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Custodial rape, torture, and the legacy of Section 377

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In terms of how women are seen in our culture, we live in a duality. On the one hand, we depict women as magnificent goddesses revered for their strength and courage, but on the other, we enslave and force them to the outskirts of society. Where her life is exposed to a system that tells her there is an in-built hierarchy in which her life is always valued less than a man's. We live in a culture where a girl kid is not permitted to enjoy her life for the simple reason that she is a girl. A civilization in which the government was forced to prohibit sex determination services in 1983 to prevent people from punishing a female kid for her existence. This systemic oppression of women is so ingrained in the system that it begins before she is even born, ensuring that even if she does live, it will not be free of institutional preconceptions and biases. This is demonstrated by the fact that India has one of the highest rates of crime against women. Sexual assault, rape, and female infanticide may all be linked back to the marginalization of women.

This article will investigate the status of women who are brought into police custody to better evaluate the topic and gain a view on how deep-rooted the issue of society's treatment of women is. It is primarily a position in which she is under the authority of others and is expected to be safe. However, because of the established power dynamic in which the custodian has total control over every element of that individual's existence, the space becomes immensely exploitative for the one taken into custody. It transitions from being a haven to being the source of their anxiety. Cases of this power being abused as a crime against women frequently manifest as custodial rape. This leaves the individual with significant emotional and psychological wounds. This article will trace the history of incarcerated rape, its psychological impact on victims, and the legal framework in place to provide justice to these victims.

Keywords: *rape, torture, section 377.*

INTRODUCTION

Nearly 80 years before its independence, India had been exposed to legislation prohibiting homosexuality. At its peak, the British Empire enforced criminal law on its colonies as part of its 'civilizing mission' including the rule against sodomy. While homosexuality was legalized in England and Wales by the United Kingdom parliament in 1967 and in Scotland in 1980, some British Indian colonies have been forced to reject colonial rule up to now.

In 1967, legislation called the Sexual Offences Act,¹ was enacted by the British Parliament. Homosexual sex between consenting people has been decriminalized. Of course, it is what also happened this week by our Supreme Court. After this, a letter from Glasgow-based reader called Paul Brownsey in the British daily *The Guardian* read: The title above your story on the Indian Supreme Court statement indicates that the ban against gay sex is unlawful, "A toxic colonial legacy is killed under India's anti-homosexual statute." For 71 years, India has been independent. If the legislation had been opposed to colonial-imposed Indian culture, it would probably have been abolished long ago."²

India has joined in the ranks of the few former colonies, having abolished regressive 19th-century legislation that criminalized homosexuality, to give up an enduring British heritage. The English enacted Section 377 of the Indian Penal Code (IPC)³ in 1861, based on the 1553 Buggery Act,⁴ which banned England's homosexuality. It is said to safeguard troops and colonial managers from "corruption" because of fears that these men (and their spouses) who were moved away from home might turn to homosexuality.⁵

¹ Sexual Offences Act 1967

² *Ibid*

³ Indian Penal Code 1860, s 377

⁴ British Buggery Act 1533

⁵ *Ibid*

The Indian Penal Code, Provision 377, is a section of the Indian Penal Code enacted in the British Indian administration in 1861. Modeled in 1533 by the Buggery Act, sexual activity makes it unlawful "against the order of nature." On 6 September 2018, the Indian Court decided that Section 377 was unconstitutional, "irrational, defenseless and arbitrary" concerning consensus on gay intercourse between adults, but that Section 377 was in effect on sex with children, non-consensual sexual behavior, and bestialize. Part of the provision was found by the High Court in Delhi in July 2009 to be unlawful regarding homosexual sex. On 11 December 2013 in *Suresh Kumar Kaushal vs. Naz Foundation*,⁶ the Supreme Court of India (SC) overturned the judgment. The Court concluded that it was a matter for Parliament, not the courts, to alter and abrogate Section 377.⁷ A tripartite panel of the Court examined the curative petitions made by the Naz Foundation and others on 6 February 2016 and resolved to consider them by a constitutional court of five. The Supreme Court maintained in the *Puttaswamy* judgment⁸ on 24 August 2017 that the right to confidentiality is a basic right under the Constitution. The Court also advocated for equality and denounced discrimination, said that the protection of sexual orientation is at the center of basic laws and that LGBT rights are genuine and constitutionally based. This opinion implied that section 377 was unconstitutional.⁹

NAVTEJ SINGH JOHAR VS UNION OF INDIA¹⁰

Although the word homosexual was not expressly included in Section 377, it was utilized for the prosecution of homosexual behavior. This clause was enacted by Raj authorities in 1862 under Section 377 of the Indian Penal Code and used in numerous cases of the same section number as the legal motivation behind the criminalization of what were known as "unnatural crimes" across colonies.¹¹

