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# HUMAN RIGHTS OF PRISONERS IN INDIA: A STUDY OF CUSTODIAL VIOLENCE

AUTHORED BY - PRAGATI SINGH

## Abstract

Custodial violence remains a widespread issue across the globe, affecting individuals irrespective of their gender, age, or health status. In developing nations like India, this issue has become particularly critical and disturbing. Incidents of severe abuse inflicted by law enforcement agencies on undertrials, suspects, and convicts are steadily rising. Although custodial violence does not target any one group specifically, it disproportionately affects the economically marginalized and socially disadvantaged communities, who make up a significant portion of the victims.

Despite the existence of international norms prohibiting torture and various constitutional and legal protections in India, these measures have proven largely ineffective in curbing the occurrence of custodial abuse, including deaths in custody. Such violence is not restricted to police custody alone but is also prevalent within judicial custody, where mistreatment and physical assault by officials have become alarmingly routine, often leading to fatalities.

This research paper aims to explore the human rights violations faced by prisoners, with a focus on constitutional provisions, procedural safeguards, and legal remedies available to those subjected to custodial violence. Additionally, the study will examine the critical role played by the media in raising public awareness and highlighting cases of custodial abuse in contemporary India.

**Keywords:** Human Rights, Custodial Violence, Death by custodial violence, Police Torture, Legislative Framework.

## CHAPTER I: INTRODUCTION

### 1.1 Introduction

*“Torture is a wound in the soul so painful that some-times you can almost touch it but is 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, paralyzing 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 simple terms, torture or violence refers to acts of cruelty, abuse, or harm that intentionally cause severe physical or mental suffering. These acts are often used to punish, extract information, or force a confession from an individual. According to general definitions, 'violence' involves harmful behavior that results in physical damage, often involving significant force or aggression. Torture, on the other hand, specifically refers to the deliberate infliction of extreme pain—either physical or psychological—for the purposes of punishment, coercion, or sometimes to satisfy a sadistic impulse. When such acts exceed a victim’s threshold of endurance, they may result in death.

Despite its seriousness, the term 'torture' has not been formally defined in the Indian Constitution or in any substantive criminal law. Torture by one individual upon another is fundamentally a means of asserting control, whereby the powerful impose suffering on the vulnerable.

Similarly, the word ‘custody’ is not explicitly defined in either procedural or substantive law in India. However, in common usage, custody refers to a form of protective care. Dictionaries define it as the legal responsibility for the care of a person, or the condition of being detained, particularly by law enforcement authorities. Custody involves the control and oversight of a person or object for purposes such as supervision, preservation, or security. When a judge places an individual in custody, it implies that the correctional authority assumes responsibility for the individual’s welfare and must ensure their well-being. Even though the term custody can refer to arrest or imprisonment, it inherently carries no implication of harm or mistreatment.

Custodial violence refers to any form of physical or psychological abuse inflicted on an individual while in custody—whether lawful or unlawful—and is strictly prohibited under the law. Such violence can range from verbal abuse and psychological intimidation to severe beatings, sexual assault, and even custodial deaths. This form of abuse can occur in various

types of custody, including police and judicial custody, as well as within institutions responsible for care, such as hospitals or shelter homes. In certain instances, such acts may also be committed by non-state actors like terrorist or insurgent groups. Ultimately, custodial violence signifies any form of torture inflicted upon a person while they are under the care or control of an authority.

Custodial violence is a grave violation of an individual's inherent dignity. It not only dehumanizes the victim but also subjects them to extreme humiliation, reducing them to a condition where their basic humanity is stripped away. Such acts of torture often leave deep psychological scars that are difficult to recover from, along with causing serious physical harm. Survivors frequently live in a constant state of fear and trauma, haunted by the brutal experiences they endured at the hands of law enforcement officials.<sup>1</sup>

These incidents of abuse raise profound concerns within society, especially in relation to human rights and the treatment of individuals in state custody. The Indian Constitution, through Articles 20, 21, and 22, provides essential safeguards for individuals who are detained or imprisoned. Over the years, the Supreme Court of India has affirmed that several rights are intrinsic to Article 21, such as protection from the use of handcuffs, the entitlement to a fair and timely trial, and the right to free legal aid. These constitutional protections are meant to uphold the dignity and legal rights of individuals, even when they are under custody.

### **1.2 Research Objectives**

This paper aims to examine the nature and scope of custodial crimes occurring within police custody, along with their consequences. It will explore how such crimes lead to violations of the human rights of detainees and highlight the legal protections available to victims under various legislative frameworks. The study also seeks to emphasize the importance of raising public awareness about the rights of individuals in custody. Furthermore, the paper will analyze the role of the media in identifying and reporting incidents of custodial violence at an early stage. In conclusion, the researcher will propose effective measures and strategies to prevent and control custodial crimes in police custody.

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<sup>1</sup> Supriya M. Swami, Custodial Violence: A Growing Abuse of Human Rights in India, JETIR. 2020 February;7(2) www.jetir.org (ISSN-2349-5162).

### **1.3 Research Methodology**

In this paper, the researcher intends to undertake a doctrinal as well as empirical study of existing literature and reviews on custodial violence in India, with the aim of compiling and analyzing the data to estimate the overall prevalence of such crimes across the country.

### **1.4 Research Questions**

- I. What are the major causes of custodial violence in police and judicial custody in India?
- II. What are the legal, constitutional, and international frameworks governing the protection of prisoners' human rights in India, and how effectively are they implemented to prevent custodial violence?
- III. What are the legal, constitutional, and international frameworks governing the protection of prisoners' human rights in India, and how effectively are they implemented to prevent custodial violence?

