

**CUSTODIAL VIOLENCE: A STUDY ON EXISTING LEGAL FRAMEWORKS, VICTIM  
COMPENSATION MECHANISM, AND USE OF TECHNOLOGY IN ITS PREVENTION**

**A Dissertation submitted to the National University of Advanced Legal Studies, Kochi in  
partial fulfilment of the requirements for the award of L.L.M Degree in Constitutional and  
Administrative Law.**



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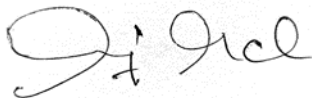
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## DECLARATION

I declare that this dissertation titled “CUSTODIAL VIOLENCE: A STUDY ON EXISTING LEGAL FRAMEWORKS, VICTIM COMPENSATION MECHANISM, AND USE OF TECHNOLOGY IN ITS PREVENTION” is researched and submitted by me to the National University of Advanced Legal Studies, Kochi in partial fulfilment of the requirement for the award of Degree of Master of Laws in Constitutional Law and Administrative Law, under the guidance and supervision of Dr. Nandita Narayan, Assistant Professor. It is an original, bona fide and legitimate work pursued for an academic interest. This work or any type thereof has not been submitted by me or anyone else for the award of another degree of either this University or any other University.



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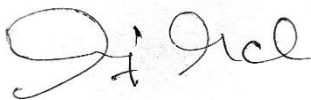
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Lumina L

## ABBREVIATIONS

1. AIR- All India Report.
2. Anr. – Another.
3. ed. – Edition.
4. e.g. – Example.
5. etc. - Et cetera.
6. HC – High Court.
7. Ors- Others.
8. PIL – Public Interest Litigation.
9. SC – Supreme Court.
10. SCC- Supreme Court Cases.
11. UN- United Nations.
12. vs. – versus.
13. CCTV – Closed Circuit Television.
14. NCRB – National Crimes Record Bureau.
15. BC – Before Christ.
16. AD – Anno Domini.
17. NHRC – National Human Rights Commission.
18. CrPC – Code of Criminal Procedure, 1973.
- 19.** IPC – Indian Penal Code, 1860.
20. FIR – First Information Report.
21. SC ST Act - Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- 22.** BNSS - Bharatiya Nagarik Suraksha Sanhita, 2023.
- 23.** UAPA - Unlawful Activities (Prevention) Act 1967.
- 24.** UDHR – Universal Declaration of Human Rights.
25. ICCPR - International Covenant on Civil and Political Rights.
26. UNCAT - United Nation Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
27. COB – Central Oversight Body.
28. RTI – Right to Information.

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## Chapter 1: Introduction

### **1.1. Introduction:**

“Jails and prisons are designed to break human beings, to convert the population into specimens in a zoo - obedient to our keepers, but dangerous to each other<sup>1</sup>”.

- Angela Davis

The above quote states that today the purpose of the jails is not just to punish the wrongdoer but to strip away humanity and autonomy in an individual. Every inmate in the jail is vulnerable to abuse by those in power within the prison system. With lack of accountability and oversight it might be dangerous for the inmates.

In the beginning when man was in the state of nature, his life was solitary, poor, nasty, brutish and short<sup>2</sup>. Man wanted to come out of the state of nature and so state and sovereignty was established. Thus the main purpose of establishing sovereign is to ensure law and order and uphold rule of law which is very much essential to foster good governance, societal harmony and justice<sup>3</sup>. One of the very important institution of the state that ensures maintenance of law and order is the police department<sup>4</sup>. However, these police officers tend to misuse their power and commit crimes against people who they are under mandate to protect in accordance with the law<sup>5</sup>.

“Custodial Violence” refers to the commission of a crime against the accused while they are under the custody of a public official<sup>6</sup>. It is one of the gravest misconduct that public servants entrusted with law enforcement duties could do<sup>7</sup>. Such acts not only tarnish public trust in the legal system but also impede the administration of justice. However, in India, the brutality committed by the police officials are not considered to be a very serious issue and the society many a times conceive it to be a function of the law enforcement agencies<sup>8</sup>. Public many a times tolerate police brutality.

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<sup>1</sup> ANGELA DAVIS, ANGELA DAVIS: AN AUTOBIOGRAPHY (Random House 1974).

<sup>2</sup> THOMAS HOBBS, LEVIATHAN (1660).

<sup>3</sup> Nik Ahmad Kamal Nik Mahmud, Good Governance and The Rule of Law, The First International Conference on Law, Business and Government 2013.

<sup>4</sup> Balbir Kumar, Role of Information and Communication Technology in Indian Police, Volume 1, Issue 2, GIAN JYOTI E-JOURNAL, Jan – Mar 2012.

<sup>5</sup> TOM BARKER, POLICE CRISIS: CRISIS IN LAW ENFORCEMENT, (3<sup>rd</sup> edition, Charles C. Thomas Publisher).

<sup>6</sup> Law Commission, Custodial Crimes (Law Com No 152, 1994).

<sup>7</sup> National Human Rights Commission, Annual Report 2016-17, 39.

<sup>8</sup> Alden D' souza, Judicial Approach and Reformation in The Law Regarding Custodial Violence in India, Volume II, Issue II, Indian Journal of Integrated Research in Law.

This act of violence committed by police officials possess threat not only to the rule of law and human rights of an individual but also it undermines the very foundation of democracy in a nation where the Constitution reigns supreme.

As an extension of the government, the police are obligated to uphold the law. It is contradictory for law enforcement agencies to preserve law and order while engaging in illegal torture of detainees. After all, in India's democratic framework, no one is above law<sup>9</sup>.

For a victim of custodial violence, the impact of custodial violence extends far beyond the immediate physical and psychological trauma. They go through severe psychological and physical trauma, leaving lasting scars that affect their well-being throughout their lifetime. Physically, victims often suffer pain and swelling throughout their bodies, impairing their ability to perform daily tasks. Additionally, victims commonly experience symptoms of post-traumatic stress disorder (PTSD), including anxiety, sadness, flashbacks, nightmares, and difficulty sleeping, which disrupt their ability to lead normal lives. Economically, victims face costs associated with legal proceedings, investigations, and the pursuit of compensation. Furthermore, victims and their families often face stigmatization and isolation from society, leading to withdrawal from social events and exacerbating feelings of depression and trauma<sup>10</sup>. Thus the impact of custodial violence on victims and society is profound and multifaceted and there is urgent need for systemic reforms to address these pervasive issues and uphold the rights and dignity of all individuals<sup>11</sup>.

The torture or brutality committed against individuals especially against those in custody is deeply entrenched in Indian history<sup>12</sup>. Especially we can find that the colonial influence with regard to police brutality still prevails in India. This research aims to delve into the concept of custodial violence and history of custodial violence. By examining the root causes, manifestations, and implications of custodial violence, the study aims to identify the causes and the factors that contribute for the prevalence of custodial violence. It also seeks to identify possible ways to mitigate custodial violence and promote a more just and humane custodial environment.

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<sup>9</sup> Ujjwal Singh, Custodial Violence in Modern India, ILE JLP, 1 (1) of 2023, Pg. 14-20.

