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Custodial Deaths and Role of Judiciary: A Critical Analysis

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Abstract: India is a diverse nation governed by rule of law with people of nations at the supreme level. Every citizen of India is enshrined with some fundamental rights provided under the Constitution of India. Therefore, the fundamental rights of the citizen cannot be suppressed by the police officers just because he/she is arrested. Under Articles 20, 21 and 22 of the Constitution, prisoners and people in custody have various rights. Article 21 of The Constitution calls for a number of rights, including those against handcuffing, the right to a fair trial, legal aid, and so on. Inmates who commit suicide while on probation are causing social anxiety. When police officers violate those laws instead of protecting mankind they are accused of violating their responsibilities. This research paper aims to create awareness about custodial death, as well as to highlight the importance of preserving equality and protecting human rights. To build a strong and healthy democracy in which human rights are not violated, both police and citizens need to work together. Therefore, this paper presents some suggestions to end jail violence.

Keywords: Inmates, Custodial Deaths, Police Officers, Prisoners.

I. INTRODUCTION

"If I can love myself despite of my infinite faults, how can I hate anyone at the glimps of few faults".

Alexander the Great

In a civilised society governed by the rule of law, custody death is one of the worst crimes. Torture and the use of third-degree practices on detainees during wrongful imprisonment and police custody throw a stain on the basic system of governance in India, where rule of law functions throughout every volume of engagement and is given the highest priority across all vital rights¹.

India's foundations are secularism, socialism, sovereignty, and democracy. Instead of tormenting its inhabitants, the police should defend them. The police's primary goal is to create a safe and regulated society in which freedom may be enjoyed. When legislators become lawbreakers and human rights advocates become persecutors, democracy is jeopardised².

Since antiquity, humanity has been afflicted by the nasty aspects of torture. Torture and death have an impact on modern civilization.

As a reason, democracy and growth have been impeded in the modern world. Custody death is one of the most heinous crimes in a civilised society regulated by the rule of law. At the moment a policeman arrests you, does that mean you lose your right to Life? In the case of an arrest, is the Right to Life of the citizen infringed?³

The answer is simply no. India is a nation that values the legal system, with the right to life and liberty ranking first among the most important Basic Rights. Torture and TDT used against detainees during wrongful imprisonment and police arrest reflect poorly on our representative democracy⁴.

The practise of imprisonment torment is often regarded as one of the most heinous violations of human rights. It is illegal, according to the Indian Constitution, the Supreme Court, the NHRC, and the United Nations. Regrettably, the Indian police disobey these organizations. When combatting crime, it is consequently critical to strike a reasonable balance among human freedom and societal objectives⁵.

¹ Deeksha Saggi, 'Custodial Deaths and Role of Judiciary: A Critical Analysis' (Latest Laws, 25 July 2020) <<https://www.latestlaws.com/articles/custodial-deaths-and-role-of-judiciary-a-critical-analysis>> accessed 15 November 2023.

² Dinesh Singh Chauhan, 'Custodial Deaths and Role of Judiciary: A Critical Analysis' (Legal Service India) <<https://www.legalserviceindia.com/legal/article-6829-custodial-deaths-and-role-of-judiciary-a-critical-analysis.html>> accessed 15 November 2023.

³ Ibid.

⁴ See Supra 2.

⁵ Joginder Kumar v. State of Uttar Pradesh, (1994) 4 SCC 260.

A. Literature Review

Baidyanath Mukherjee and Jayshree Mishra “Custodial Death in India- An Analysis” (2020)⁶

In this author is discussing about a severe and worrying problem of custodial deaths in the third-world nations like India. This paper attempts to examine several parts of India's constitution that provide basic fundamental rights to all people under detention. This paper also examines numerous judicial standards and the award of compensation to victims as a key mechanism, despite the fact that, unlike other legal systems, the Indian constitution does not directly allow for the right to compensation.

Deeksha Saggi “Custodial Deaths and Role of Judiciary: A Critical Analysis” (2020)⁷

The author in this article is discussing about the custodial deaths that it is one of the most heinous crimes that can be committed in a civilised society regulated by the rule of law. Torture and the use of third-degree methods on suspects during illegal detention and police remand cast a smear on the very system of administration in India, where the rule of law is inherent in every action and the right to life and liberty is essential fundamental right occupying highest place among all important fundamental rights. The author is also discussing about recent scenarios and judgments of the court.