Facts

⁶ *Suresh Kumar Kaushal v Naz Foundation* Civil Appeal No 10972/2013

⁷ *Ibid*

⁸ *K S Puttuswamy v Union of India* Writ Petition (Civil) No 494/2012

⁹ *Ibid*

¹⁰ *Navtej Singh Johar v Union of India* [2018] SC 4321

¹¹ *Ibid*

On 26 April 2016 a letter was sent by Navtej Singh Johar (dancer from the LGBT community), along with 4 others, to call into question the constitutional legitimacy of Section 377 of the IPC. In their prayers, the petitioners requested that "the right to sexuality," "the right to sexual autonomy" and "the right of choice" be declared part of the right to live as provided by Article 21 of the Indian Constitution.¹² In addition, the petitioners were called upon to declare illegal Article 377 of the Indian Penal Code.¹³

The initial parts of Section 377 were found to be unconstitutional in *Naz Foundation v. Govt. of the NCT of Delhi*¹⁴ by the Delhi High Court in July 2009. Several persons and religious groups contested the ruling, and in 2013 the High Court of Delhi overthrew the case and decision of the *Suresh Kumar Kaushal v. Naz Fund.* Section 377 in 2015 has been rejected.¹⁵

Issues

1. Whether Article 377 of the IPC breaches Article 14¹⁶ of the Right to Equality?
2. Whether the freedom of speech and expression of Article 19¹⁷ of the Constitution is violated under Section 377 of the IPC?
3. If, under Article 21 of the Constitution, Article 378¹⁸ of the IPC breaches the Right to life with dignity?
4. Does it contradict Article 15¹⁹ of the Constitution whether discrimination is based on sexual orientation according to IPC Section 377?
5. In its interpretation of moral as social morality was the basis of a judgment of the Supreme Court of *Suresh Kumar Koushal*?

¹² Constitution of India, art 21

¹³ *Ibid*

¹⁴ *Naz Foundation v Govt of the NCT of Delhi* Writ Petition (Civil) No 7455/2001

¹⁵ *Ibid*

¹⁶ Constitution of India, art 14

¹⁷ Constitution of India, art 19

¹⁸ Indian Penal Code 1860, art 378

¹⁹ Constitution of India, art 15

Judgment

Section 377 was deemed in contravention of articles 14 and 15 of the Constitution to discriminate against persons on account of their sexual orientation and/or gender identity. In addition, they found quiet, following Article 21, Section 377 infringes the rights to life, dignity, and personal autonomy. They concluded that infringing the right to freedom of speech under Article 19(1)²⁰ would limit an LGBT person's capacity to fully realize their identity (a). They all alluded to recent rulings of the Court in *NALSA vs Union of India*²¹ and *Justice K.S. Puttaswamy vs Union of India*²² (recognized fundamental right to privacy).²³

The Court affirmed the validity of Section 377 in 2013 in *Suresh Kumar Koushal v Naz Foundation*.²⁴ The Bench not only found Suresh Koushal unaccountable of how section 377 breaches basic rights, but also that it relied on a legally unacceptable justification. Suresh Koushal utilized the minority reasoning which states that the Court does not need to interfere since only tiny minorities of citizens are affected negatively by Section 377. The Constitution safeguards their basic rights for all people, regardless of gender or sexual orientation. Instead of "popular morality," the Court is concerned with protecting "constitutional morality."²⁵

HOW DOES SECTION 377 ENCOURAGE POLICE BRUTALITY?

The Supreme Court of India ruled in April 2014 that transgenders were to be recognized as a third gender, and not only enjoy all fundamental rights, but also receive special benefits for education and employment in a landmark ruling in the *National Legal Services Authority (NALSA), c. the Union of India and Others*. Along with recent attacks on transgender groups highlighting their vulnerability, implementation halted over a year after the Supreme Court ruling. Section 377 of the Indian Penal Code, which makes homosexual and transgender

²⁰ Constitution of India, art 19(1)

²¹ *NALSA v Union of India* (2014) 1 SCC 1

²² *K S Puttaswamy* (n 8)

²³ *Ibid*

²⁴ *Suresh Kumar* (n 6)

²⁵ *Ibid*

persons susceptible to police harassment, extortion, and abuse, criminalizes equal sex encounters between consenting adults.

Recently, the organization said that on 20 January 2015, police detention for probing the murder of a new Hijra, Prabalika, four days earlier, included a separate transgender and intersex community with a formal shared home system and mutual assistance. The police led him to a policeman's station that was reportedly stripped nude and verbally assaulted and humiliated. Pravallikas's buddy identified himself as a lady. The hijra was held for four hours at the station without any female police officer present. The cops may have attacked her, but they buried their faces and shrank away when she found out she was HIV-positive. She was still humiliated, her identification was questioned and freed in the early morning hours requesting that she wear a men's dress. Police investigated and recognized misconduct in this case, but campaigners warn that transgender individuals around the country are still living with dread of assault and police harassment. On January 22, in Chennai's southern metropolis, the police collected a transgender lady for questioning in a murder investigation. Officers reportedly hung her by her legs in the police station and batted her genitalia afterward.