<sup>10</sup> V. Sorna Lakshmi, Custodial Violence: Causes, Consequences and Preventive Measures, Volume 6, Issue 4, Journal of Emerging Technologies and Innovative Research, 2019, Pg. 14-22).

<sup>11</sup> Sameera Khan, The Culture of Sexual Victimization and Custodial Violence Inside the Indian Prisons: A Critique, Vol. 4 Iss. 6, International Journal of Law, Management and Humanities, 1130 1124-1142 2021).

<sup>12</sup> Dr. Asifa Parveen & Dr. Naaz Akhtar Siddique, Historical Perspective of Custodial Tortures in India, Volume 8, Issue 8, JETIR, August 2021.

In order to prevent custodial violence there is a need for proper legislation. Strong and efficient legislative frameworks are necessary to deter crimes and to ensure justice<sup>13</sup>. This research will give a detailed analysis of various constitutional provisions, legislations and international conventions offering comprehensive insights on legal framework relating to custodial violence. It will also examine the complexities of existing legal frameworks, evaluating their advantages and disadvantages in dealing with violence against prisoners. The research seeks to identify areas requiring reform and development by critically analysing the legislative intent and how they are implemented.

As discussed earlier the victims of Custodial Violence undergo both physical and psychological trauma<sup>14</sup>. Corrective justice requires the wrongdoer to compensate for the wrong done to the victim<sup>15</sup>. When a victim is sought to be compensated, his mental as well as physical trauma should be considered along with social and financial aspects of the victim. The research endeavours to highlight the hurdles encountered by victims in their pursuit of compensation, thereby providing critical insights for advocating enhanced support mechanisms and reforms within the legal framework. This dissertation will also illuminate on the need for specific legislative measure aimed at providing victim compensation to the victims of custodial violence.

One of the main problem with regard to custodial violence is lack of evidence. Since most custodial violence occur within the confines of the police station, the cops are frequently absolved of responsibility for their acts. The use of surveillance technology like CCTV cameras in police station has the potential to make the police accountable to custodial violence and may prevent custodial violence<sup>16</sup>. This research seeks to explore how surveillance systems may be used to improve prison conditions that are more open, responsible, and accountable, while also acknowledging the practical challenges of integrating surveillance technology into addressing custodial violence.

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<sup>13</sup> Dr. Dipti Rekha Mohapatra, Custodial Violence and Human Rights: Legal Implications, Vol. 5, Issues III (5), IJRMSS, 2017.

<sup>14</sup> Chetanya Sharma & Vikas Sharma, Genesis of Custodial Violence in India: A Critical Analysis, Volume III, Issue II, Indian Journal of Law and Legal Research, 2021).

<sup>15</sup> Coleman, Jules L. "Corrective Justice and Tort Law." Oxford University Press EBooks, 19 Sept. 2002, pp. 361–385.

<sup>16</sup> A. Nirmal Singh Heera, Rajasathya K.R, N. Prabhavathi, Police Brutality and Custodial Torture in Technological Era: Need for Anti-Torture Law in India - A Critical Analysis, Vol. 15 No. 2, Indian Journal of Forensic Medicine & Toxicology, Page 17-24, (2021).

Thus, this dissertation endeavors to explore the multifaceted issue of custodial abuse by delving into its historical origins, assessing present legal frameworks, scrutinizing victim compensation programs, and examining the potential role of technology in curbing these injustices. The primary goal of this research is to contribute to the ongoing discourse on custodial violence and establish a framework that promotes fairness within the system.

## **1.2. Statement of Problem:**

When the Custodial Violence is committed by the law enforcement agencies it imposes significant threat on justice, human rights and rule of law of the country. These incidents of custodial violence are happening every now and then. Some of the recent instances of custodial violence are:

The infamous Sathankulam incident that happened in Tamil Nadu where two people namely, P. Jayaram and Bennix were taken to police custody on the charges of breaking lockdown regulations. In the police custody they were sexually assaulted and were fatally battered; their bodies had about thirty lacerations. As a result of this, three days after their arrest both of them died<sup>17</sup>.

Stan Swamy, a Jesuit priest, was detained at Taloja Central Jail, under the stringent Unlawful Activities Prevention Act for allegedly inciting the 2018 Bhīma Koregaon violence. He had Parkinson's disease and was imprisoned for nine months as an under trial without access to proper medical care. It was during this time that he developed COVID-19, which further worsened his health. After 270 days in jail as an under trial prisoner, Father Stan Swamy passed away without proper medical care<sup>18</sup>.

Ankit Gujjar, died in Tihar Jail owing to custodial violence committed against him. He was not able to meet the police officers demand for money and was murdered. The police officials were able to tamper the CCTV cameras<sup>19</sup> and in this case the police officials were not held liable as there was no evidence.

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<sup>17</sup> “Jayaraj & Bennix: CBI Accuses Police Officers of “Criminal Conspiracy”, Extreme Brutality.” The Wire, 27 Oct. 2020.

<sup>18</sup> Das, Awstika. “Father Stan Swamy Died as A UAPA Martyr; But Political Prisoners Continue to Suffer Without Bail.” Wwww.livelaw.in, 8 July 2023.

<sup>19</sup> “Ankit Gujjar’s Death in Tihar Jail a Case of Custodial Violence, Says Delhi HC.” The Times of India, 2 Sept. 2021.

Hira Bajania who belonged to the slum in western part of Gujarat was dragged to police station for stealing cell phones. In the police station, Hira Bajania along with 10 other accused was bound, stripped, beaten, abused and sexually tortured to make them confess. Hira Bajania, died after being beaten up by the police<sup>20</sup>. Hira belonged to Nat Bajania caste, that was legally categorized as “criminal tribe” by British colonial administrators.

Resham Singh, an army man, was subjected to severe torture. His mother and two sisters in Pilibhit, Uttar Pradesh, were also humiliated<sup>21</sup>. Faisal Hussain, an 18-year-old vegetable vendor in the Unnao region of Uttar Pradesh, was allegedly beaten to death for breaking COVID-19 regulations<sup>22</sup>. Another such incident happened in Agra, where a sanitation worker, who was arrested for interrogation on a case relating to theft, died in police custody. In Assam, a person named Moinul Haque was battered to death when the police tried to evict certain people<sup>23</sup>. The extra-judicial killing of 4 rape-murder accused<sup>24</sup>, is also another example where the police officers used unreasonable force and illegal means to punish the accused.

There are many such incidents that happened in Tamil Nadu. In Vignesh case where 25-year-old man died in the police custody. He was arrested on alleged possession of marijuana. While the police claim that he suffered seizure there were signs of being tortured by the police as they were 13 different wounds on his report<sup>25</sup>. Murugesan, the owner of a fruit stall, died after what is said to have been a severe beating by a Tamil Nadu police special sub-inspector<sup>26</sup>. Gokul Shree, 17-year-old juvenile died in the Correctional Facility in Chennai. He was brought to correctional facility for stealing a battery from railway facility. Post-mortem report revealed that there were 98

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<sup>20</sup> Rao, Mohit. “Torture and Discrimination: How Police Brutality Became Endemic in India.” CNN, 3 Dec. 2020, [edition.cnn.com/2020/12/02/india/police-brutality-india-dst-intl-hnk/index.html](https://edition.cnn.com/2020/12/02/india/police-brutality-india-dst-intl-hnk/index.html).