### **1.5 Scope of Limitation of Study**

This research focuses on examining custodial violence in India, particularly the human rights violations faced by prisoners in police and judicial custody. It covers the analysis of constitutional protections, legal frameworks, judicial interventions, and the role of statutory bodies and media in preventing and addressing custodial violence. The study also explores the socio-political causes and implications of such violence, emphasizing marginalized communities most affected. The geographical scope is limited to India, drawing on recent data, case laws, and reports. That the study relies mainly on secondary data from reports, judicial decisions, and academic articles due to limited access to primary data from custodial institutions. As well as the official statistics on custodial violence may be underreported or inconsistent. At last, draw the Variations in custodial practices across different states may limit generalization.

### **1.6 Research Hypothesis**

- I. Existing constitutional and legal provisions in India are inadequate in effectively preventing custodial violence against prisoners.
- II. Custodial violence disproportionately affects marginalized social groups due to systemic discrimination and lack of accountability.

- III. Judicial interventions, statutory bodies, and media exposure have a significant but insufficient impact on curbing custodial violence and ensuring justice for victims.

## **1.7 Literature Review**

### **I. ARTICLES**

Aparna Chandra et al. (2020), "*Fair Trial Guarantees and the Role of the Police in India*" (*Indian Law Review*),

This article critically examines how police practices in India frequently undermine the right to a fair trial. The authors highlight that coercive tactics such as illegal detention, physical torture, forced confessions, and denial of legal counsel—are common during investigation and custody. These actions not only violate the fundamental rights of the accused but also compromise the integrity of the judicial process. The article argues that custodial torture is not just a violation of human rights but also a serious flaw in the legal process, weakening the fairness and credibility of the criminal justice system.

**Aditi Singh (2023), "Custodial Violence," published in the Legal Lock Journal,**

This article explores the historical roots and persistence of custodial abuse in India. She discusses how such practices have become deeply institutionalized and difficult to eliminate. The article presents a comparative view of the human rights framework at both international and national levels, critically reviewing India's legal provisions addressing custodial violence. It also reflects on significant judicial rulings, highlighting how courts have responded to such violations over time and contributed to the development of legal safeguards. However, the study falls short in offering a detailed classification or analysis of the different forms and expressions of custodial torture, which remains an area requiring further research.

**Chetanya Sharma and Vikas Sharma (2021), "Genesis of Custodial Violence in India: A Critical Analysis" published in Volume III, Issue II of the Indian Journal of Law and Legal Research.**

In their research article they conduct a detailed review of custodial violence using crime statistics from 2010 to 2020. The authors offer an in-depth examination of torture, breaking it down into various forms—physical, mental, and psychological. They further analyze legal frameworks and statutory provisions introduced to combat such abuses

within the Indian legal system. While the article effectively outlines the types and legal treatment of custodial torture, it lacks an exploration of the root causes that allow such practices to persist in the Indian law enforcement system.

## II. BOOKS

### **Upendra Baxi – ‘*The Crisis of the Indian Legal System (1982)*’**

Baxi provides a foundational critique of how legal institutions in India often fail to protect the most vulnerable. He links custodial violence to systemic injustices and the erosion of constitutional morality. Baxi's work underscores how procedural safeguards are routinely bypassed in practice, particularly when victims belong to marginalized communities.

### **K.S. Subramanian – ‘*Political Violence and the Police in India (2013)*’**

Subramanian, a former IPS officer, provides an insider's view of police institutions and their complicity in custodial abuse. He argues that the Indian police operate with colonial-era powers and without accountability, making torture a routine method of investigation.

### **Jinee Lokaneeta – ‘*The Truth Machines: Policing, Violence, and Scientific Interrogations in India (2020)*’**

Lokaneeta examines the intersections between science, law, and torture. She challenges the popular notion that scientific interrogation methods are humane alternatives, revealing how they often work alongside physical and psychological coercion rather than replacing it.

### **David Arnold – ‘*Police Power and Colonial Rule, Madras, (1859–1947 & 1986)*’**

Arnold's historical work shows how colonial policing practices—designed to suppress dissent rather than serve justice—continue to shape post-independence policing culture in India. His analysis helps explain the institutional normalization of torture and coercion.

## III. REPORTS

### **Asian Centre for Human Rights – Torture Update: India 2022**

This report documents over 1,800 custodial deaths from 2017–2021, pointing out that

a vast majority of cases end without investigation or accountability. It criticizes the government's failure to ratify the UN Convention Against Torture despite signing it in 1997.

#### **Amnesty International – Justice Denied: Custodial Torture in India (2020)**

The report details specific case studies and emphasizes how systemic weaknesses—such as the absence of independent investigation bodies and delays in judicial proceedings—perpetuate impunity.

#### **National Human Rights Commission (NHRC) Annual Reports (2017–2022)**

The NHRC provides annual statistics on custodial deaths and recommends policy changes. However, its reports also reflect the limited power the commission has in enforcing its recommendations, particularly when cases involve the police.

#### **Law Commission of India – 273rd Report: Implementation of the UNCAT (2017)**

This report strongly recommends enacting a standalone anti-torture law and ratifying the Convention Against Torture. It identifies legislative gaps and provides a model draft law, which has yet to be enacted.

#### **Commonwealth Human Rights Initiative (CHRI) – Status of CCTV in Police Stations in India (2021)**

This report evaluates compliance with Supreme Court orders mandating CCTV installation in all police stations. It reveals significant implementation gaps and the lack of real-time monitoring mechanisms, undermining the preventive role of technology.