In India, transgender persons are often openly mocked and ostracized from society. Not just the police but frequently also the medical authorities suffer prejudice and humiliation. The Indian government's two-sex policy was to remove essential rights, including the right to vote, own property, marry, and claim legal status through a passport or other public identity. They were also unable to access public services like food subsidies, education, jobs, and health. Many hijras have no alternative other than to start or work sexually.²⁶ The Indian criminal code is also utilized under section 377, to persecute both gays and transgender individuals. Although these laws are rarely applied to arrests, they are subject both to transgender and homosexual harassment, extortion, and abuse by the police. In the NALSA judge's judgment, while Section 377 relates to sexual activities, "it accentuated certain identities, notably the Hijras, and was utilized to harass and abuse Hijras and transgender individuals as instruments for physical harassment."

²⁶ *Ibid*

A group of experts created by a Ministry of Social Justice & Empowerment to address questions concerning transgender people also approved many of the suggestions set out in a January 2014 report. It suggested that transgender persons be proclaimed to be the third genre and that they be designated in all official papers as 'man,' 'woman,' or 'transgender,' regardless of operation or hormones. It also suggested the extension of central and state governments' benefits to transgender people and measures to sensitize people to gender diversity in their families, educational institutions, health care, and workplaces, and law-enforcement agencies, including the law enforcement police.²⁷

EFFECTIVELY CRIMINALIZING ALL LGBTQ+ PERSONS

The ruling of the Supreme Court of 11 December 2013, which upheld Section 377, was supported. Suresh Kumar Koushal, the main petitioner was an astrologer, and other religious groups, such as All India Muslim Human Resources Law Committee, the Trust God Missionaries, Krantikari Manuwadi Morcha, and the Apostolic Churches Alliance. The Daily News and Analysis "Unambiguous unanimity in the homophobic stance of the religious leaders. Normally contentious and nearly usually visible, authorities from all walks of life have decried homosexuality and shown their support with the verdict."

For those who were brave enough to do so, school administrators urged roughly a third of them to alter their sexual models to avoid further bullying. Most respondents indicated that their academic performance was damaged by such occurrences – and by bad reactions from the authorities. More than a third of the children interviewed reported that such bullying had helped them decide to abandon school. LGBT campaigners in India won last year when section 377 of the India penal code, criminalizing same-sex relations, was unanimously abolished by the Supreme Court. Judge Indu Malhotra said that "the members of the LGBT community must apologize... for ostracising and persecuting the people that they confronted because of ignorance of society."

²⁷ *Ibid*

In 2014, the Supreme Court delivered a broad decision in *NALSA v. India*²⁸ which stated that transgenders should be recognized legally, be enjoy all fundamental rights and special privileges in school and job according to their gender identification. But while legislative improvements are an essential start, LGBT persons in India need a lot more to live with dignity and without prejudice. Young kids at school who are bullied are less likely to prosper and prone, as adults, to prejudice and violence.²⁹ Human Rights Watch research in a variety of settings worldwide, whether in South Africa, Kenya, Jamaica, or the US reveals that adulthood is related to adverse experiences as children at home or in school. To turn India into a nation that safeguards the differences between men and women would require effort on both the national and state level from many ministries and organizations.

CONVERSION THERAPY

The Indian Psychiatric Society (IPS), in February 2014, released a declaration that there was no proof of the unnatural of homosexuality: "The Indian Psychiatric Society would like to say that there is no evidence to support the idea that homosexuality is a mental disorder or a disease based on existing scientific data and good practices of psychiatry." IPS restated its position on homosexuality in June 2018 by stating: "Some individuals are not cut off to be gay and we don't have to punish, we don't have to punish, ostracise them." Conversion treatments are still conducted in India, notwithstanding this declaration from the IPS. In general, such techniques entail electroconvulsive therapy (which can lead to memory loss), hypnosis, using medications to induce nausea, or more frequently talking treatment, when an individual is persuaded that homosexuality is caused by "insufficient early male affirmation." Conversion therapy can cause the person concerned sadness, anxiety, convulsions, medication usage, and suicide.