Rakshit Ranjan “Custodial Death and Role of Judiciary- A Critique” (2020)⁸

The author in this paper is talking about the custodial deaths and the judicial system led by the Supreme Court of India. Judiciary is responsible for upholding the constitution and the constitutional provisions that protect our interests. It is supposed to operate independently of external pressure, precisely within the bounds of the law, and to do what is right. In this paper, the author wants to critically explore the role of the court in the occurrences of incarceration fatalities, as well as what has led to the public's acceptance for something that is inherently evil.

Rangita Chowdhury “Custodial death and anti-torture law”⁹

In this research paper the author discusses detention torture, as well as the legal procedures and safeguards in place to prevent it. Concerns that need to be addressed further have also been discussed by the author.

B. Statement of Problem

Criminals cannot be detected when the law is in place. A crime is committed when people are directly involved in it and they are directly protected. The honest police officials who admit that harassment is a common method to investigate crimes want to avoid answering the question of whether or not this demonstrates a reversal in approach, or ineffective methods to detect crime. In spite of this, they still maintain that only a few crimes could be solved if police followed the rules strictly. This research aims to focus on some key measures that could lead a smooth investigation process by the police officers with protection of individual rights. In this paper, we will also legally analyse the provisions relating to custodial tortures under various statutes.

C. Hypothesis

The work mainly proceeds with the hypothesis that:

- 1) The existing laws for protection of Human Rights of Arrested Persons in India are being implemented in letter and spirit by the law enforcing agencies.
- 2) These laws are adequately protecting the human rights of arrestees.

D. Objectives of Study

The research study is made to achieve the following objectives:

- 1) To examine the implementation of existing laws relating to arrest.
- 2) To evaluate the treatment towards arrested persons under trials/convicts.
- 3) To examine how much aware are the arrested persons regarding their rights.
- 4) To examine the behaviour of police authorities towards arrested persons and the knowledge the officers regarding precautions to be taken while arresting or after taking into custody.
- 5) To evaluate the extent to which the directions or safeguards have been properly executed in practice.

⁶ Baidyanath Mukherjee and Jayshree Mishra, ‘Custodial Death in India- An Analysis’ Volume 7(Issue 6) JETIR 552.

⁷ See Supra 1.

⁸ Rakshit Ranjan, ‘Custodial Death and Role of Judiciary- A Critique’ Volume I (Issue V) International Journal for Legal Research and Analysis 4.

⁹ Rangita Chowdhury, ‘Custodial death and anti-torture law’ (IPleaders, 3 January 2021) <<https://blog.ipleaders.in/custodial-death-anti-torture-law/>> accessed 16 November 2023.

- 6) To suggest the mechanism to make improvement in existing laws to overcome shortcomings.

E. Research Questions

- 1) How does the custodial deaths impact on the society and what are the legal provisions dealing in regard to protection of the custodial deaths?
- 2) What are the remedies available with the accused to protect himself from such illegal and heinous tortures done by the police officers?
- 3) How can the rights of the individuals and powers of arrest by police officers can be balanced?

II. CUSTODIAL DEATHS AND ROLE OF JUDICIARY: A CRITICAL ANALYSIS

The administration of justice is a critical part of the state's machinery. It has two purposes: to safeguard society and to identify criminality in the society. There is a lengthy history of police abuse and interrogation torture. In recent years, there has been an upsurge in similar instances in several regions of the world, including India. Police utilise third-degree procedures to get confessions and statements from suspects. They may be gravely harmed or perhaps killed as a result of this. It is also true that in the midst of such cruelty and humiliation, these victims are occasionally pushed to commit suicide¹⁰.

In general, the phrase "custodial death" has been used to describe police, jail, or other authorities inflicting physical abuse on inmates. But after the Stan Swamy case, the definition of custodial is broadened to include judicial custody as well. Therefore, now deaths in custody can be divided into three categories:

- 1) Custody of Police
- 2) Custody of Judicial Officer
- 3) Custody of army or Paramilitary Force

A. Custodial Deaths In India

Between 2001 and 2018, 1,727 people died while in captivity, like those on judicial detention and those who were detained but never presented before a judge¹¹. This equates to an average of 96 fatalities every year.