<sup>21</sup> Upadhyay, Sparsh. ““Sorry State of Affairs & Police Atrocities”: Allahabad HC Seeks DGP’s Personal Affidavit On Alleged Attack On Ex-Army Man by Up Police.” [www.livelaw.in](http://www.livelaw.in), 9 July 2021.

<sup>22</sup> Ara, Ismat. “Up: Family Awaits Compensation, struggles to Get by After Losing Son to Police Torture.” *The Wire*, 23 May 2021.

<sup>23</sup> Tiwary, Anurag. “The Unlawfulness of Police Brutality in India – the Leaflet.” [Theleaflet.in](http://theleaflet.in), 26 Oct. 2021, [theleaflet.in/the-unlawfulness-of-police-brutality-in-india/](http://theleaflet.in/the-unlawfulness-of-police-brutality-in-india/).

<sup>24</sup> Koshy, Sneha Mary. “4 Telangana Rape-Murder Accused Shot Dead by Cops, “Tried to Escape.”” *NDTV.com*, 6 Dec. 2019, [www.ndtv.com/india-news/all-4-accused-in-gang-rape-and-murder-of-veterinarian-in-telangana-killed-in-encounter-with-police-n-2144188](http://www.ndtv.com/india-news/all-4-accused-in-gang-rape-and-murder-of-veterinarian-in-telangana-killed-in-encounter-with-police-n-2144188). Accessed 4 Apr. 2024.

<sup>25</sup> Daniel, J Sam. “Chennai Man Who Died after Arrest Had 13 Different Wounds: Report.” *NDTV.com*, 5 May 2022, [www.ndtv.com/india-news/vignesh-custodial-death-in-tamil-nadu-post-mortem-report-reveals-13-different-wounds-2947155](http://www.ndtv.com/india-news/vignesh-custodial-death-in-tamil-nadu-post-mortem-report-reveals-13-different-wounds-2947155). Accessed 13 Apr. 2024.

<sup>26</sup> “Tamil Nadu: Sub-Inspector Arrested After Man Dies of Police Assault.” *The Wire*, 24 June 2021.



injuries in him<sup>27</sup>. Meen Kuzhambu Karthik, an accused of chain snatching in Chennai died in police custody<sup>28</sup>. 20 Tamilians killed in an encounter in Andhra Pradesh for cutting down red sander trees<sup>29</sup>. Balveer Singh case, where the IPS officer broke the teeth of several accused using cutting plier<sup>30</sup>. These are some of the examples of custodial violence in Tamil Nadu.

Custodial Violence is not a crime that happens only in India. It also happens in other countries. One of the famous incident of custodial violence in New York. George Floyd, an African-American black guy of 46 years old, was the victim of custodial violence. He died in Minnesota on May 25, 2020, after a white police officer knelt over him for nine minutes without moving. George was charged for using a fake \$20 bill in a shop. After being forcibly removed from the vehicle, having his hands handcuffed, and being forced to lie on the ground, George repeatedly gasped and told the white officer, Derek Chauvin, to stop kneeling on his neck. The officer persisted in this behavior when they were brought to the hospital, where the doctors pronounced him dead<sup>31</sup>.

These are some of the reported instances of custodial violence that shook the conscience of individuals. There are many that goes unreported.

The National Crime Records Bureau (NCRB) reports that between 2016–17 ad 2021–2022, an average of 11,419 people died in Indian prisons. Tamil Nadu recorded the highest number of custodial deaths among the southern states, while Uttar Pradesh reported the highest overall tally, with 2,580 deaths. Additionally, between 2001 and 2018, 1,727 individuals died while in police custody. From 2010 to 2020 alone, 1,080 individuals in police custody, yet only 26 police officers were convicted for these deaths.

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<sup>27</sup> A, Selvaraj. “Juvenile Dies due to Torture; Six Prison Officials Arrested in Tamil Nadu.” *The Times of India*, 15 Jan. 2023, [timesofindia.indiatimes.com/city/chennai/juvenile-dies-due-to-torture-six-prison-officials-arrested-in-tamil-nadu/articleshow/96997602.cms](https://timesofindia.indiatimes.com/city/chennai/juvenile-dies-due-to-torture-six-prison-officials-arrested-in-tamil-nadu/articleshow/96997602.cms). Accessed 13 Apr. 2024.

<sup>28</sup> Madhav, Pramod. “Man Accused of Robbing Woman Techie in Chennai Dies in Police Custody.” *India Today*, 22 Sept. 2016, [www.indiatoday.in/india/story/chennai-chain-snatching-cctv-robbery-at-knifepoint-kannagi-nagar-area-police-brutality-342576-2016-09-22](http://www.indiatoday.in/india/story/chennai-chain-snatching-cctv-robbery-at-knifepoint-kannagi-nagar-area-police-brutality-342576-2016-09-22). Accessed 13 Apr. 2024.

<sup>29</sup> A.D. Rangarajan. “20 Woodcutters from TN Gunned by A.P. Police.” *The Hindu*, 7 Apr. 2015, [www.thehindu.com/news/national/andhra-pradesh/20-red-sanders-smugglers-shot-dead-in-Chittoor-encounter/article60358749.ece](http://www.thehindu.com/news/national/andhra-pradesh/20-red-sanders-smugglers-shot-dead-in-Chittoor-encounter/article60358749.ece). Accessed 13 Apr. 2024.

<sup>30</sup> K. Menon, Amaranth. “Who Is Balveer Singh, the IPS Officer Accused of Custodial Torture in TN?” *India Today*, 10 Apr. 2023, [www.indiatoday.in/india-today-insight/story/who-is-balveer-singh-the-ips-officer-accused-of-custodial-torture-in-tn-2358217-2023-04-10](http://www.indiatoday.in/india-today-insight/story/who-is-balveer-singh-the-ips-officer-accused-of-custodial-torture-in-tn-2358217-2023-04-10).

<sup>31</sup> Hill, Evan, Et Al. “How George Floyd Was Killed in Police Custody.” *The New York Times*, 31 May 2020.

The data in Annexure 1 shows the Custodial Deaths that happened in different states from 2020 – 2022<sup>32</sup>.

Over the period from 2000 to 2018, approximately 2,000 instances of police violations of human rights were documented, including deaths occurring while individuals were in custody. However, in these cases, only 344 police officers were found guilty of wrongdoing. These statistics underscore significant challenges in addressing custodial deaths and ensuring accountability within the Indian criminal justice system<sup>33</sup>.

However, it's important to note that many incidents of custodial deaths remain unreported, attributed to various factors such as pressure on potential reporters, deaths occurring in remote areas, the abandonment of individuals, economic disparities, and settlements with law enforcement personnel. According to NCRB data of 2022, 75 people died in police custody, yet only 19 cases were officially registered, and no police personnel faced charges<sup>34</sup>.

Also, with regard to Custodial Violence in general there were 2614 cases registered in the year 2022 among them only 843 were charge sheeted which is not even half of the case registered. And only 12 were convicted but 282 were acquitted<sup>35</sup>.