S SUSHMA VS COMMISSIONER OF POLICE³⁰

Facts

²⁸ *NALSA* (n 21)

²⁹ *Ibid*

³⁰ *S Sushma v Commissioner of Police* WP No 7284/2021

The instant petitioners are Ms. S. Sushma and Ms. U. Seema Agarwal, a lesbian couple. Their parents, who in the immediate case also are the respondents, oppose their relationship and the pair have thus eloped from their residence in Chennai to Madurai. With the help of several NGOs and other LGBTQIA+ people, they were able to get shelter and safety. The respondent's parents have meanwhile submitted the missing complaints to the police and now they are the respondents. The couple had a threat to their safety and safety questioning and worry. As a result, the petitioners addressed the Court in requesting instruction from the Respondents' police not to cause harassment or protection against any type of threat or risk.

Issue

Whether LGBTQIA+ Community police protection should be offered for the safety and safety threats?

Judgment

A single judicial bench, Anand Venkatesh, noted that LGBTQIA+ members endure different atrocities because of social punishments as they are not seen to be good for society. The LGBTQIA+ Community should be changed from a society's perspective to enhance its situation and guarantee that its lives and dignity are protected following Article 21 of India's Constitution. Then, legislation must match this cultural transformation. This may be used to reduce societal prejudice against LGBTQIA+ people.³¹ The Court has set specific rules that safeguard LGBTQIA+ individuals against police harassment when their parents submit a missing allegation. The court remarked that because the protection and security of the LGBTQIA+ Community are not guaranteed, they could not be left until then in a risky environment. Therefore, these recommendations will cover the vacuum until the government draws up distinct laws for the welfare of the LGBTQIA+ Community.³²

³¹ *Ibid*

³² *Ibid*

THE IMPETUS OF CUSTODIAL RAPE

The extortion of confessions and the imputation of evidence is not rare, ranging from attacking different forms of torture to police killings. This approach to investigating and detecting a crime, undermining not only the human rights of a person and thereby his dignity, but also exposes him to unjustifiable violence and torture by persons expected to "protect" it, in the context of an increasingly broad concept of the "humane" administration of criminal law³³. In India, the fundamental right which has the highest place amongst all-important human rights, torture, and the use of third-degree methods for suspects in unlawful detention and police retention are inherent in every action and right to life and freedom.³⁴ The system of the administration itself is being criticized³⁵. In this dismal circumstance, human rights take second place.³⁶ Custody torture is presently considered an unavoidable element of inquiry. Investigators have the false assumption that the accused will confess if sufficient pressure is exerted³⁷.

It is a contradiction that in India there is still torture. India is a liberal democracy since its constitutional and legislative protections against torture have been very clearly stated and are continually improved and reviewed by a powerful and independent court.³⁸ The issue arises: how is torture still going on in India?³⁹ The crude nature of the criminal investigation is often accused of the vague nature of the resources: the absence of scientific equipment and professional skills. While that's one aspect, it's not the main element. The sheer impunity of law enforcement officials is more essential. This impunity can grow because there are no laws to criminalize and punish custodial torture and because the courts and other institutions for

³³ KI Vibhute, *Criminal Justice-A Human Right Perspective of Criminal Justice Process in India* (1st edn, Eastern Book Company, Lucknow 2004) 219

³⁴ *Ibid*

³⁵ 'Custodial Deaths in Punjab' (*The Sikh Coalition*, 1997-2001)
<<http://www.sikhcoalition.org/HumanRights4.asp>> accessed 18 October 2021

³⁶ *Ibid*

³⁷ Asian Human Rights Commission, 'INDIA: Government of Kerala must criminalise torture to prevent custodial deaths' (*achchk*) <http://www.ahrchk.net/statements/mainfile.php/2006statements/688/>> accessed 23 October 2021

³⁸ *Ibid*

³⁹ Rukhmani Seth, 'Custodial Torture And Its Remedies' (*Legal Service India*)
<<http://www.legalservicesindia.com/article/297/Custodial-Torture.html>> accessed 19 October 2021

the upholding of the law in India are corrupted and unintentionally degenerated.⁴⁰ When a victim of torture must wait for years in the hope that a court can take up his case someday while promoting the offender, the entire notion of justice is compromised. Universally recognized, custodial torture is one of the most severe kinds of abuse of human rights. This is forbidden under the Constitution of India, the Supreme Court, NHRC, and the United Nations. However, the police throughout the country are defying these institutions. For this reason, the balance must be struck in a realistic way between human rights and social interests in the fight against crime.