According to the **2019 IART**, 1,731 persons died in prison as a consequence of violence. There have been 1,606 fatalities in judicial and police detention, correspondingly. Every day, about five people die by torture of police officers. Electrocution, pounding nails into the body, delivering cold power to various regions of the body, searing with a hot iron, pulling legs apart, hanging upside down, and cruel beatings are among the most prevalent kinds of torture highlighted in the research¹². Individuals who are detained are frequently exposed to such heinous torture. Those who are victims of police brutality are overwhelmingly representatives of underprivileged groups who lack the financially and socially resources to combat back.

Uttar Pradesh has the terrible reputation of having one of most custodial deaths, with 14 fatalities out of 125 cases, followed by Tamil Nadu and Punjab, each with 11 deaths. About 75% of the 125 fatalities were said to be triggered by mistreatment or criminal wrongdoing, while 20% were said to have been caused by suicide under questionable circumstances¹³.

B. Some Recent Case Studies

1) Tamil Nadu Tutorin's case

It is more heinous than some of the most heinous crimes that India has seen till yet. A father (P. Jeyaraj) and his son (Fenix) who own a mobile accessories shop in Sathankulam, Tuticorin district, were detained for unlawfully keeping it open well after business hours. In Tamil Nadu, COVID-19 has been effectively eradicated thanks to a rigorous lockdown. After being escorted to the police station, family members allege they were violently attacked. They were declared deceased after many days in custody. After the incident, various politicians, celebs and people of our nation tweeted about the incident and appealed the government to take action against the offenders. The offenders were ultimately transferred or suspended.

¹⁰ Ibid.

¹¹ See Supra 9.

¹² Ibid.

¹³ Ibid.

2) *Vikas Dubey Encounter Case*

Vikas Dubey was the wanted gangster which was killed by the police officers in an encounter when he tried to ran away from the police custody. Despite the fact that the police explanations were unsatisfactory, there was a public outcry against this conduct. Despite this, the authorities were able to persuade the court that the legendary criminal was murdered in a firefight.

C. *Impact Of Custodial Deaths On Society*

During the tormenting method, a perverted intimate connection develops between the torturer and the victim in question, resulting to emotions of reliance, terror, and, eventually, the annihilation of any remaining resistance. Confessions are made at this stage, and the cycle is fittingly dubbed "Destruction." Many people want to die and find a means to do it before they reach this point. Before being disposed of, just a few of them are slain carelessly or on purpose. On a physical as well as a mental level, the consequences and effects of being free of the pain are enormous - it all depends on the individual and the tactics utilised. Depending on the approach used, a comprehensive examination of internal wounds may not disclose visible symptoms of cruelty. Some operations leave no visible scars but might harm crucial organs and tissues on the inside. Re-experience of the damage, intrusive memories, a feeling of passion numbness, violent repression of relation to the external world, and important drowsiness symptoms supplemented by anxiety, psychological irresponsibility, and destructive behaviour were among the psychic responses noted by psychological wellness specialists¹⁴.

D. *Conclusion*

India has a high proportion of incarceration-related mortality. Our saviour, on whom we trust for safety, is guilty of one of our society's most heinous sins. Police officers may urinate in the mouth and perform forced oral sex in addition to raping and beating a suspect's private parts. When police do this, they show a lack of regard for their human victims. The fact that 26 police officers were convicted out of 1,727 incidents of custodial death between 2001 and 2017 demonstrates that justice has not been served and that the judicial system has significant flaws¹⁵. India must pass anti-torture legislation in order to have a well-organized society with effective rule of law and justice mechanisms.

III. JUDICIARY ROLE AGAINST CUSTODIAL VIOLENCE IN INDIA

A significant part of the fight against custodial torture in India has been played by the Supreme Court and NHRC. In light of the recent deaths in police custody and torture, the Apex court expressed its grave concerns. Judiciary is one of the pillars of our democratic system. In this chapter, we are going to discuss various landmark judgments on custodial violence in India and we will see how the judiciary creates a long-lasting role in curbing this kind of ill-treatments from its root level.