This data is deeply concerning, highlighting systemic issues within the criminal justice system. When examining related statistics such as the number of cases filed, officers detained, and charge sheets issued, it becomes evident that the severity of these crimes is grossly underrepresented.

The rise in custodial violence underscores two critical realities. Firstly, it highlights the institutionalization of state violence and its systematic use as a tool for intimidation and suppression of dissent. Within police stations, violence is often the default response during investigations, and the alarming number of deaths in detention facilities reflects a disturbing normalization of violence within these environments<sup>36</sup>. Secondly, it points to a troubling acceptance of the unlawful use of force and a culture of impunity within law enforcement oversight mechanisms. Deaths in custody are frequently dismissed as "unintended consequences" of police

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<sup>32</sup> See Annexure 1.

<sup>33</sup> 'Prison Statistics Report in India, 2021' was published by the National Crime Records Bureau (NCRB).

<sup>34</sup> See Annexure 2.

<sup>35</sup> See Annexure 3.

<sup>36</sup> Krishnan, Murali. "Custodial Deaths in India: A Toxic Play of Power and Class, DW, 19.11.2021." DW.COM, 19 Nov. 2021.

interrogation tactics, perpetuating a culture where torture remains a common practice. These trends underscore the urgent need for systemic reforms to address accountability, transparency, and the protection of human rights within India's law enforcement agencies<sup>37</sup>.

Thus, despite Constitutional provisions, legislations and international conventions, custodial violence is being perpetrated on the vulnerable sections of society and victims of such violence many a times go uncompensated and there is lack of uniformity in awarding compensation. Furthermore, in India little has been done to explore the potential of surveillance technology in preventing custodial violence.

Thus the problem at hand may be summarized as:

- Despite various laws and judicial guidelines, the persistence of custodial violence in India.
- Lack of uniformity in awarding compensation for custodial violence.
- Non-utilization of technology to prevent custodial death.
- Absence of separate legislation to prevent custodial violence.

It is important to address these issues, in order to ensure that custodial violence is curbed in India, to ensure that victims get fair amount of compensation and to ensure that there is transparency and accountability among police officers. This dissertation tries to find solution by analyzing the existing legal framework, advocating for fair compensation scheme and use of technology in preventing custodial violence.

### **1.3. Research Objective:**

1. To discuss the concept of custodial violence.
2. To analyze the existing legal framework like constitutional provisions, municipal and international laws relating to custodial violence in India.
3. To analyze the compensation mechanism available to the victims of custodial violence.
4. To investigate how technology may be used to stop violence against inmates.
5. To assess the compliance of judicial guidelines by the state on installation of CCTV camera in police stations.
6. To propose certain measures and suggestion to curb custodial violence in India.

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<sup>37</sup> Abimanyu, Gokul. "Custodial Violence in India – A Case Study." Law Insider India, 9 July 2020.

#### **1.4. Research Question:**

1. What are the gaps and challenges in the existing legal framework in prevention of custodial crimes in India?
2. What are the difficulties faced in awarding compensation to victims of custodial crimes?
3. What are the challenges associated with the application of advanced technology in custodial violence and its impact on prevention of custodial violence?

#### **1.5. Hypothesis:**

The existing legal frameworks and victim compensation scheme has limitation and challenges in addressing the menace of custodial violence.

The application of technology for preventing custodial crimes will have positive impact on the prevention of custodial violence.

#### **1.6. Research Methodology:**

The research methodology employs both doctrinal and empirical approaches. Extensive review of textual sources including the Constitution, various acts, case laws, subordinate legislation, and government notifications is conducted. Secondary data from books, journals, and newspaper articles is also analysed. Empirical data is being collected through the filing of RTI applications to obtain information on CCTV camera installation in police stations across Chennai, Madurai, and Thoothukudi. Additionally, interviews have been conducted with NGOs and stakeholders engaged in addressing custodial violence to gather further empirical insights.

#### **1.7. Chapterization:**

The First Chapter, titled "Introduction," outlines the objectives, statement of the problem, research questions, and hypotheses, providing a clear roadmap for the study. The methodology section details the approach taken in conducting the research, while the chapterization subsection offers an overview of the dissertation's structural framework. The chapter on literature review explores the existing body of research to lay the groundwork for further analysis.

Chapter 2 delves into the "Concept and History of Custodial Violence in India," aiming to provide a comprehensive understanding of custodial violence and its impact on victims and society. It

examines the concept of custodial violence and discusses various types and manifestations of custodial violence ranging from physical to psychological abuse. Furthermore, the chapter explores the underlying reasons behind custodial violence. In addition, it provides a historical overview spanning from ancient India to Independent India, contextualizing the evolution of custodial practices over time. Lastly, the chapter scrutinizes the impact of custodial violence on marginalized groups, with a specific focus on lower castes and women, highlighting the disproportionate burden they bear within the custodial system.

Chapter 3 deals with the "Legal analysis of Custodial Violence". It offers a comprehensive analysis of existing constitutional provision, criminal laws namely Code of Criminal Procedure, Indian Penal Code, and Indian Evidence Act. It also discusses recent criminal laws and India's international obligations under conventions like the United Nations Convention against Torture. Moreover, it scrutinizes commission reports, human rights guidelines, and judicial decisions, providing a holistic view of the legal landscape. Additionally, the chapter also analyzes custodial violence laws in other countries namely United States and United Kingdom enhancing the discussion with comparative perspectives.

Chapter 4 is about the "Analysis of Victim Compensation in Custodial Violence". It offers an in-depth exploration of compensatory jurisprudence in India. It traces the historical development of compensation laws and examines provisions related to compensation for violations of the right to life caused by custodial death. The chapter analyses existing legislations governing the grant of compensation and identifies the circumstances in which victims can receive compensation. Furthermore, it discusses the quantum of compensation awarded in such cases and highlights the challenges inherent in determining the compensation amount.

Chapter 5 deals with the "Use of Surveillance technology in preventing Custodial Violence". It highlights how important surveillance technology is to maintaining transparency and accountability in law enforcement. It analysis the installation of CCTV cameras in police station and its efficiency in deterring and documenting instances of custodial violence. The chapter evaluates the evidentiary value of CCTV footage in legal proceedings, highlighting its significance in substantiating claims and ensuring justice. Additionally, the implementation of the judgment in *Paramvir Singh Saini vs. Baljit Singh* is analysed by empirical data.

Chapter 6, the last chapter, provides a summary of the conclusions drawn from the conceptual, historical, legal, compensatory, and technological evaluations. Based on the findings of the study, the conclusions and suggestions are made. A bibliography (Chapter 7) that lists all of the sources reviewed during the research is included in the dissertation's conclusion and provides a thorough inventory of academic publications and resources.

## **1.8. Literature Review:**

### **1. Aditi Singh, Custodial Violence, 2 LEGAL LOCK J. 6 (2023).**

The author delves into the origins of custodial violence, providing insights into how deeply entrenched abuses in custody have become over time. It talks about human rights framework in both international and domestic perspective, evaluates and examines national legal framework related to custodial violence. Analysis of landmark cases provides valuable insights into the evolving nature of judicial interventions and the judiciary's role in safeguarding human rights in detention contexts. However, a notable research gap lies in not examining the types and manifestation of custodial violence.