⁴⁰ *Ibid*

REMEDIES AGAINST CUSTODIAL TORTURE

1. Constitutional safeguards: In the catenary judgment, a person is held not to deprive him of his fundamental rights just because he is in police custody and is arrested or imprisoned, and his violation enables him to approach the Supreme Court under Article 32 of the Constitution of India.⁴¹ The decision was taken in catena. His arrest does not take away any of his basic rights. They don't run away from people as he enters the prison, however, they may be shrunk by imprisonment. The degree of shrinking can, however, never reach the point of agony in a manner that reduces humans to simple animal life.
2. Article 20 of the Constitution: The rights against the conviction of crimes are granted under Article 20.⁴² These include the rule that criminal laws (Nullum crime sine lege) be not retroactive (i.e., ex post facto legislation). Thus, if attempts are made to condemn them and torture them according to some legal provision, they violate their basic rights. In addition, Article 20 safeguards against dual risk (Nemo debet pro eadem causa bis vexari). This article safeguards a person most crucially against self-injury. The police torture a guy, even if he had not committed it, brutally and constantly so that he would confess to a crime.⁴³
3. Article 21 of the Constitution: In the Indian judiciary, this article was interpreted as protection from torture. This opinion takes place because the right to life is more than a straightforward right to live a pet life. Article 21 codifies as "life or personal freedom" the guarantees of a person in custody and no sovereign immunity against a State's culpability because of such illegal use of force against the prisoner against the torture and assaults, even by the State and its employees.

⁴¹ Constitution of India, art 32

⁴² Constitution of India, art 20

⁴³ *Ibid*

4. Article 22 of the Constitution⁴⁴: Concerning convictions, Article 22 lays out four essential rights. These include being told of the reason for their arrest and being defended before the next judge within 24 hours of a person's arrest by a legal practitioner of their choice, preventative detention legislation, and production. These regulations are therefore meant for a person not to be exposed to any abuse without statutory support or overcoming authorized excesses.⁴⁵
5. Indian Evidence Act: The police officer's confession of an accused person of any crime (sec. 25 Evidence Act⁴⁶) and the confession caused by a person in charge would not be shown to be of relevance in a criminal process as allowed for in sec. 24 to prevent any temporary evil. Thus, while custodial torture in India is not specifically forbidden by law, evidence gathered illegally, including torture, is not admissible in courts.
6. Indian Police Act: Articles 7⁴⁷ and 29⁴⁸ of the Law provides those police officers who are neglectful in fulfilling their responsibilities or are not able to execute their duties be dismissed, punished, or suspended. This is shown in the violation of several constitutional and legislative safeguards by the police personnel, coupled with instructions issued in *DK Basu v. State of West Bengal*.⁴⁹

⁴⁴ Constitution of India, art 22

⁴⁵ *Ibid*

⁴⁶ Indian Evidence Act, s 25

⁴⁷ Indian Police Act, art 7

⁴⁸ Indian Police Act, art 29

⁴⁹ *DK Basu v State of West Bengal* AIR 1997 SC 610

7. Code of Civil Procedure, 1973⁵⁰: Sec 46⁵¹ and 49⁵² of the Code safeguard people under custody against torture who are not charged with a lifetime or escaping offense punishable by death or imprisonment. The provisions of paragraphs 50⁵³-56⁵⁴ are in line with Article 22. Sec. 54 of the Code,⁵⁵ is a clause that corresponds significantly to any tortures and violence committed under custody. The magistrate is then and then obligated to inspect his body and record the results of his examination, and accordingly reasons when an accusation of maltreatment is filed by a person in custody.⁵⁶ It grants individuals the right to bring any torture or attack to the knowledge of the Court which they may have suffered and have examined on their request by a medical practitioner. The courts have also employed a compensating method. If the Magistrate fails to proceed with custodial torture proceedings, it calls for the High Court to intercede following Sec. 482 of the Code.⁵⁷
8. Section 176 of the Code,⁵⁸ where an obligatory magisterial inquiry is to take place on the death in police confinement of an accused person, is also crucial concerning custodial abuse which leads to death. The purpose of Articles 167⁵⁹ and 309⁶⁰ of the Code is to bring the accused before the court and therefore protect their rights and interests, as their custody is authorized.⁶¹

MAJOR CASES

SR Siras vs Aligarh Muslim University, High Court at Allahabad, India

Facts: The petitioner was a reader and chairman of the Aligarh Muslim University's Department of Modern Indian Languages. He lived on campus and waited for his teacher to

⁵⁰ Code of Civil Procedure 1973

⁵¹ Code of Civil Procedure 1973, s 46

⁵² Code of Civil Procedure 1973, s 49

⁵³ Code of Civil Procedure 1973, s 50

⁵⁴ Code of Civil Procedure 1973, s 56

⁵⁵ Code of Civil Procedure 1973, s 54

⁵⁶ *Ibid*

⁵⁷ Code of Civil Procedure 1973, s 482

⁵⁸ Code of Civil Procedure 1973, s 176

⁵⁹ Code of Civil Procedure 1973, s 167

⁶⁰ Code of Civil Procedure 1973, s 309

⁶¹ *Ibid*

be promoted before he retired. In February 2010, several press members broke into his home and videotaped him with a male companion in a sexual event. University staff came on stage and studied the tape. The next day the University Vice-Chairman suspended the petitioner and ordered him to go home. For a hearing on the accusation of misconduct, the petitioner was notified. In violation of the core moral ethic, whilst living in university housing he was accused of "immoral sexual behavior" and of damaging the "pious image" of academia. Following the event, videotapes and clippings of the petitioner were also released. In response, the petitioner decided to file a petition in writing against the University's actions. The petitioner chose to do so.⁶²

Issue: Whether a requestor suspended his education and removed his lodging from his campus violated his privacy and equality rights.