A. *Landmark Judgments On Custodial Violence In India*

The Supreme Court stated in *Prakash Kadam v Ramprasad Vishwanath Gupta*¹⁶ that a policeman is an individual who must implement the law. Ordinary punishment should be given to someone who commits a criminal for no apparent cause, but a more severe punishment should be imposed to a police officer who commits a crime directly counter to his or her duties.

The Supreme Court stated in *Re Inhuman Conditions in Prisons v State of Assam*¹⁷ that numerous examples of such fatalities have been reported and unreported across the country, and the tendency appears to continue ongoing notwithstanding the numerous judgements this Court has issued, as well as those of every other High Court. As previously said, the current condition of circumstances is dreadful rather than sad, and demonstrates the government's obvious contempt for personal actions and freedoms. Despite the fact that the deadline for restoration has passed, there is no hint of a remedy or of a desire to tackle the situation.

It was held by Indian Supreme Court in *Kishore Singh v State of Rajasthan*¹⁸, that use of the third degree by police violates Article 21 of the Constitution. The court noted that if the bottom rung is to effectively mimic the State's efforts to re-educate the police department to respect human dignity, the State must lead by example rather than by precept. Furthermore, if any of these accompanying cops are found to be abusing, the administration should not suppress the facts.

¹⁴ Yashashvi Singh, 'Custodial deaths and role of the judiciary: Indian and international perspective' (*IPleaders*, 19 March 2021) <https://blog.ipleaders.in/custodial-deaths-and-role-of-the-judiciary-indian-and-international-perspective/#Impact_on_society_and_role_of_judiciary> accessed 15 November 2023.

¹⁵ Dipakkshi Chachan, 'A critical analysis of custodial violence in India' (*All India Legal Forum*, 29 April 2021) <<https://allindialegalforum.in/2021/04/29/a-critical-analysis-of-custodial-violence-in-india/>> accessed 15 November 2023.

¹⁶ (2011) 6 SCC 189.

¹⁷ AIR 2016 SC 993.

¹⁸ AIR 1981 SC 625.

Rather than claiming that "everything is great with the police, the criticisms are always incorrect," succinct remedial steps ensure public authenticity. Just one factor worse than physically abusing someone in detention are cowardice and unconscionability, and nothing harms our constitutional system more than state personnel who go crazy regardless of individual rights.

The Supreme Court has expressed concern about police atrocities and handcuffing in cases such as *Sunil Batra v Delhi Administration*¹⁹, *Prem Shankar v Delhi Administration*²⁰, *Altemesh Rein v Union of India*²¹ and *Sunil Gupta v State of MP*²².

The police force has recently been subjected to judicial activism. As a result, the court has decided that in the event of a death or injury received while in police custody, the authorities will have the burden of proving that the death or injury was caused by natural causes rather than by the police.

B. General Guidelines Laid Down By The Supreme Court Of India In Relation To Custodial Violence

In the case of *D. K. Basu v State of West Bengal*²³ the Supreme Court laid down various guidelines in relation to custodial violence:

- 1) While investigating the matter and examination of the accused, the police officer must refrain from using TDT.
- 2) The workplace conditions, orientation and alignment of police officers with fundamental human principles must all be carefully examined.
- 3) By introducing Section 114-B, the legislature must implement the LC's suggestions.
- 4) When it comes to extracting information from dangerous offenders, police should take a more holistic perspective.
- 5) At least one family member of the accused must be there when such an arrest is made, according to the note written by the police official in charge.
- 6) Police officers must adhere to the Constitution's obligations under Articles 21 and 22 (1) of the Indian Constitution.
- 7) The arrestee must be made aware of his fundamental human rights so that he can comprehend them at the time of his arrest.
- 8) In addition, the Court has mandated that the police officer in charge of the arrest of an accused must adopt specific precautionary steps.

C. Conclusion

Human rights are at the heart of good government. In a democratic society, the state is responsible for safeguarding and advancing human rights. Whether it's the police, the army, the court, or the civil administration, state institutions have a responsibility to defend, preserve, and respect human rights. The Supreme Court has spent many years developing and explaining fundamental rights. They have successfully opposed state incursions by maintaining that an individual's integrity and liberties must always be maintained. The Court has issued various guidelines for CJS.

IV. REMEDIES AVAILABLE AGAINST CUSTODIAL TORTURE

"Torture is wound in the soul so painful that sometimes you can almost touch it, but it also so intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone, paralysing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself".