### **1.8 Significance of Study**

Firstly, it contributes to the growing body of academic literature on human rights and prison reforms by critically analyzing the existing legal safeguards and their shortcomings. It highlights the gap between constitutional protections and ground-level realities faced by undertrials and convicts.

Secondly, this research is significant from a policy and governance perspective. By identifying systemic failures and institutional loopholes, it can inform policymakers, legal practitioners, and human rights bodies about necessary reforms in law enforcement, judicial accountability,

and prison administration.

Ultimately, this research aspires to serve as a foundation for constructive recommendations that can help in the eradication of custodial violence and the strengthening of prisoners' rights in India.

### **1.9 Chapterization Scheme**

- I. Chapter I Introduction:** This chapter introduces the research topic, its relevance, and the rationale behind selecting it. It includes the research problem, objectives, research questions, hypotheses, scope, limitations, significance of the study, and methodology adopted (doctrinal or empirical) and lastly the literature review by the significant sources. It sets the foundation for the subsequent chapters.
- II. Chapter II Conceptual and Legal Frameworks:** This chapter deals with the conceptual understanding of key terms like “custodial violence,” “human rights,” and “prisoners.” It provides a comprehensive overview of the constitutional provisions (Articles 20, 21, and 22), legal safeguards under the Bharatiya Nyaya Sanhita (BNS) 2023, the Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, and the Bharatiya Sakshya Adhinyam, 2023, and relevant international conventions such as the UN Convention Against Torture. It also examines how the Indian legal framework aligns or deviates from global human rights standards.
- III. Chapter III Judicial Responses with violation of human rights during custody in police and Landmark Judgements:** This chapter analyzes important Supreme Court and High Court decisions that have shaped the jurisprudence on custodial violence in India. Cases like *D.K. Basu v. State of West Bengal*, *Nilabati Behera v. State of Orissa*, and *Sheela Barse v. State of Maharashtra* are discussed in detail to show how judicial activism has influenced reform. It also evaluates the effectiveness and limitations of such judicial interventions.
- IV. Chapter IV Causes, Trends and Impact of Custodial Violence:** This chapter investigates the socio-political and institutional causes of custodial violence, including police brutality, lack of training, systemic discrimination (caste, class, minority status), and weak oversight mechanisms. It presents statistical data, official reports (e.g., NHRC

reports), and real-life cases to highlight trends. The chapter also examines the physical, psychological, and societal impact of such violence on victims and their families.

- V. **Chapter V Suggestions and Conclusion:** This final chapter presents the key findings of the study based on the research questions and hypotheses. It offers practical and legal recommendations for curbing custodial violence, strengthening prisoners' rights, and ensuring effective accountability. The chapter concludes with a summary of the study's contributions and its relevance to future research and policy development.

## **CHAPTER II: CONCEPTUAL AND LEGAL FRAMEWORKS**

### **2.1 Concept of Custodial Violence**

Custodial violence refers to any form of physical or psychological abuse inflicted on individuals while in police custody. Such acts are not only violations of human rights but also represent a severe affront to human dignity and justice. Despite multiple interventions — including recommendations by the Law Commission of India, advisories from the National Human Rights Commission (NHRC), and the judicial safeguards laid out in the D.K. Basu guidelines — incidents of custodial violence continue to surge.

In 2019 alone, statistics revealed a disturbing trend: approximately five custodial deaths were reported every day, raising serious concerns about the state of justice and accountability. In response to this grim reality, the Prevention of Torture Bill was introduced twice in the Indian Parliament with the aim of aligning domestic law with the United Nations Convention Against Torture (UNCAT). However, despite considerable debate, both attempts to pass the legislation failed due to governmental apathy, and the bills eventually lapsed.<sup>2</sup>

Ironically, in a 2017 address to the United Nations Human Rights Council, India's Attorney General invoked the teachings of Mahatma Gandhi and Gautama Buddha, asserting that "*India believes in peace, non-violence, and upholding human dignity. As such, the concept of torture is completely alien to our culture, and it has no place in the governance of the nation*".<sup>3</sup> Such a statement, however, appears deeply contradictory when juxtaposed with the persistent and

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<sup>2</sup>Jasir Aftab & Nausheen Khan, Custodial Torture And Deaths: The Dark Side Of Indian Police, Livelaw (Jan. 07, 2022, 19:45 PM), Custodial Torture And Deaths: The Dark Side Of Indian Police (livelaw.in).

<sup>3</sup> Mr. Mukul Rohatgi, Former Attorney General of India at United Nation Human Right Council, Reviewed by Universal Periodic Review (May 04, 2017, 14.30 – 18.00) OHCHR | India's human rights record to be reviewed by Universal Pe riodic Review.

rising incidents of custodial abuse in the country.

## **2.2 Historical Perspective of Custodial Violence in India**

The phenomenon of torture, abuse, and even death within police custody and prisons is not a modern issue. These inhumane practices have existed throughout history, deeply rooted in various political and social systems.

### **Ancient India**

As early as the **Mauryan period**, instances of state-sponsored cruelty were prevalent. Historical accounts mention that rulers like *Nand Mahapadma* subjected detainees to severe deprivation—providing food sufficient for just one person's survival, regardless of the number of prisoners. “*He speaks of the four forms of punishment- Vak Danda (admonition), Dhik Danda (censure), Dhanadanda (pecuniary punishment including fine), and Bandhadanda (all sorts of physical punishment including the death penalty)*”.<sup>4</sup> The *Arthashastra*, attributed to Kautilya (Chanakya), lays out a chilling list of punishments used during that time. These included burning of limbs, death by wild animals, trampling by elephants and oxen, and physical mutilation all forms of torture used as state-sanctioned punishment.