Judgment: The petitioner said that there had been no allegation at any time of indecent conduct or misconduct. He confessed he was homosexual and claimed in reply that his sexual orientation had never been disguised. In his opinion, his sexual focus was not a matter of worry because under Articles 14, 15, and 21 of the Indian Constitution the right to privacy and equality protected what he had done in his home's private. Moreover, the petitioner argued that, in contravention of Article 21 of the Constitution, both the media and the university staff visited his home without his authorization and had therefore intruded on his privacy. He further stated that, regardless of sexual orientation, Articles 14 and 16⁶³ of the Constitution ensured equality for all individuals and banned discrimination on such grounds. Furthermore, the petitioner stated that any action that had not affected his work in the privacy of a person's house did not amount to misbehavior susceptible to departmental investigation and prosecution. In arguing that he had the right to privacy, dignity, equality, and non-discrimination concerning sexual orientation, the petitioner relied on Naz Foundation. In his petition, the defendant filed preliminary objections, arguing that the order of suspension still had the Executive Council's consent. As he may appeal to the Executive Council, the petitioner remained administratively remedied.

⁶² *Ibid*

⁶³ Constitution of India, art 16

First, the Court decided that, as the claims were not the foundation for any crime, prosecution, or conviction with "moral turpitude," the application of Naz Foundation has not arisen in this instance. Secondly, the Executive Council's option of an appeal was not an obstacle to the written petition. The Court further held that considering the conditions in which the truth has been discovered, the petitioner is right in claiming that the sexual choice of an adult may not constitute wrongdoing. It confirmed that privacy was a basic law that needed protection and that, if the claims against the petitioner are to come under the concept of immorality and amount to misbehavior, they would require a rigorous degree of documentation. The Court ordered the suspension of the ruling and the removal of the petitioner from his campus as a provisional remedy. The media also prevented any material on the incident from being publicized.⁶⁴

Bangalore Incident 2004, Custodial rape case

Kokila is a 21-year-old hijra who lives in Bangalore City. She is a member of a traditional South Asian male-to-female transsexual society. She was raped by several males on 18 June 2004. But Kokila was detained, verbally abused, and tormented when she tried to obtain a remedy through the police. She was mocked about her gender identification and forced to remain nude for many hours.

Delhi Incident 2006, Custodial Rape Case

On 23 January 1996 Priyadarshini Mattoo, a 25-year-old law student, was discovered and killed at her house in New Delhi. After her family relocated to Jammu, Priyadarshini completed her school in Srinagar. She joined the University of Delhi for her LL.B. degree after finishing her B Com at Jammu. The offender, Santosh Kumar Singh, who had also studied at the LL, B. Law Centre, Faculty of Law, University of Delhi, had been charged with several allegations of harassment, threats, and stalking. In December 1994 the accused had crossed the LL.B. from Delhi University at the Campus Law Centre. It turned out to be completely meaningless to repeated charges made by the deceased that did not deter the accused person,

⁶⁴ *Ibid*

who continued to harass him. Although the accused had given two previous promises following a petition brought against the dead at the police stations of R.K. Puram and Vasant Kunj, 25 February 1995 and 16 August 1995 and 6 November 1995 respectively. He again tried in the Campus Law Centre to harass the dead. He was detained and then freed from prison in the Maurice Nagar Police Station after an FIR under Section 354⁶⁵ of the Indian Criminal Code (IPC) in 1860.

The defendants were warned not to do so. In addition, the seriousness of the case led to a recommendation for the dead to speak with the deputy police officer (South West) protesting the accused who appointed him an officer of personal security. Thus, the aggrieved plaintiff made unfounded charges to the Delhi University officials of the dead-on 30 October 1995, out of vindication, that she was carrying out two courses simultaneously. As a result, the results of the dead have been rejected by the institution that received a statement of reason to which it had to reply as soon as possible.⁶⁶

The defendant personally prosecuted the defendant's case. The dead contended in his statement that in 1991 she finished her M. Com and had not appeared before in her LLB III review, thereby contesting the allegations against her. The accused of the last year-and-a-half was also harassed by her. On the fatal day of the assassination, Vasant Kunj, the accused, was alone at her place of residence in B-10/7098. On arriving at the dead house of security guard Rajinder Singh, Priyadarshini Mattoo was found to lie under a double bed and her corpse was never moved. Therefore, under section 302 of the Indian criminal code, an FIR was registered at the Vasant Kunj Police Station (IPC). The declaration in section 161 of the CrPC,⁶⁷ has recorded that the mother of the dead Rajeshwari Mattoo alleged the perpetrator and so joined the inquiry.