### **2. Neha Nehra, Custodial Violence and Police Brutality: A Critical Overview and Ways to Reach Reforms, 2 JUS CORPUS L.J. 653 (2022).**

The author's quantitative investigations have elucidated the incidence and demographic trends associated with custodial abuses, providing a crucial foundation for understanding the often obscured realities of violence against detainees. Furthermore, a critical evaluation of constitutional provisions and legislative measures intended to mitigate violence against inmates has been conducted. The author has also scrutinized significant case laws, analyzing the courts' rulings and conclusions that influence discussions surrounding violence against detainees. The article does not address the challenges associated with compensating victims of custodial violence or the role of technology in preventing such abuses.

### **3. CHETANYA SHARMA & VIKAS SHARMA, GENESIS OF CUSTODIAL VIOLENCE IN INDIA: A CRITICAL ANALYSIS (Volume III, Issue II, Indian Journal of Law and Legal Research 2021).**

The article examines crime data spanning from 2010 to 2020 to initiate a comprehensive data analysis of custodial violence in India. A particular emphasis is placed on a nuanced analysis of torture, with the author delving extensively into its definition and classification, covering various forms such as mental, physical, and psychological aspects. In addition, the paper explores the underlying reasons of custodial abuse and offers a thorough summary of the legal measures implemented in India to address this serious problem. However, the article doesn't talk about the causes of prevalence of custodial violence in India.

**4. R. S. Roshini, Custodial Violence: A Crucial Need of Anti-Torture Law, 3 INDIAN J.L. & LEGAL RSCH. 1 (2021).**

The article provides a comprehensive overview of custodial violence, beginning with its definition and the legal provisions governing it, notably Section 46 of the Criminal Procedure Code (CrPC) concerning arrest procedures. It delves into recent case laws to illustrate real-world examples and examines the underlying causes of custodial violence in depth. However, a notable research gap lies in the lack of discussion regarding victim compensation and the challenges associated with obtaining compensation for custodial violence survivors.

**5. Shephalika Srivastava, Custodial Violence: Horrendous Crime in a Civilized Society, 5 INT'L J.L. MGMT. & HUMAN. 195 (2022).**

The article provides a comprehensive examination of custodial violence, beginning with its definition and discussing recent incidents related to this phenomenon. It highlights instances of constitutional and legal violations, emphasizing concerns regarding police conduct and the functioning of law enforcement agencies. The analysis extends to various legislations governing the actions of police officials and explores the potential implications of the proposed Anti-Torture Law. However, a notable research gap exists in the absence of discussion on the role of technology in preventing custodial violence. Exploring technological interventions could offer valuable insights into enhancing accountability and transparency within law enforcement practices, thereby contributing to efforts to curb custodial abuses.

## **Chapter 2: Concept and History of Custodial Violence in India**

“Torture is a wound in the soul so painful that sometimes 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

### **2.1. Introduction:**

It is sovereignty that stands as a defining element of the state, distinguishing state from other institutions<sup>38</sup>. The state which is bestowed with this sovereign power is entrusted with important function to uphold law and order while safeguarding the fundamental human rights of all individuals within their territory. However, problems arise when those with authority perpetrate crimes against the most vulnerable members of society. Custodial violence is one such instance where individuals granted with the responsibility to prevent crime misuse their power to commit offenses<sup>39</sup>. After all, "Power corrupts, and absolute power corrupts absolutely"<sup>40</sup>.

Custodial violence persists as a troubling phenomenon within India's criminal justice system, posing significant challenges to the foundational principles of justice and human rights<sup>41</sup>. This chapter delves into the concept and historical evolution of custodial violence in the Indian context, offering a comprehensive examination. Beyond mere physical abuse, custodial encompasses a range of offenses that violate the trust that people have in law enforcement and prison officials<sup>42</sup>. This issue traces its roots back to the historical fabric of medieval and ancient custodial systems, evolving through colonial authority and continuing to shape contemporary narratives surrounding abuse and justice in post-independence India<sup>43</sup>. This chapter explains the fundamental causes of the widespread incidence of custodial violence and offers a thorough examination of its scope.

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<sup>38</sup> Marume, Dr, Et Al. An Analysis of Essential Elements of the State, Volume 5, Issue 3, International Journal of Engineering Science Invention, Mar. 2016, PP.24-28.

<sup>39</sup>Gupta, Mohit Kumar. “Suggestions to Curb the Menace of Custodial Violence and Brutality: Targeting The Ill-Conceived Notion of “My Area, My Custody, And My Law.” Wwww.livelaw.in, 24 Oct. 2021.

<sup>40</sup> Lord Acton in a letter to Bishop Mandell Creighton, April 3<sup>rd</sup>, 1887.

<sup>41</sup> Supra Note 11.

<sup>42</sup> V. Sorna Lakshmi, Custodial Violence: Causes, Consequences and Preventive Measures, Volume 6, Issue 4, Journal of Emerging Technologies and Innovative Research, 2019, Pg. 14-22.

<sup>43</sup> Dr. Asifa Parveen & Dr. Naaz Akhtar Siddique, Historical Perspective of Custodial Tortures in India, Volume 8, Issue 8, Journal of Emerging Technologies and Innovative Research, 2021.



Through this comprehensive examination, the chapter lays the essential groundwork necessary for fostering a nuanced understanding of the concept of custodial violence.

## 2.2. Concept of Custodial Violence:

The term "Custodial Violence" is not explicitly defined in Indian statutes. It comprises two components: "custody" and "violence."<sup>44</sup>

"Violence" denotes the state or trait of being aggressive, involving the use of extreme force without cause or restriction, or causing severe injury. It manifests as a process wherein an individual asserts superiority through force over another, intending to cause harm<sup>45</sup>. This behaviour is aimed at inflicting injury upon another person or causing damage to property, irrespective of whether the harm is physical, mental, or otherwise<sup>46</sup>.

Custody entails assuming control over another person<sup>47</sup>. According to legal dictionaries, it refers to "charge" and encompasses the judicial or criminal safekeeping of an inmate<sup>48</sup>. The Chamber Dictionary defines "custody" as the state of being detained by the police, arrested, or imprisoned<sup>49</sup>. In the Legal Glossary Dictionary, custody is described as the act of imprisoning someone while they are under the legal authority of another person<sup>50</sup>. While custody implies protection and guardianship, it does not inherently entail unpleasant experiences<sup>51</sup>. Rather, it signifies being under the surveillance of the police, with the primary objective of keeping the suspect within the jurisdiction of law enforcement agencies. In the case of **Chhotey Lal vs. State of Uttar Pradesh**<sup>52</sup>, clarified that custody extends beyond physical confinement to include individuals under police surveillance. Similarly, in **Bibachha Baitharu v. State of Orissa**<sup>53</sup>, it was held that restricting a person's movement in itself constitutes custody.

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<sup>44</sup> Supra Note 11.

<sup>45</sup> Salman Mekrani, "Custodial Death: A Legal Study," Vol. 5 Iss. 1, International Journal of Law Management & Humanities (2022) Pp: 1429 – 1447.

<sup>46</sup> Ibid.

<sup>47</sup> Sebastian, Manu. "Explainer: Judicial Custody and Police Custody." Wwww.livelaw.in, 4 Sept. 2019.