### **Medieval India**

During the **Islamic or Mohammedan rule**, harsh punishments continued under the framework of **Shariat (Islamic law)**. The criminal justice system during this period was marked by extreme penalties such as the amputation of hands for theft and life imprisonment. These severe punishments reflected the prevailing legal and religious doctrines, elements of which continue to influence legal systems in several modern Islamic nations.

### **British Colonial Era**

Under **British colonial rule**, custodial violence became institutionalized. The British used detention and torture as tools to suppress dissent and extract false confessions. The **Police Act of 1861** formalized a police force primarily tasked with maintaining colonial order rather than protecting Indian citizens. This police structure prioritized control over justice and carried a legacy of brutality and indifference toward human rights.

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<sup>4</sup> Graves Champney Haughton & Standish Grove Grady, *Institutes of Hindu Law, or, The Ordinances of Menu*, according to the Gloss of Cullúca: Comprising the Indian System of Duties, Religious and Civil London: Wm. H. Allen, 164 (1869).

Additionally, the **Prisons Act of 1894**, which governs Indian prison systems to this day with minimal reforms, provided broad powers to prison authorities. *“The report of the Police Commission in 1905, appointed by Lord Curzon, reveals that innocent persons were bullied and threatened or compelled to give their information.”*<sup>5</sup> Inmates could be punished harshly for even minor violations of prison regulations, reinforcing a system of unchecked authority and abuse.

### **Post Independent Era**

Following India’s independence, both the Union and various state governments established multiple **Police Commissions** to evaluate the performance and functioning of state police forces, particularly during the decades of the 1950s, 1960s, 1970s, and 1980s. These inquiries consistently uncovered troubling patterns, including the widespread use of torture in police custody. Such practices were often influenced by political agendas, systemic corruption, inadequate infrastructure, and the lack of modern scientific tools and proper training within police departments. One of the most significant inquiries was conducted by the **Shah Commission (1978)**. It examined the **abuse of power and police misconduct during the Emergency period (1975–1977)**.<sup>6</sup> The commission highlighted instances of rampant police brutality and raised serious concerns over how law enforcement agencies operated without accountability. The Shah Commission's findings exposed how, during the Emergency, the police frequently acted as instruments of political repression, violating citizens' rights with impunity.

## **2.3 Classification of Custodial violence**

### **I. Torture in Police Custody**

Torture in police custody is commonly used as an unlawful method to extract information, confessions, or leads in criminal investigations. This practice reflects serious administrative lapses and a failure to uphold the legal rights of detainees. The **first 24 hours after arrest** are considered the most dangerous period, as suspects are most vulnerable to coercion and abuse during this time. Police custody refers to the period when an individual is arrested and kept within a police station lock-up before being produced before a magistrate, typically within 24 hours of arrest, as per legal

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<sup>5</sup> East India Police, Report of The Indian Police Commission and Resolution of the Government of India 16 Printed for His Majesty’s Stationary Office, London (1905)

<sup>6</sup> Kumar Narender. Constitutional Law of India, Allahabad Law Agency; c2010.

mandates. Although the presence of a lawyer during interrogation is a legal safeguard to prevent coercion and ensure the detainee's rights are respected, in practice, access to legal counsel is often delayed or denied. Moreover, there is a glaring lack of accountability and transparency — custodial entries are often not recorded promptly, and medical examinations may be manipulated or skipped. This form of custody is especially risky in non-bailable offences where suspects are more likely to be held longer and subjected to more intense pressure from the police.

**Example: Case: 7th April, 2010 – Velji Parmar (Gujarat)**

Velji Parmar, a theft suspect, died in Tajada Police Station, Bhavnagar District, Gujarat. While the police claimed that Parmar experienced chest pain and died at a hospital, his wife, Mrs. Manjula, alleged that he died due to custodial torture. A subsequent post-mortem report revealed approximately 37 injury marks on his body, pointing clearly to severe physical abuse.

**II. Torture in Judicial Custody**

Judicial custody differs significantly from police custody in both purpose and procedure. In this form of detention, an individual is held under the authority of a magistrate or court. A person may be placed in judicial custody under various circumstances—such as denial of bail, contempt of court, or following conviction and sentencing.

During judicial custody, **interrogation is not permitted** unless explicitly allowed by the court. This custody is generally perceived to be safer; however, in reality, **custodial violence within prisons remains a serious concern**.

Reports and studies, including those by the **National Crime Records Bureau (NCRB)** under the Ministry of Home Affairs, have documented numerous instances of **torture and abuse in Indian prisons**. Many prisons operate under informal power structures, where select inmates—often with tacit approval from jail authorities—exercise control and mistreat others.

**Example: Case: 12th January, 2010 – Krishna Kumar (Haryana)**

Mr. Krishna Kumar, an undertrial prisoner in Bhondsai Jail, Gurgaon, Haryana, died under suspicious circumstances. While jail authorities attributed his death to medical complications, investigations later revealed injury marks on his body, suggesting he

was subjected to custodial torture during his time in judicial custody.

## **2.4 Legislative Frameworks**

### **I. Bharatiya Nyaya Sanhita (BNS), 2023**

The BNS, 2023, retains many provisions from the Indian Penal Code that criminalize torture and abuse of authority by police officers, but does not introduce a specific or standalone offense of custodial torture or custodial death. It continues to treat such acts under the general offenses of voluntarily causing hurt or grievous hurt.