-Adriana P. Bartow

In the above chapters, we have broadly discussed about the custodial tortures, deaths and judicial pronouncements on custodial violence. In this chapter, I will discuss about some remedies which are available to an individual from the brutal and wrongful behaviour of the police officers and other authorities having the power to arrest or detain.

Remedies can be broadly divided into two categories:

A. Constitutional Safeguards

Article 32 is considered the heart and soul of the Constitution. If any person is deprived of his basic human rights or fundamental rights enshrined to him by the Constitution then he can claim the same in a Supreme Court in the form of a writ petition.

¹⁹ AIR 1978 SC 1675.

²⁰ AIR 1980 SC 1595.

²¹ AIR 1988 SC 1768.

²² (1990) 3 SCC 119.

²³ AIR 1997 SC 610.

1) Article 20 of the Constitution of India

Article 20 of the Indian Constitution guarantees the right to appeal convictions. Ex-post facto laws, as defined by Article 22 of the RSICC, are a breach of fundamental rights whenever efforts are made to condemn and torture the individual in accordance with some legislation²⁴. Article 20 of the Indian Constitution also safeguards against double jeopardy which states that no one should be tormented or persecuted again for the same reason. This Article also serves as protection from self-incrimination. A person is subjected to cruel and persistent torture by the police in order to force him to admit to a crime he has not undertaken.

2) Article 21 of the Constitution of India

Article 21 of the Constitution of India states that every person must be ensured with a right to life and personal liberty. This is a broad article which enshrined in its ambit various rights and right to be free from torture is one of those right.

3) Article 22 of the Constitution of India

Under Article 22 of the Indian Constitution, conviction is guaranteed by four fundamental rights. Under PDR, he has many rights, including being told of the reasons for his arrest, being defended by a counsel of his choosing, and appearing before the next magistrate within 24 hours of his arrest. As a result, these regulations are designed to ensure that no ill-treatment occurs that is not permitted by law or that it becomes extreme or unnecessary²⁵.

B. Other Statutory Safeguards

1) Code of Criminal Procedure, 1973 and Indian Penal Code, 1860

Certain sections of the 1973 Code of Criminal Procedure safeguard those in custody against torture. When holding an accused or suspected individual in custody, police officers should be aware of a variety of rules listed in the Criminal Procedure Code.

Section 41 of the Code of Criminal Procedure empowers the police to detain anyone. As stated in this section, police officers have the authority to make arrests in order to conduct additional investigations, but they are not allowed to use excessive force to extract information from them. Furthermore, because the term may appear in the section, the Police Officer's authority is delegated. The state and police personnel have a responsibility to ensure that an accused is not subjected to needless constraint.

If a person is apprehended, they must not be subjected to excessive force or torture, and police officers can be held accountable under several provisions of the Indian Penal Code, 1860, if they misuse their authority.

Section 340 of the Indian Panel Code, 1860, as well as Sections 349 to 358 of the Indian Panel Code, 1860, which deal with abuse and illicit force, are among these sections.

The reason of arrest is defined in Section 50 of the Code of Criminal Procedure, 1860. These reasons for detention must be in accordance with Article 22 of the Indian Constitution. As a result, non-compliance with the Section will result in an accused's unlawful arrest and imprisonment.

The Police Officer is required under Section 161 of the Code of Criminal Procedure, 1973, to record the testimony along with all the facts and circumstances of the case. This statement must be separated from the data that initiates the investigation. Section 161 (2) states that an individual accused cannot be forced to answer questions that might lead to a criminal accusation being brought against him. The CS is also provided for under Section 164 of the Code of Criminal Procedure, 1973. In this case, it is noted that a Magistrate should ensure that all of the conditions under Section 164 are met.

Under Section 56 of the Code of Criminal Procedure, 1973, and Article 22 of the Constitution require that an individual be presented before a Magistrate within 24 hours after being arrested. However, if a person is not brought before a magistrate and is instead held in police custody, he is subjected to violence and coercion to admit, which results to the revelation of crucial facts. A Magistrate must assure and investigate the time and date of the accused's arrest when he is produced before the Court in order to prevent extrajudicial practise and cruelty.