<sup>48</sup> P. Ramanatha Aiyer: The Encyclopaedic Law Dictionary with Legal Maxim (1992): Wadhwa & Company Nagpur, India.

<sup>49</sup> Chamber Dictionary: (1983) Allied Publisher p. 330.

<sup>50</sup> Legal Glossary (1988) Ministry of Law and Justice, Govt. of India.

<sup>51</sup> Supra Note 34.

<sup>52</sup> Chhotey Lal vs State of Uttar Pradesh, (1953) 1954 CriLJ 1445.

<sup>53</sup> Bibachha Baitharu v. State of Orissa, (1991) 1998 CriLJ 1553.

While "custody" and "arrest" are often used interchangeably, they have distinct meanings. Arrest involves forceful confinement by the police, typically in accordance with Section 46 of the Criminal Procedure Code<sup>54</sup>. Custody, on the other hand, does not necessarily require arrest<sup>55</sup> and can occur when an individual surrenders before a court or magistrate. In the case of **Niranjan Singh vs. Prabhakar Rajaram Kharote**<sup>56</sup>, Justice Krishna Iyer emphasized that custody applies not only when the police arrest an individual and produce them before a magistrate for remand but also when the accused voluntarily surrenders before the court or magistrate.

Judicial and police custody are the two categories of custody described in Section 167 of the Code of Criminal Procedure. The person being held by the police is subject to the jurisdiction of the police officer in charge of the police station. He is kept in the prison or cell in that police station. The police officer can interrogate and conduct investigation. Judicial Custody, on the other hand, is the detainment of the accused under the jurisdiction of the magistrate, typically following an order by the court. During Judicial Custody, the suspect becomes the responsibility of the court, and access to the accused by the police is granted only with the court's permission. The decision to place an individual in judicial custody is based on the public prosecutor's satisfaction that the suspect's custody is necessary for interrogation purposes.

After an arrest, police officers may detain an individual in police custody, for up to 24 hours before presenting them before a court. Following this, the accused is presented before the Magistrate as per Section 167 of the CrPC, who may order further detention. Police custody is limited to a maximum of fifteen days as per Section 167(1) of the CrPC. However, any extension of detention beyond the initial fifteen-day period is possible in judicial custody provided compelling grounds are shown by the court<sup>57</sup>.

The term "custodial violence" denotes violence perpetrated by law enforcement personnel against individuals under their custody or following arrest. Described as an act of inhumanity born out of a perverse desire to inflict suffering without fear of retaliation, it represents a senseless display of dominance and physical prowess over those rendered powerless<sup>58</sup>. As defined by the Law

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<sup>54</sup> Section 46, Criminal Procedure Code, 1973.

<sup>55</sup> Supra Note 36.

<sup>56</sup> Niranjan Singh vs. Prabhakar Rajaram Kharote, AIR 1980 SC 785.

<sup>57</sup> Section 167(1), Criminal Procedure Code, 1973.

<sup>58</sup> Supra No. 34.

Commission of India, custodial violence occurs when a public servant commits a crime against an individual in custody or arrested<sup>59</sup>. Dr. S. Subramanian broadens this definition, encompassing any employment of force, threat, or psychological coercion.<sup>60</sup> Justice B.P. Jeevan Reddy observes that the spectrum of custodial violence spans torture, death, rape, and excessive beatings in police custody<sup>61</sup>. Justice Krishna Iyer emphasized the egregious nature of such acts, asserting that nothing undermines constitutional values more profoundly than state officials disregarding human rights and subjecting individuals in custody to violence<sup>62</sup>.

Victim of custodial violence often endure torture. Every deliberate act that results in extreme bodily or mental anguish or suffering is considered torture. This encompasses actions aimed at extracting information or confessions, punishing individuals, coercing or intimidating them, or discriminating against them. The Prevention of Torture Bill in both 2010 and 2017 aimed to criminalize custodial torture, defining it as inflicting grievous hurt or threatening one's life, limb, or health.

In the case of **D.K. Basu v. State of West Bengal**<sup>63</sup>, Judge Dr. A.S. Anand, described custodial torture as "a naked violation of human dignity and degradation," emphasizing its destructive impact on individual personality. It is an organized assault on human dignity, and civilization always declines when human dignity is violated. This was subsequently cited in the **Mehmood Nayyar Azam v. State of Chandigarh**<sup>64</sup> case. Nevertheless, law enforcement agencies often describe custodial violence as 'sustained interrogation,' 'questioning,' or 'examining,' thereby minimizing the severity of the systemic issues involved<sup>65</sup>.

Police officers are authorized to question or apprehend suspects on the basis of reliable information; however, it is their responsibility to make sure that these measures are carried out in a way that respects both the law and human rights. Any interrogation must be carried out without

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<sup>59</sup> Law Commission, Custodial Crimes (Law Com No 152, 1994).

<sup>60</sup> Dr. S. Subramanian: Human Rights International Challenges (2004), Manas Publications, Delhi (India).

<sup>61</sup> Justice B.P. Jeevan Reddy, a paper presented in seminar: "Custodial Crime, An Affront to Human Dignity, Human Right Year Book 2001, Universal Law Publication Pvt. Ltd., New Delhi, India.

<sup>62</sup> Kishore Singh v State of Rajasthan AIR 1981 SC 625.

<sup>63</sup> Id.

<sup>64</sup> Mehmood Nayyar Azam v. State of Chandigarh (2012) 8 SCC 1.

<sup>65</sup> R.S Saini, Custodial Torture in Law and Practice with Reference to India, 36 Journal of the Indian Law Institute 167, 166-192(1994).

resorting to assault or violence against the individual being questioned<sup>66</sup>. When law enforcement officials engage in abusive behaviour towards individuals under their control, it constitutes a violation of the principles underpinning our judicial system, undermining the very foundation of justice and fairness.

### **2.3. Types and Manifestation of Custodial Violence:**

Custodial violence in India is a pervasive issue that takes on various disturbing forms. Many of us are familiar with the high-handed behavior of the police, often witnessed in instances where individuals are slapped or beaten mercilessly with lathis in the name of maintaining law and order. This type of violence remains a significant cause of mortality in prisons and lock-ups, worsened by problems like overcrowding, malnutrition, unhygienic conditions, and inadequate medical care<sup>67</sup>. The term "custodial violence" denotes a spectrum of abuses, which can be categorized into various types. These include:

**Physical Abuse:** In the context of custodial violence, physical abuse refers to a variety of abusive behaviors. This may involve the usage of excessive force during arrests or confinement, as well as the perpetration of beatings and torture against detainees. Inmates subjected to physical abuse may endure brutal beatings, whippings, or even electric shocks, often resulting in fatalities or severe injuries. Of particular concern is the occurrence of sexual assault, wherein victims are subjected to rape or sexual harassment by public officials<sup>68</sup>.

**Emotional and Psychological Abuse:** Emotional and psychological abuse within the realm of custodial violence often involves the use of threats and intimidation tactics to instil fear and exert control over detainees. This form of abuse inflicts significant mental anguish on individuals, leading to enduring psychological trauma due to experiences of intimidation, humiliation, and prolonged isolation. The deleterious effects of such abuse can have far-reaching consequences, impacting the mental well-being and overall health of detainees<sup>69</sup>.