- Section 113 (*Voluntarily causing hurt to extort confession or information*): This provision punishes any person who voluntarily causes hurt to extort a confession or any information related to an offense. It is primarily used against police officers who beat or torture accused persons in custody to obtain a confession. This section mirrors the earlier Section 330 of the IPC and carries a punishment of up to 7 years of imprisonment and a fine.
- Section 114 (*Voluntarily causing grievous hurt to extort confession or information*): This section addresses situations where a person is subjected to grievous hurt for the purpose of extorting a confession or information. It is the counterpart of the old Section 331 IPC and carries a punishment of up to 10 years imprisonment along with a fine.
- Section 116 (*Public servant voluntarily causing hurt or grievous hurt*): This provision penalizes a public servant who voluntarily causes hurt or grievous hurt to any person while acting or purporting to act in the discharge of his official duties. It targets acts of violence committed under the guise of official authority, especially by law enforcement.

Despite these provisions, there is no specific definition of "custodial violence" or "custodial death", nor is there any aggravated punishment for police officers or jail authorities when such acts occur within the walls of custody or prison.

### **II. Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023**

The BNSS, 2023, governs the procedures for investigation, arrest, trial, and bail. It maintains several safeguards aimed at protecting the rights of persons in custody, yet falls short of instituting any special procedures for the prevention or redress of custodial torture.

- Section 47 (*Rights of Arrested Person*): This section outlines the rights of arrested persons, including the right to be informed of the grounds of arrest, the right to contact a relative or friend, and the right to legal counsel. These provisions are grounded in Article 22 of the Constitution and reflect principles established in *D.K. Basu v. State of West Bengal*.
- Section 51(3) (*Medical Examination of Accused*): It mandates that a person in police custody must be subjected to a medical examination by a government doctor every 48 hours. This provision acts as a preventive safeguard against custodial torture and is meant to document any signs of physical abuse while in custody.
- Section 182 (*Recording of Confession by Magistrate*): This section governs the recording of confessions before a magistrate and emphasizes that confessions made to police officers are not admissible unless made voluntarily in the presence of a magistrate. This is a key procedural check against coerced confessions.
- Section 187 (*Use of Handcuffs*): This provision restricts the use of handcuffs to certain conditions, preventing their routine and excessive use on persons in custody. The use of handcuffs must be justified and must conform to human dignity standards.

### III. **Bharatiya Sakshya Adhinyam (BSA), 2023**

The BSA, 2023, deals with admissibility and evaluation of evidence during trials. It continues the legal tradition of protecting accused persons from self-incrimination and coerced confessions.

- Section 23 (*Confession to police officers inadmissible*): This section provides that any confession made to a police officer is inadmissible in evidence, unless it is made in the immediate presence of a magistrate. This is a critical safeguard to ensure that police do not extract confessions through threats, torture, or coercion.
- Section 24 (*Confessions made under threat or coercion*) : This provision ensures that any confession made under threat, inducement, or coercion is inadmissible in court. It aims to protect the integrity of the judicial process and the rights of the accused.

#### IV. Constitution of India, 1950

The Indian Constitution places the protection of prisoners' rights at the very heart of its guarantee of fundamental freedoms, most notably through Article 21, which enshrines the right to life and personal liberty. In the landmark decision of *Paramanand v. Union of India* (1989), the Supreme Court held that Article 21 not only bars arbitrary arrest and detention but also forbids any "cruel, inhuman or degrading treatment," thereby extending its shield to all persons deprived of their liberty, including those behind bars. Complementing this, Article 14's promise of equality before the law ensures that no inmate may be subjected to discriminatory treatment on grounds of caste, religion, gender or any other status, while Article 22 confers procedural safeguards—requiring that every arrested person be informed of the charges against them, granted prompt access to counsel, and produced before a magistrate within twenty-four hours. Here are few sections under which prisoners can seek protection:

- Right to Equality (Article 14)
- Right to Life and Personal Liberty (Article 21)
- Right against Torture and Cruel, Inhuman, or Degrading Treatment (Article 21)
- Right to Legal Aid and Fair Trial (Article 22)
- Directive Principles of State Policy (Article 39A)
- Prohibition of Forced Labor (Article 23)
- Prohibition of Traffic in Human Beings and Forced Labor (Article 24)

#### V. International Conventions

Custodial violence whether through physical torture, mental abuse, or inhuman detention conditions violates the fundamental human rights recognized globally. Numerous international conventions and treaties, particularly under the United Nations framework, address the prevention, prohibition, and accountability of custodial violence. Below is a detailed discussion of the key international instruments relevant to this issue:

- **United Nations Convention Against Torture (CAT), 1984**

Article 1(1) of the **Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)** defines *torture* as the intentional infliction of severe physical or mental suffering on a person. This may be done to extract information or a confession, punish for an act allegedly

committed by the person or a third party, intimidate or coerce them, or discriminate on any grounds. Such acts are considered torture when carried out directly by, or with the consent or involvement of, public officials or individuals acting in an official capacity.

- **Universal Declaration of Human Rights (UDHR), 1948**

Article 5 of the **UDHR** asserts that no individual shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment. The global commitment to this principle was further emphasized during the **Fifth United Nations Congress in 1975**, which led to the adoption of the **Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**. This declaration, comprising 12 articles, reinforced international efforts to combat torture. Subsequently, in 1997, the UN General Assembly recognized **June 26** as the **International Day in Support of Victims of Torture**, to honor and support survivors of such abuse.<sup>7</sup>

- **International Covenant on Civil and Political Rights (ICCPR), 1966**

Article 7 of the **ICCPR** strictly prohibits torture and all forms of cruel, inhuman, or degrading treatment or punishment. It specifically bars involuntary participation in medical or scientific experimentation. Notably, this right is absolute and **non-derogable**, meaning it cannot be suspended or restricted even during public emergencies. The article reflects a global consensus to uphold the dignity and physical integrity of all individuals, irrespective of circumstances.<sup>8</sup>

- **European Convention on Human Rights (ECHR), 1950**

Under Article 3 of the **European Convention for the Protection of Human Rights and Fundamental Freedoms**, commonly referred to as the **ECHR**, torture and inhuman or degrading treatment or punishment are explicitly prohibited. This right is also **non-derogable** under Article 15(2), meaning that no state, even during times of war or emergency, may legally suspend or limit this protection. The Convention underscores Europe's strong legal stance against all forms of custodial abuse.<sup>9</sup>

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<sup>7</sup> Torture and India, 7 SUPREME COURT CASES JOURNAL 11-12 (1999).

