests as held by an 11 Judge seat of the Supreme Court of India however the privilege gives resistance from indictment based on constrained oral proof. Just deliberate articulations made by the denounced to the court are allowable. The Constitution and the statutory law ensure against tribute impulse on the comm ence that such impulse may go about as an unpretentious type of pressure on the accused.³

This is esteem that has been given the status of a key right but on the other hand, is the hidden topic of a few statutory arrangements - especially segments 24 to 26 of the Indian

²Article 20- s(1), (2),and (3) of the Indian constitution.

³Smith v. Director, Serious Fraud Office, (1992)3 ALL EF 456 (463); People's Union for Civil Liberties v. Union of India, (2004)9 SCC 580.

Evidence Act.⁴ Article 20(3) of the Constitution of India comes into activity when a formal allegation is made, regardless of whether before the beginning of an arraignment or amid its duration.⁵

Article 21 of the Constitution gives that no individual should be denied life or individual freedom except as per methodology built up by law. Due to the sweeping translation set on "system set up by law", this article has been held to cover an assortment of Governmental acts which affect individual freedom. Even though Article 21 does not contain any express arrangement against Torture or custodial crimes, the articulation "life or individual freedom" happening in the article has been deciphered to incorporate sacred certification against violence, strike or damage against a man collared or under care. Following are some illustrative choices: -

- (i) Punishment which has an element of torture is unconstitutional.⁶
- (ii) Prison restrictions amounting to torture, pressure, or infliction and going beyond what the court order authorizes are unconstitutional.⁷
- (iii) An under-trial or convicted prisoner cannot be subjected to physical or mental restraint:
 - (a) Which is not warranted by the punishment awarded by the court, or
 - (b) Which is more than the requirement of prisoner's discipline, or
 - (c) Which amounts to human degradation.⁸

The Supreme Court of India proclaimed;⁹

Any type of violence or unfeeling, brutal, or debasing treatment would be hostile to human respect and constitute an advance into this privilege to live and it would, on this view, be disallowed by Article 21 unless it is as per technique recommended by law, yet no law which approves and no methodology which prompts such Torture or merciless, barbaric or corrupting treatment can ever stand the trial of sensibility and non-intervention: it would doubtlessly be illegal and void as being volatile of Articles 14 and 21.

In the point of interest instance of *D.K. Basu v. Territory of West Bengal*¹⁰, the Supreme Court of India saw in this generally pitched demise in police custody that utilizing Torture to extricate data would not be 'correct nor just nor reasonable' and hence would be impermissible and hostile to Article 21. The court noticed the universality of Torture and

⁴ Sections 24, 25, 26 of Indian Evidence Act 1872

⁵ Dastagir v. State of Madras, AIR 1960 SC 759; Balkishan v. State, AIR 1981 SC 279

⁶ Sheela Barse v. State of Maharashtra, AIR 1983 SC 378; Javed v. State of Maharashtra, AIR 1985 SC 231

⁷ Inderjeet v. State of Uttar Pradesh, AIR 1975 SC 1867.

⁸ Sunil Batra v. Delhi Administration, AIR 1968 SC 1675; Sita Ram v. State of U.P., AIR 1979 SC 745; Sunil Batra v. Delhi Administration, AIR 1988 SC 1579; Javed v. State of Maharashtra, AIR 1985 SC 231; Sher Singh v. State of Punjab, AIR 1983 SC 465.

⁹ Mullin v. Union Territory of Delhi, (1981)1 SCC 608.

¹⁰ (1997)1 SCC 416.

third-degree strategies in police examinations furthermore, regretted the 'developing frequency of violence and deaths in police custody and held:

Such wrongdoing speculate must be grilled for sure subjected to supported and logical cross-examination decided as per the arrangements of law. He can't however, be tortured or subjected to third-degree strategies or disposed of to inspire data, separate confession, or determine information about his associates, weapons, and so forth.

The Supreme Court of India decided that the weight of clarifying a custodial death lay on the police instead of the casualty. The court allowed remuneration on the sacred premise in broad daylight law for the encroachment of principal rights. It alluded to its obligation to authorize Fundamental Rights under Articles 14, 21, and 32 of the Indian Constitution and the need to make the guaranteed remedies compelling and to provide complete justice.¹¹ Article 22(1) and 22(2) of the Constitution are likewise applicable for the present reason since one of their items is to guarantee that specific checks exist in the law to counteract manhandle of the power of arrest and detention. Article 22(1) gives that no individual who is arrested might be kept in care without being educated at the earliest opportunity of the ground for such arrest, nor might he be denied the privilege to counsel and to be shielded by a lawful professional of his decision.