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<sup>66</sup> Bhagwan Singh v. State of Punjab, (1992) .1 sec 249; JT 1992(3) SC 216

<sup>67</sup> Supra Note 34.

<sup>68</sup> Economic and Political Weekly, Vol. 51, No. 53 (DECEMBER 31, 2016), p. 8 Published by: Economic and Political Weekly.

<sup>69</sup> Ibid 31.

**Verbal abuse:** The use of dehumanizing language, insults, and verbal threats directed at individuals in custody constitutes a form of psychological abuse within custodial settings. This behaviour undermines the dignity and rights of detainees, subjecting them to demeaning treatment and psychological distress. Additionally, discriminatory remarks based on race, ethnicity, gender, or other attributes further increases the harm inflicted on individuals, perpetuating systemic inequalities and reinforcing oppressive power dynamics.

**Denial of Basic Rights:** Denial of basic rights in custodial settings refers to instances where individuals are deprived of fundamental legal protections and access to necessary services. This may include obstructing their right to legal counsel or impeding their ability to receive a fair trial. Additionally, withholding essential medical care can result in physical and psychological harm, violating the right to health and well-being.

**Unauthorized Arrest and Detention:** Unauthorized arrest and detention occur when individuals are apprehended without adhering to proper legal protocols or without valid grounds. This may involve arbitrary arrests made without following due process or without sufficient evidence to justify the arrest. Additionally, individuals may be unlawfully detained for prolonged periods without being formally charged or presented before a judicial authority.

**Forced Confession:** Forced confession refers to the practice of obtaining confessions from individuals through coercion, threats, or torture. Through physical or psychological coercion, people may occasionally be forced or deceived into confessing to crimes they did not commit. This can include subjecting individuals to torture, intimidation, or prolonged interrogation until they provide a confession, regardless of its accuracy.

**Inhumane Conditions of Detention:** Inhumane conditions of detention refer to the substandard living conditions experienced by detainees, characterized by overcrowding, inadequate amenities, and poor hygiene standards. Detainees could be kept in cramped spaces with restricted access to basic utilities like running water, hygienic restrooms, and sufficient air conditioning. These conditions can lead to health hazards, including the spread of infectious diseases and mental distress. Furthermore, the lack of basic hygienic practices and sanitation infrastructure worsen the already dire situation, posing serious risks to the well-being and dignity of detainees.

Other kind of custodial violence may include sleep deprivation, coerced confessions, fabrication of evidence, denial of basic rights such as access to food and other forms of mistreatment. Among these, police torture, commonly referred to as third-degree abuse, has emerged as one of the most prevalent and egregious forms of violence against detainees<sup>70</sup>.

It is important to mention the report on the torture of political prisoners in India presented to the US House of Representatives' subcommittee on international relations in March 1976. The report outlined various forms of physical torture inflicted on individuals, including using heeled boots to stamp on the naked body, hitting the bare soles of feet with a cane, rolling a police officer on top of a big stick across the shins, making victims squat in a "Z" stance for hours, beating on the spine, striking with the butt of a rifle, giving hard, cupped-hand smacks on both ears till they bleed and pass out, poking live electrical cables via bodily indentations, forcing victims to lie nude on slabs of ice, burning with candle flames and lit cigarettes, making victims drink their own excrement after depriving them of food, drink, and sleep, stripping victims, painting their faces black, and parading them in public, holding victims down by their wrists, and putting them on an "aeroplane" by tying a long rope around their back and hauling the end over a pulley, leaving them hanging in mid-air<sup>71</sup>.

According to a 2019 report by National Campaign Against Torture (NCAT), the following torture methods were used for custodial brutality in 2019: pounding iron nails on the body; using a roller on the legs and consuming; using a technique called "falanga" in which the bottoms of the feet are beaten; extending the legs separated in inverse bearing; hitting in private areas; electric shock; pouring petroleum in private areas; applying stew powder in private areas; beating while wearing handcuffs; and puncturing the body with a needle. Other methods included thrashing after draping potential gain with limited options and legs, forcing them to have oral sex, using forceps to pinch fingernails, depriving them of food and water, beating them with iron bars, and suspending them between two tables with limited options and legs, forcing them to perform pressure position and kicking in the pregnant woman's belly. Other methods included peeing in the mouth, beating with

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<sup>70</sup> Ibid.

<sup>71</sup> Nirman Arora, Custodial Torture in Police Stations in India: A Radical Assessment, Vol. 41, No. ¾, Journal of Indian Law Institute, July-December 1999, pp. 513-529.

a hot iron pole, beating after stripping, embedding a hard, dull object in the back, and various other abuses and torture methods<sup>72</sup>.

Police officers these days' use methods of torture that would not leave any injury on the victim. Some of such methods include stretching the victim's legs apart and twisting his arms backward while his back was held immobilised, roller treatment – smooth wooden roller is placed on the thighs of a prostrate victim and two cops stood on the roller as it is rolled forward and backward and giving low-voltage shocks to the testicles of a man<sup>73</sup>.

However according to NCRB data 2022 Majority of deaths occur due to suicide or illness. In 2022, among the total 75 deaths, 31 died by suicide and 32 by some illness<sup>74</sup>.

Given that the majority of deaths in prison settings in 2022 were related to suicide or sickness, according to NCRB figures, it is imperative that the underlying reasons of these disturbing results be thoroughly investigated. Suicide and illness as leading causes of custodial deaths underscore systemic vulnerabilities within the criminal justice system. The prevalence of suicides among detainees raises concerns about mental health support and the stressors inherent in confinement. Concurrently, deaths from illness highlight deficiencies in healthcare provision and the need for improved medical attention within custodial settings.

Denying people in jail access to fundamental human rights like food, drink, medical treatment, or legal counsel exacerbates their suffering. Custodial violence can also encompass extortion and corruption by law enforcement personnel who abuse their authority for personal gain, in addition to these direct acts of violence. These varied manifestations underscore the pervasive nature of custodial violence and its profound impact on both the victim and society at large<sup>75</sup>.

## **2.4. Reasons for Custodial Violence:**

Custodial violence, a pervasive issue within the criminal justice system, arises from a multitude of factors. Among them, some key reasons include:

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<sup>72</sup> Ujjwal Singh, Custodial Violence in Modern India, ILE JLP, 1 (1) of 2023, Pg. 14-20.

<sup>73</sup> Asthana, N.C. "Why Police Brutality and Torture Are Endemic in India." *The Wire*, 13 Dec. 2021, [thewire.in/government/why-police-brutality-and-torture-are-endemic-in-india](https://thewire.in/government/why-police-brutality-and-torture-are-endemic-in-india).

<sup>74</sup> See Annexure 4.

<sup>75</sup> Ameena R, A Socio-Legal Study of Custodial Violence with Special Reference to SCs/STs in India.

**Structural Deficiencies:** Structural deficiencies in the criminal justice system, such as overcrowded prisons and understaffed facilities, create conditions favourable for violence. Overcrowding creates tensions among inmates and limits resources, making it difficult for authorities to maintain order and ensure the safety of detainees. According to 2019 NCRB data on overcrowding in prison, most of the prisons are overcrowded and in Uttar Pradesh prisons are overcrowded by more than 175%<sup>76</sup>.