<sup>8</sup> Divya Vikram, India's Response against Acts of Torture, available at <http://www.indialawyers.wordpress.com> (last visited 28/10/2012).

<sup>9</sup> Human Rights Education Associates, Torture, Inhuman or Degrading Treatment, available at [www.hrea.org](http://www.hrea.org) (last visited 27/10/2012)

## CHAPTER III: JUDICIAL RESPONSES WITH VIOLATION OF HUMAN RIGHTS DURING CUSTODY IN POLICE AND LANDMARK JUDGEMENTS

### 3.1 Judicial Pronouncements

The Indian judiciary has consistently played a pivotal role in addressing the grave issue of human rights violations in police custody, emphasizing the protection of individual dignity and constitutional rights. Through several landmark judgments, the courts have underscored that custodial violence is a direct violation of Article 21 of the Constitution, which guarantees the right to life and personal liberty. There are few landmark judgments on the instances of Custodial violence:

- I. Joginder Kumar v. State of U.P. and Others 1994:** In this case the Court ruled that arrest must not be routine and that the police must justify the necessity of arrest.<sup>10</sup>
- II. J Prabhavathamma V. The State of Kerala & Others:** The CBI Court, awarded the death sentence to the two police officers. The judge J Nazar had said: "this is a brutal and dishonorable murder by accused persons. The acts of accused persons would definitely adversely affect the police department. If the faith of the people is lost, that will affect the public order and law and order, and it is a dangerous situation."<sup>11</sup>
- III. In Khatri v. State of Bihar,** often referred to as the Bhagalpur Blinding Case, prisoners were forcefully blinded by having acid poured into their eyes. The Indian Supreme Court declined to provide compensation to victims of crime since the police personnel' involvement was still being looked into. However, the court mandated that the state pay for the seven convicts' medical care who are blind.<sup>12</sup>
- IV. In the case of Rudul Sah v. State of Bihar,** compensation was granted by the Supreme Court and the High Courts under Article 21 for situations including rape, various types of torture, fatalities while under custody, disappearances, fictitious encounters, and incarceration by the armed forces. The court determined the compensation after accounting for the depreciation of Indian

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<sup>10</sup> Bihar, 1994 Supp (3) SCC 100; Kewal Pati v. State of U. P., 1995 Cri LJ 2920; Inder Singh v. State of Punjab, 1995 Cri LJ 3235.

<sup>11</sup> 1996 (2) CTC 478.

<sup>12</sup> AIR 1981 SC 928.

currency, realizing that all citizens, wealthy or not, are equal and entitled to compensate as a public law remedy in questions of personal liberty.<sup>13</sup>

- V. Another case in which the Court held the following was **Gauri Shanker Sharma etc. v. State of U.P.** " it is generally difficult in cases of deaths in police custody to secure evidence against the police officers who used third-degree tactics because they are in charge of police station records, which they can easily tamper with as they did in this instance. The fact that the offence was committed by someone whose job it is to protect the public—rather than abusing his uniform and power to ruthlessly assault people while they are in his care— makes it even more serious. Death in police custody needs to be taken seriously, or else we'll be taking a step closer to police raj. It needs to be heavily curbed. The penalty ought to be such that it would discourage others from engaging in similar activities. There isn't going to be space for indulgence."<sup>14</sup>
- VI. In the historic judgment in **D.K. Basu v/s. State of West Bengal 1997**, the Hon`ble Supreme Court initiated the development of 'Custodial Jurisprudence' including torture to arrestee, infringement of fundamental rights, citizens entitled to receive compensation from State, quantum of compensation would depend on peculiar fact of each case.<sup>15</sup>

## **CHAPTER IV: CAUSES, TRENDS AND IMPACT OF CUSTODIAL VIOLENCE**

### **4.1 Causes of human rights violation in Custodial Violence**

The major causes of human rights violations in custody in India, including the underlying issues and systemic failures that contribute to such abuses:

#### **I. Lack of Police Accountability**

Police personnel often act with impunity due to weak accountability mechanisms. There are no strict internal or external disciplinary systems that can immediately check or

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<sup>13</sup> AIR 1983 SC 1086; Rajasthan Kisan Sangthan v. State; P.Rathinam v. State of Gujrat, (1994) SCC 1163; Arvinder Singh Bagga v. State of U.P., (1994)6 SCC 565; Death of Sawinder Singh Grower In re, 1995 Supp(4) SCC 450; State of M.P. v. Shyamsunder Trivedi, (1995)4 SCC 262; People's Union for Civil Liberties v. Union of India, (1997)3 SCC 433; Kaushalya v. State of Punjab, (1999)6 SCC 754; Ajab Singh v. State of Uttar Pradesh, (2000)3 SCC 521; Inder Singh v. State of Punjab, (1995)3 SCC 702; Union of India v. Luthukla, (1999)9 SCC 273; State of Punjab v. Vinod Kumar, (2000)9 SCC 742; Postsangbam Ningol Thokchom v. General Officer Commanding, (1997)7 SCC 725; Tasleema v. State (National Capital Territory [NCT] of Delhi), (2009) 161 DLT 660.