2) Indian Evidence Act, 1872

The Indian Evidence Act of 1872 also provides protection to the accused. A confession given to the police is not admissible in court, according to Section 25 of the Indian Evidence Act of 1872.

²⁴ Rukmani Seth, 'Custodial Torture and its Remedies' (*Legal Services India*) <<http://www.legalservicesindia.com/article/297/Custodial-Torture.html>> accessed 15 November 2023.

²⁵ See Supra 2.

In addition, Section 26 of the Indian Evidence Act, 1872 states that a confession reported to police cannot be used against a suspect unless it is done in front of a Magistrate.

In addition, Section 164 of the Indian Evidence Act, 1872 mandates that a Magistrate note the accused's CS given to him during an inquiry or at any phase of the case. As a result, the Indian Evidence Act of 1872 protects the accused from being tortured needlessly by the cops in the jail.

3) *Indian Police Act, 1861*

Police officers who are careless or incompetent to fulfil their responsibilities are subject to termination, punishment, or suspension under Sections 7 and 29 of the Police Act of 1861. This is evident in the police officer's violations of many constitutional and legislative safeguards, as well as the directives provided.

C. *Conclusion*

The thought of a human being held in captivity for the sole reason protection and development is abhorrent to human life. The term "custody" connotes parenthood and the provision of protective services. It does not convey any dark signs of brutality during captivity, even when used to denote detention or imprisonment. When it comes to an allegation of custodial torture, the court should not take it lightly just because it was brought by a frequent criminal²⁶. It is a recurring statesmanship issue²⁷. As a result, it is critical to develop a framework of state administration that allows the police to efficiently maintain order and stability while also preventing and detecting criminal activity without affecting laypeople's legal standing, benefits, and entitlements. Such a system clearly needs an effective police supervision in order to prevent officers from acting arbitrarily with their authority. An efficient ICR process to justify "police abuses" is also urgently required²⁸.

V. CONCLUSION AND SUGGESTIONS

A. *Conclusion*

A quint essential component is changing the Evidence Act and make any evidence obtained by a police cross examination that involved the use of agony, harsh, harsh, or immoral mistreatment, or other unlawful coercion. Another viable option for dealing with the occupying issue is to repeal Section 197 of the IPC, which needs government approval for the prosecution of police officers for criminal crimes such as SAD, torture, and arbitrary murders. If this looks to be a problem, it is preferable to define "formal responsibility" as the prohibition of illegal actions, such as self-assertive imprisonment, imprisonment suffering and brutality, and extrajudicial murders.

B. *Suggestions*

By the analysis of the topic, I would like to suggest that:

- 1) Instead of using torture, cops must be prepared to use new physical and mental approaches.
- 2) Current police officers should be enhanced, and they should be given extra special brownie points based on their positions.
- 3) The police should be under the control of the governor of the state so that they may function in a flawless environment free of political constraints.
- 4) End police immunity so that those who are aware are prosecuted. The delicate relationship between the state and the general population is often governed by the principle of common freedoms. The Supreme Court's proposal in 2006 for the establishment of a police protests authority will provide every resident the option to file a grievance against police personnel for any display of offence. With the exception of a few states, this request has been collecting dust in pantries.
- 5) Fundamental changes are required, such as reconstructing primary police training programmes, focusing on civil liberties, destroying the established mentality of separation that leads to disdain for wrongdoings inside jails, and establishing a regular cycle of investigation to ensure that law and public safety are maintained.

²⁶ D.J. Vaghela v. Kantibai 1985 CrLJ 974 (Guj).

²⁷ Nandini Satpathy v. P.L. Dani, (1978) 2 SCC 424.

²⁸ S.C Sarkar, Sarkar's Commentary on Code of Criminal Procedure, (1st Edition, Dwivedi Law Agency, 2005) p. 506

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LIST OF ABBREVIATIONS

Abbreviations	Full Forms
CJS	Criminal Justice System
COVID	Coronavirus Disease
CS	Confessional Statement
IART	India Annual Report on Torture
ICR	Institutional Complaint Resolution
IPC	Illegal Procedure Code
LC	Law Commission
NHRC	National Human Rights Commission
PDR	Preventive Detention Regulations
RSICC	Rome Statute of the International Criminal Court
SAD	Self-Assertive Detention
TDT	Third-Degree Tactics

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