⁶⁵ Indian Penal Code 1860, s 354

⁶⁶ *Ibid*

⁶⁷ Code of Criminal Procedure 1973, s 161

IN THE TRIAL COURT

The Delhi Police handled the case, but the deceased's father submitted it to the central office of investigation (CBI) on 25 January 1996 at the request of C.L. Mattoo. The case had not been resolved. The Central Agency filed a lawsuit against Santosh Kumar Singh on 11 April 1996 following a detailed CBI inquiry into this case. The defendant was prosecuted according to the law. Then the matter was brought to the hearing and, following Sections 302⁶⁸ and 376⁶⁹ of the IPC, the then Additional Judge of S.C. Mittal was happy to submit a charge. The defendant pleaded not guilty and proceeded to trial. On 11 August 1997, the trial started. In all, on 3 January 1998, up to 50 testimonials were investigated in court. After all conditions and documentation have been considered.⁷⁰ The Court of Justice acknowledged the culprit on 3 December 1999 and granted him the benefit of the doubt, stating that the CBI had failed to correctly convey the evidence and behaved unfairly. Furthermore, it was pointed out that, according to section 45⁷¹ of the Indian Evidence Act of 1872, the DNA report provided by the CBI was thus composed of sand which is inadmissible in law.

IN THE HIGH COURT

The court's judgment surprised us even more as the court was convinced that the prosecution case was not in dispute. The verdict was mistaken as far as "the DNA fingerprinting analysis confirmed the culpability of the accused." It was found by this courthouse itself. Therefore, given the erroneous judgment followed by the massive public outrage that ensued. The CBI appealed to the Delhi High Court on 29 February 2000. The High Court only heard the issue every day after six years. The High Court reversed the Court of Justice decision seven years ago on 17 October 2006, in which it claimed Santosh Kumar Singh was guilty "beyond question, of irreplaceable evidence," of R.S. Sodhi and P.K. Bhasin's patting of CBI. The High Court in Delhi found the accused on 30 October 2006 guilty of offenses that are punishable by death under Section 302 and Section 376 of the Indian Penal Code.

⁶⁸ Indian Penal Code 1860, s 302

⁶⁹ Indian Penal Code 1860, s 376

⁷⁰ *Ibid*

⁷¹ Indian Evidence Act 1872, s 45

IN THE SUPREME COURT

In an appeal to the Supreme Court on the death punishment handed down by the High Court in Delhi on 19 February 2007, the convicted Santosh Kumar Singh decided. On 6 October 2010 Santosh Kumar Singh in the 14-year-old Priyadarshini Mattoo rape and murder affair was upheld by the Bench of Justices H.S. Bedy and C. K. Prasad. However, it reduced the death punishment to life imprisonment by noting that the appellant favored other reasons. The Bench argued that "the balance sheet was in favor of Santosh Kumar Singh, and if Santosh Kumar Singh's death sentence is shifted to life imprisonment, the objectives of justice will be met."⁷²

Chennai Incident 2006, Suicide due to Custodial Rape

A poor man, who has been reported to have lost his sound as a result of the torture carried out by police officers of the Keeraithurani police station, Madurai District knocked at a mandamus at the doors of this Court, ordered the state and other parties to pay the compensation of Rs. 5 lakhs. The son of the petitioner, aged around 26, had his livelihood at the Anuppandi meat business. At his death, the daughter and two kids, ages 5 and 3 years, lived with his wife, 7 months pregnant. He returned from the butcher shop on 4.12.2004, as usual, Saturday. When he drank liquor about the wine store No. 5276 in TASMACH, police agents, Mr. Marimuthu and Mr. Karupppiah came in for a motorcycle to ask him in a residential area for a drink. Some other police officers also gathered for an intimation and took him to the Keeraithurai Police Station for investigation. Two folks saw the same thing. Since the son of the petitioner did not return home, he was looking for his son.

At around 9 pm the Keeraithurai Police Station Police Constable Mr. Marimuthu told the petitioner that he had been discovered drunk, which had been held at the police station because of annoyances. The police officer brought the petitioner to the police station. The objects in his hip were extracted, including his shop's key. The kid of the petitioner lied on his back at the police station, without movement. On his face, water was sprayed. He opened his

⁷² *Ibid*

eyes slightly and closed quickly. His body had no movement. There were 8 police officers at the police station and the author had the impression on a blank paper of the petitioner's left-hand thumb.