<sup>14</sup> AIR 1990 SC 709.

<sup>15</sup> AIR 1997 SC 610.

punish officers responsible for custodial violence. The absence of independent oversight bodies—like Police Complaints Authorities or adequately functioning Human Rights Commissions—allows misconduct to go unpunished.

## II. Colonial Legacy of Policing

India's police structure was inherited from the British colonial regime, designed primarily for control rather than service. The **Police Act of 1861**, which still forms the backbone of police administration in many states, emphasizes authority and suppression rather than rights-based policing.

## III. Absence of Proper Training and Sensitization

Many police officers are not adequately trained in human rights, ethical investigation methods, or in the humane treatment of detainees. Interrogation often becomes a method of punishment rather than a means to gather information. The lack of sensitization towards vulnerable groups (women, Dalits, minorities) exacerbates discriminatory practices in custody.

## IV. Overburdened and Understaffed Police Force

Most police stations in India are severely understaffed, and officers are overworked, poorly paid, and under constant pressure to deliver results quickly. This leads to shortcuts, including coercive interrogation methods, to close cases or satisfy public and political pressure.

## V. Judicial Delays and Inaccessibility

The delay in trials leads to prolonged detention of undertrials, who often suffer abuse in jails or police lock-ups. Furthermore, **limited access to legal aid**, especially for the poor, results in a lack of oversight over the treatment of accused persons.

## VI. Societal Acceptance of Third-Degree Methods

A significant portion of the population, and even some judiciary members, unofficially accept **torture as a legitimate means of investigation**, especially in high-profile cases. This cultural acceptance allows custodial violence to be justified as "necessary."

## VII. Weak Implementation of Judicial Guidelines

Although the Supreme Court has issued detailed guidelines (e.g., *D.K. Basu case*), implementation on the ground is weak. Police stations frequently fail to maintain arrest memos, deny access to legal counsel, or ignore medical examination requirements.

## VIII. Gender and Caste-Based Discrimination

Women, Dalits, Adivasis, and Muslims are often subjected to **disproportionate levels of custodial violence**, including sexual abuse, humiliation, and discrimination. Their

vulnerable status is exploited by authorities who assume they lack the means to seek justice.

#### **4.2 Consequences of Custodial Violence while protection in Human Rights**

Custodial violence, encompassing torture, abuse, and deaths in custody, has grave and far-reaching consequences—legally, socially, psychologically, and institutionally. These consequences affect not only the direct victims but also their families, the justice system, and public trust in the rule of law.

- I. Violation of Fundamental and Human Rights:** Custodial violence constitutes a direct assault on the right to life, dignity, and protection from cruel and inhuman treatment, guaranteed under Article 21 of the Indian Constitution and several international treaties such as the UN Convention Against Torture (CAT). Such acts strip individuals of their most basic human rights while under the protection of the state.
- II. Loss of Life and Physical Harm:** The most direct and severe consequence is the loss of human life or long-term physical injuries. Victims often suffer broken bones, internal injuries, and permanent disabilities. Many are left traumatized or mentally unstable due to the severity of the torture endured in custody.
- III. Psychological Trauma:** Even if not physically harmed, victims may endure deep psychological trauma, including Post-Traumatic Stress Disorder (PTSD), anxiety, depression, and suicidal tendencies. This mental damage can persist long after release and often remains untreated, especially among marginalized communities.
- IV. Erosion of Public Trust in Law Enforcement:** When custodial violence becomes frequent or widely reported, citizens begin to lose faith in police and judicial systems. Law enforcement is seen not as a protector of rights but as a threat to liberty. This erodes the moral authority of the state and undermines the justice system's credibility.
- V. Stigmatization and Social Consequences:** Victims and their families often face social ostracism or stigma. A person subjected to custodial torture is sometimes seen as a criminal regardless of whether they were convicted or proven guilty. This can affect their chances of employment, education, or reintegration into society.

- VI. Legal and Institutional Repercussions:** Custodial violence often results in litigation, compensation claims, and disciplinary proceedings against officials. However, due to weak enforcement, lack of evidence, and institutional protection of officers, accountability is rare. Still, it clogs up the judicial system and exposes the state to criticism and financial liabilities.
- VII. International Condemnation and Diplomatic Pressure:** Countries with a high number of custodial violence cases face international scrutiny and criticism from human rights organizations like Amnesty International and the United Nations Human Rights Council. This can affect a nation's reputation globally and undermine its credibility in upholding democratic and human rights principles.
- VIII. Encouragement of a Culture of Impunity:** When officials are not held accountable, a culture of impunity grows within law enforcement. Officers may feel empowered to use excessive force without consequence, normalizing violence as a tool of investigation and control rather than an aberration.
- IX. Delay and Distortion in Criminal Justice:** Custodial violence often leads to false confessions, tampered evidence, and wrongful convictions. Instead of aiding investigations, torture undermines the process by generating unreliable testimonies and compromising the fairness of trials.

#### **4.3 Legislative Authorities where Reports on Custodial Violence Publishes**

##### **I. National Crime Records Bureau (NCRB) Reports**

The **NCRB**, operating under the **Ministry of Home Affairs**, is the principal agency for collecting and publishing crime data in India. It releases **annual reports**, such as *Crime in India*, which include specific sections on **custodial deaths and police atrocities**.