Article 22(2) gives that each individual who is arrested and kept in custody might be delivered before the closest justice within a time of 24 hours of such arrest, barring the time vital for the voyage from the place of arrest to court of the Magistrate and no such individual should be confined in care past the endorsed period without the expert of a Magistrate.

Both the arrangements alluded to above, have a crucial significance to the subject of the present theory. The privilege to counsel a legal advisor is proposed to empower the confined individual, *inter alia*,

- (a) To secure release, if the arrest is illegal,
- (b) To apply for bail, if the circumstances so warrant,
- (c) To prepare for his defense, and
- (d) To ensure that while he is in custody, no illegality is perpetrated upon him.

The right to be produced before a Magistrate under Article 22(2) is intended, *inter alia*, to ensure that:

- (i) There will be independent scrutiny of the legality of the detention,
- (ii) There will be an adequate and effective opportunity for seeking release on bail, and

¹¹Nilabati Behra v. State of Orissa, AIR 1993 SC 2366.

(iii) There will be available an avenue where the person detained can ventilate his grievance that he might have against the treatment meted out to him in custody.

Realizing the essential connection between the provision of Articles 22(1) and Article 22(2), the courts have held that the provision of clauses (1) and (2) of Article 22 is mandatory.¹²

Judicial Aspect on custodial violence of women by Police

Tukaram vs The State of Maharashtra¹³

The decision of the Supreme Court in *Tukaram v. State of Maharashtra* created furors in the field of rape law. The facts of this case were so peculiar and the decision so coldly legalistic and unjust that it led to the culmination of a mass movement for the amendment of rape laws. In this case, Mathura was a young girl of 14-16 years. She had developed a relationship with her employer's cousin. On March 26, 1972, her brother filed a report that Mathura was kidnapped by her employer and her boyfriend. They were all brought to the Police Station at 9 P.M. and their statements were recorded. When everybody started to leave, Mathura was directed to remain at Police Station by Tukaram, the Head Constable, and Ganpat, a Constable. While both Policemen were on duty, they bolted the doors and put off the lights. Ganpat raped Mathura and Tukaram fondled her private parts. Tukaram was too drunk to rape Mathura. A crowd gathered outside and then shortly after Mathura came out and announced that she had been raped by Ganpat. Mathura was examined on the next day. Her report showed old ruptures of hymen and that she was habituated to sexual intercourse. In Sessions Court, this fact was held against her and the accused were acquitted. It was held that Mathura had consented to the act. The Bombay High Court reversed the decision and sentenced Tukaram to rigorous imprisonment for 1 year and Ganpat for 5 years. The High Court held that mere passive submission or helpless surrender of the body and its resignation to the other's lust induced by threats or fears cannot be equated with consent. The Supreme Court reversed the decision and held that Mathura had consented to the act. There were no injuries in the person of Mathura, thus, it was held that the story of rape was concocted by her and her testimony was disbelieved. Further, it was held that only fear of death or hurt could vitiate consent in the clause thirdly. The operation of clause secondly was not even considered.

¹²Gopalan v. State of Madras, 1950 SCR 88; Hansmukh v. State of Gujarat, AIR 1981 SC 28; Madhya Pradesh v. Shobhram, AIR 1968 SC 1910.

¹³Tukaram vs State of Maharashtra 1979 AIR 185 SCR (1) 810 1979 SCC (2) 143

Smt. Rameeza Bee v. D Armugam¹⁴ (Rameeza Bee's Case) In this case, Rameeza Bee was a 26-year-old working female who was returning home along with her husband, Ahmed Husain who was a rickshaw puller. They were on their way to their house but they were arrested by the police officers for loitering late in the night. They were asked to pay a fine. Rameeza was kept in custody and was raped by the three police officers while her husband was sent home to bring money to pay the fine. After his return, he protested against the assault committed by the policemen upon his wife but he was beaten mercilessly to death by the policemen.

Later, Rameeza Bee complained about the incident which led to violent protests and riots, and four policemen were even suspended. Due to the results of such activities, an inquiry commission was set up to inquire about the rape of Rameeza Bee and the death of Ahmed Husain. During the period of commission's proceedings, the police defended the murder and rape by putting questions on the character of the victim and tried proving that Rameeza Bee was married several times earlier and her marriage to Ahmed Husain was not lawful marriage and she was wrongfully cohabiting with him.

However, the commission stated that the police officers were guilty of rape as well as murder and they shall be prosecuted. Subsequently, they were acquitted on the grounds stating that evidence recorded by the inquiry commission was inadmissible in the session's Court.