They told the petitioner that there was just one little instance recorded and he, together with his kid, was asked to pay the fee on the next day. Then he discovered his child unresponsive at 10 p.m. when he was transported to the petitioner's home and learned that the Keeraithurai Officers Station's police were viciously beaten and died. Avaniyapuram Police Station has filed a complaint and recorded a case under section 174⁷³ of Crime No. 820 of 2004 on 5.12.2004. The Avaniyapuram police station's Sub Inspector arrived at the petitioner's residence in a vehicle at about 10:30 and took the clothes off on his son's corpse.

The body, blood clots, and soils of both feet were externally injured. Although an autopsy took place on 5.12.2004, doctors were not able to video graph the same video as according to NHRC rules. The petitioner complains that, under the relevant sections of the Indian penal code, the Deputy Police Inspector, Avaniyapuram neglected to record a case. Complaints were forwarded to the Chief Secretary, Chennai, Police Director General, Chennai, the Additional Police Director-General, and Chennai and other senior police officers on December 7, 2004. The complaints were received on this subject. The petitioner said police officers tortured his son under the pretext of an investigation, leading to his death. In an unconscious condition, his son was turned over to the police with injuries to his body and there is a case of illegal detention, torture, physical attacks, illegal treatment, and the death of his son. It is also the petitioner's claim that while the police staff committed severe violations following Sections 120(b),⁷⁴ 166,⁷⁵ 302, 307,⁷⁶ 325,⁷⁷ 329,⁷⁸ 342,⁷⁹ 347,⁸⁰ 352,⁸¹ and 357 of IPC,⁸² no action was brought against the infringers, even if the issue had been brought before the respondents.

⁷³ Indian Penal Code 1860, s 174

⁷⁴ Indian Penal Code 1860, s 1120(b)

⁷⁵ Indian Penal Code 1860, s 166

⁷⁶ Indian Penal Code 1860, s 307

⁷⁷ Indian Penal Code 1860, s 325

⁷⁸ Indian Penal Code 1860, s 329

⁷⁹ Indian Penal Code 1860, s 342

ANALYSIS

An anathema to human existence is the very concept of a human being under custody, rather than care and nurture. The term custody means custody and safeguarding. It has no ominous indications of assault in captivity, even if employed to signify arrest or imprisonment. The court should not adopt a casual approach in its complaint of prison torture because a normal criminal has made it. This is an ongoing statehood challenge. A state governance structure that allows the police to successfully maintain law and order and to prevent and identify the conduct of crimes without endangering legal rights; privileges and claims become important. This system requires proper police oversight to deter them from capriciously utilizing their power. Similarly, the necessity for the hour is also an efficient tool for institutional grievance-reparations to justify "policing excesses." "Custodial torture" as ruled by the Supreme Court is a flagrant breach of human dignity and humiliation that, to a significant part, destroys human individuality.

First, a crime must be committed against custodial torture. This can be introduced utilizing a specific statute. In the second place, there might be several examples of custody torture if law enforcement authorities comply with the present arrest and detention regulations. The guidelines set down by the Supreme Court - but not a comprehensive remedy - should without fail to be implemented. Those not complying with the rules must be tried. Third, the public and professional groups, including rights groups and the media, need to examine police actions carefully to ensure that government commitments are kept. The political opposition must also ensure that, in each case, custodial death and torture, a report, and an investigative report are sent by the Director-General of Police to the legislative assembly.

Fourth, it is necessary to encourage the Central Government to ratify the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment of the United Nations. It is on a false basis that current legislation is sufficiently good to prohibit custodial torture which is not the case that the Government has not ratified the convention. If the case,

⁸⁰ Indian Penal Code 1860, s 347

⁸¹ Indian Penal Code 1860, s 352

⁸² Indian Penal Code 1860, s 357

despite the many concerns and instructions given by courts in India 60 years after independence, torture would not continue uninterrupted as it does now.

CONCLUSION

Indian courts have come up with virtually little transparency as the world's most powerful judiciary. But every institution, including the courts, is incorrect. The judges comprise people and are sometimes influenced by other reasons than an objective view of law and justice as human. The Judiciary comprises judges. This would be naïve if none of them had any reason whatsoever to examine their convictions, affiliations, predilections, prejudices, or possibly even nepotism and ethics. The courts cannot nonetheless accept, instead of the strict legal reason, to take decisions on ethical and moral grounds. The function of a judge is not to read between lines, but to give the question of law before the judge with a fair, fair, and reasonable insight. "Justice should not be done alone, but it should seem to be done too." As a fillip to the country, the court must therefore endeavor to deliver justice without fear, favor, affection, or ill will in all situations.