These reports provide detailed statistics on:

- The number of custodial deaths (both judicial and police custody).
- The causes of deaths (e.g., illness, suicide, injury).
- Demographic data of the victims (age, gender, etc.).
- Legal action taken, such as registration of FIRs, departmental inquiries, and arrests of police personnel.

## II. Bureau of Police Research and Development (BPR&D) Reports

The **BPR&D** is another arm of the Ministry of Home Affairs, tasked with research and development in policing. Its reports cover:

- Trends in custodial violence and how they evolve across time and regions.
- Best practices in police functioning to reduce violence.
- Case studies of abuse and successful interventions.
- Training needs and reforms for police accountability.

## III. National Human Rights Commission (NHRC) Reports

The **NHRC** is an autonomous body established under the **Protection of Human Rights Act, 1993**, and plays a pivotal role in addressing custodial violence. It:

- Investigates complaints of torture, custodial death, and abuse.
- Publishes annual reports with statistics, observations, and recommendations for administrative and legal action.
- Has the authority to compensate victims or families and monitor compliance with its directives.
- Conducts suo motu investigations when custodial deaths are reported in the media or otherwise.

## IV. Reports by Non-Governmental Organizations (NGOs)

Many **human rights NGOs**, such as **People's Union for Civil Liberties (PUCL)**, **Commonwealth Human Rights Initiative (CHRI)**, and **Amnesty International India**, publish:

- In-depth reports with interviews, testimonies, and field studies.
- Documentation of individual cases often overlooked by official records.
- Legal analyses and policy critique.
- Advocacy materials pushing for ratification of international treaties like the UN Convention Against Torture (CAT).

## V. United Nations Reports and Special Rapporteur Findings

International bodies like the **United Nations Human Rights Council (UNHRC)** and **Special Rapporteurs on Torture and Extrajudicial Killings** often conduct studies and publish:

- Country-specific reports after missions or consultations.
- Evaluations of compliance with international conventions like CAT, ICCPR, and UDHR.
- Recommendations to governments regarding law enforcement, prison conditions, and access to remedies.

## **CHAPTER V: SUGGESTIONS AND CONCLUSION**

### **5.1 Suggestions**

Custodial violence needs to be addressed through a dual approach: one that is remedial, offering redress after the incident, and another that is preventive, aimed at averting such incidents altogether. While awarding compensation to victims or their families constitutes a remedial measure, India currently lacks a dedicated statutory framework that mandates compensation specifically for victims of custodial violence or custodial deaths.

Nevertheless, constitutional remedies under Articles 32 and 226 provide a legal pathway through which the Supreme Court and High Courts can award compensation in appropriate cases. The judiciary has played a proactive role in granting such relief, recognizing the violation of fundamental rights. However, true justice lies in preventing such violations from occurring in the first place.

To that end, several preventive strategies can be adopted:

- Regular police training programs must be conducted with a strong focus on human rights awareness. These sessions should aim to transform the mindset of law enforcement personnel so that they approach investigations with a commitment to dignity and justice.
- Senior officers should rigorously monitor and supervise the conduct of their subordinates to detect and deter any form of abuse or misconduct in custody.
- The guidelines laid down by the Supreme Court in *D.K. Basu v. State of West Bengal* must be followed in every instance of arrest and detention. These guidelines serve as essential safeguards against arbitrary and abusive practices.
- The process of registering criminal complaints should be simplified and made efficient and tamper-proof. Implementing systems like e-FIR would ensure that complaints are registered promptly without bureaucratic delays.

- Introducing technological reforms, such as computerized record-keeping, video recordings of interrogations, and modern methods of documentation, would reduce the scope for tampering with official records and enhance transparency.
- There must be a clear separation between the investigative functions of the police and their responsibilities in maintaining law and order. A dedicated investigative wing, equipped with adequate authority and independence, should handle all criminal investigations.
- Finally, complaints against police personnel involving custodial abuse should be handled by independent bodies such as the CBI or Human Rights Commissions, and swift action, including prosecution where necessary, must follow to ensure accountability.

## **5.2 Conclusion**

Custodial violence and deaths are not new phenomena in India. These practices have been deeply rooted in the system for generations. Despite numerous efforts and reforms in recent years, torture and abuse within custody remain widespread, reflecting a continued violation of human dignity across the country. So normalized has custodial torture become that it is often perceived not just by law enforcement but also by the general public as an ordinary and accepted method of police interrogation.

The tragedy is that when incidents of custodial deaths come to light, they evoke only a brief public outcry, which quickly fades. At best, such incidents lead to the formation of inquiry committees, which more often than not fail to deliver substantial justice or lead to systemic reform. While it's true that the law permits the police to use reasonable force in certain situations, such authority is meant to support law enforcement duties and not to justify the misuse of power. This power must be exercised within the bounds of legality and human rights principles.

It's acknowledged that police officers often operate under immense pressure and deal with complex, high-risk situations. However, no circumstance grants them the right to inflict violence or cruelty on individuals in their custody, especially those who are defenseless and reliant on the state for protection. Disregarding the rule of law undermines the foundational values of a democratic society. In a democracy like India, sovereignty lies with the people, not the police. Law enforcement is a tool of the government, and the

government is ultimately accountable to the citizens. The primary role of the police is to protect the public from crimes—be it murder, robbery, organized criminal activity, or terrorism—and to ensure safety and order.

There are indeed situations, such as encounters with violent criminals or armed offenders, where the use of force may be necessary. However, such actions must always be proportional, justified, and transparent. Using violence indiscriminately or as a tool of coercion in custody not only violates individual rights but also erodes public trust in the justice system. The need of the hour is a police system that balances authority with accountability and uses power not to oppress, but to protect.