Maya Tyagi, Meerut v. Ito, Baraut¹⁵ (Maya Tyagi Case)

In this case, the victim was traveling in a car via Bulandshahr district of Uttar Pradesh with her husband Ishwar Tyagi and two of her husband's friends when their car broke down near Baghpat police station. Then Ishwar Tyagi along with his two friends left to get the tire repaired. After they left, a police officer in plain clothes came in and molested Maya Tyagi. When Maya Tyagi's husband saw this he slapped the police official.

This police officer then returned with 10 policemen. Then they shot dead Ishwar Tyagi and his two friends who accompanied Maya Tyagi. Maya Tyagi the victim of this case was then dragged out of the car, stripped naked, and paraded through the marketplace. When she resisted they attacked her by inserting the police stick which is the lathi into her. Later, she was taken to the police station and was mercilessly tortured and false accusations were charged on her which stated that she was a dacoit's mistress and was covering up for their killings.

¹⁴Smt. Rameeza Bee v D Armugam (1978)

¹⁵Maya Tyagi, Meerut v. Ito, Baraut (Maya Tyagi Case) AIR 1978 All 386

During the judicial inquiry, the policemen tried to justify their actions by calling her a woman of 'easy virtue' as her marriage to Ishwar Tyagi was her second marriage so she deserved such violence.

On the allegations put on Maya Tyagi, her husband and two of his friends the Court held that all those allegations were false as they were not dacoits and were falsely framed by the police officials. The Judicial Committee found all the torturous incidents told by Maya Tyagi upon her by the police officials as true. However, there was no penetration, and though the police officials were acquitted.

Legal provisions against custodial rape in India

Protection against Conviction or Enhanced Punishment under Ex-Post Facto Law
Article 20(1) of the Constitution of India provides that,

No person shall be convicted of any offense except for violation of law in force at the time of the commission of the act charged as an offense, nor be subjected to any greater penalty than that which might have been inflicted under the law in force at the time of the commission of an offense. The concept of ex-post-facto law has its roots in the maxim null poena sine lege, which profound the idea that no man shall be made to suffer except for a distinct breach of the criminal law. The implications of this maxim can be broadly stated as under:-

It prohibits the retrospective imposition of criminality. It prohibits the extension by the analogy of a criminal rule to cover a case not falling within it, and.

It prohibits the formulation of penal laws in excessively vague and wide terms. Article 20(1) sets two limitations upon the law-making power of every legislative authority in India as regards retrospective criminal legislation. It prohibits –the making of an ex- post facto criminal law i.e. making an act a crime for the first time and making that law retrospective and the infliction of a penalty greater than that which might have been inflicted under the law, which was in force when the act was committed.

Protection against Double Jeopardy **Article 20(2)** of the Constitution of India provides that, no person shall be prosecuted and punished for the same offense more than once. Article 20(2) is based on the maxims Nemo debet is vexari, si constat curiae quodsid pro una et eadem causa, which means that no one must be vexed twice if it appears to the court that it is for the same cause. Not only the Constitution of India but also Section 26 of the General Clauses Act, 1897 provides that, 'where an act or omission constitutes an offense under two or more enactments, then the offender shall be liable to be prosecuted and

punished under either or any of those enactments but shall not be liable to be punished twice for the same offense.

Right not to be Witness against Himself **Article 20(3)** of the Constitution of India provides that, no person accused of any offense shall be compelled to be a witness against himself. The Constitutional protection against testimonial compulsion on the premise that such compulsion may act as a subtle form of coercion on the accused and it is also the underlying theme of several statutory provisions – particularly Sections 24-26 of the Indian Evidence Act. Article 20(3) of the Constitution comes into operation as soon as a formal accusation is made whether before the commencement of prosecution or during its currency.

Right to Life and Personal Liberty Article 21 of the Constitution of India provides that, no person shall be deprived of life or personal liberty except according to procedure established by law. Article 21 does not contain any express provision against torture or custodial crimes. The expression ‘Life or personal liberty’ occurring in the Article has been interpreted to include a constitutional guarantee against torture, assault, or injury against a person.

Right to be Informed of the Ground of Arrest Article 22 (1) of the Constitution of India provides that, no person who is arrested shall be detained in custody without being informed as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and to be defended by a legal practitioner of his choice.

Conclusion

The lawful system in India, both protected and statutory contains arrangements identifying with custodial violence, Torture, and different violations in custody. The substantive law (Indian Penal Code) accommodates discipline of a man causing damage, Torture, or death on the body of a man in custody. The procedural law (Criminal Procedure Code and Evidence Act) contains a few arrangements shielding the essential rights and enthusiasm of a man in custody.