Likewise, understaffed facilities struggle to adequately supervise and manage the inmate population, leading to lapses in security and an increased risk of violence<sup>77</sup>. According to India Justice Report, prisons are understaffed by 33%.

**Increasing Corruption:** The Indian police force is often cited as one of the most corrupt institutions in the country, with corruption manifesting in various forms. Primarily, there are two prevalent types of corruption within the police force. Petty Corruption involves soliciting bribes or financial incentives from ordinary citizens in exchange for preferential treatment or overlooking legal violations. Examples include accepting bribes to ignore traffic violations or to expedite paperwork processes. Officers who accept promotions, bonuses, or other favors from political people in exchange for complying with particular demands or turning a blind eye to illegal activity are said to be compromised politically inside the police force. This form of corruption undermines the impartiality and integrity of law enforcement agencies, as officers may prioritize political interests over their duty to uphold the law and ensure public safety.

**Inherent Authority:** "Inherent authority" refers to the natural or inherent power and influence that law enforcement and correctional officials possess due to their roles in upholding the law and maintaining order. This authority enables them to carry out duties such as searching, detaining, and using force when necessary, thereby giving them an advantage or dominance over individuals under their supervision<sup>78</sup>.

**Lack of Access to Justice:** Limited access to legal representation and recourse leaves detainees vulnerable to abuse. Without adequate legal representation, detainees may struggle to assert their

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<sup>76</sup> See Annexure 5.

<sup>77</sup> Kashyap, Shubham. "Major Problems of Prison System in India." Times of India Blog, 1 Jan. 2022, [timesofindia.indiatimes.com/readersblog/shubham-kashyap/major-problems-of-prison-system-in-india-40079/](https://timesofindia.indiatimes.com/readersblog/shubham-kashyap/major-problems-of-prison-system-in-india-40079/).

<sup>78</sup> Supra Note 12.



rights or challenge instances of mistreatment. Similarly, barriers to accessing recourse, such as bureaucratic hurdles or fear of retaliation, can deter individuals from seeking justice for violations they have experienced<sup>79</sup>.

**Inherent Bias of Police officers:** Prejudice, bias, and unchecked authority among law enforcement officers may lead to discriminatory treatment and disproportionate use of force. When officers harbour biases based on race, ethnicity, gender, or other factors, it can influence their interactions with detainees and contribute to differential treatment. Additionally, unchecked authority may embolden officers to use excessive force without facing consequences for their actions. A culture of impunity may embolden individuals in positions of power to engage in abusive behavior without fear of consequences<sup>80</sup>. Police have stigmatization on Muslims and certain lower caste communities and they believe that they normally commit wrongs. The India Justice Report of 2019 shows the inherent bias of police officers<sup>81</sup>.

**Stigmatization of certain groups in the society:** Stigmatization of individuals in custody, particularly marginalized groups, may contribute to dehumanization and justify acts of violence. When detainees are stigmatized or dehumanized based on their social identity, it can lead to the normalization of violence against them. LGBTQ+ people and other marginalized groups may be more susceptible to this kind of stigmatization and its effects<sup>82</sup>.

**Inadequate Training:** Inadequate training can leave law enforcement personnel ill-equipped to handle high-stress situations with composure and restraint. Moreover, the police officials are not taught enough about Human Rights and this in turn leads to custodial violence. The India Justice Report 2019 shows the minimal amount budget allocation for police training. The highest budget allocation is in Delhi which is just 2.5% of the total budget allocated for police department<sup>83</sup>.

**Political Pressure:** Political pressure on law enforcement exacerbates the risk of custodial violence by incentivizing shortcuts and coercive tactics to secure results. The influence of political interests compromises the impartiality of police personnel, prioritizing political objectives over

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<sup>79</sup> K, Rajashree, and Chetan Singai. "Reforms in Legal Aid and Awareness with Regard to the Aged in India: A Case for an Inclusive Approach." *Jindal Global Law Review*, 29 Nov. 2022, <https://doi.org/10.1007/s41020-022-00178-5>.

<sup>80</sup> Dehal, Aditi. An Analysis of Racial Profiling Vis-à-vis Police Bias. *Jus Corpus Law Journal*.

<sup>81</sup> See Annexure 6.

<sup>82</sup> Amnesty International, India: Persecution of Minorities and Shrinking Space for Dissent.

<sup>83</sup> See Annexure 7.

due process and detainees' rights. The Second Administrative Reforms Commission (2007) highlighted instances where the political administration has exerted undue influence over police personnel, compromising their ability to perform their duties impartially. According to India Justice Report 2019, which investigated on the reasons for of investigation many agreed that political pressure is one of the major hindrance in investigation<sup>84</sup>.

**Overburdened Police Officials:** The strain on police officers due to overburdened responsibilities contributes significantly to the risk of custodial violence. With only 158 officers per 100,000 people, the lack of manpower leads to fatigue, stress, and rushed decision-making. Reforming working conditions, increasing staffing levels, and providing support and training can alleviate this strain and reduce the risk of custodial violence, fostering a more just and accountable criminal justice system. India Justice Report highlights excessive working hours and minimal holidays for police officials<sup>85</sup>.

**Lack of Accountability:** In India, numerous complaints are lodged against the police, alleging wrongful arrests, unauthorized searches, instances of torture, and even cases of rape perpetrated while individuals are in custody. To mitigate such abuses of power, robust safeguards must be instituted, including mechanisms ensuring police accountability to political authorities, internal oversight by senior officers, and the establishment of independent bodies tasked with monitoring police conduct<sup>86</sup>.

**Existence of Macho culture among police officers<sup>87</sup>:** Police officers often face peer pressure to adopt a tough stance, viewing torture as a means to achieve effective policing. This pressure arises from a culture where brutality is normalized, and torture is seen as a necessary tool in law enforcement. Witnessing colleagues engage in acts of brutality can desensitize officers over time, further perpetuating a cycle of violence and impunity within the police force.

**Normalization of Police Brutality<sup>88</sup>:** Police brutality is often normalized within both the police force and society at large. Factors contributing to this normalization include a culture of impunity

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<sup>84</sup> See Annexure 8.

<sup>85</sup> See Annexure 9.

<sup>86</sup> Supra Note 71.

<sup>87</sup> Asthana, N.C. "Why Police Brutality and Torture Are Endemic in India." *The Wire*, 13 Dec. 2021, [thewire.in/government/why-police-brutality-and-torture-are-endemic-in-india](https://thewire.in/government/why-police-brutality-and-torture-are-endemic-in-india).

<sup>88</sup> Tiwary, Anurag. "The Unlawfulness of Police Brutality in India – the Leaflet." *Theleaflet.in*, 26 Oct. 2021, [theleaflet.in/the-unlawfulness-of-police-brutality-in-india/](https://theleaflet.in/the-unlawfulness-of-police-brutality-in-india/).

among officers, a lack of accountability mechanisms, and societal attitudes prioritizing security over individual rights. Sensationalized media coverage of crime further perpetuates the perception that aggressive policing is necessary for public safety.

These are some of the reasons for custodial Violence in India. Addressing the multifaceted issues contributing to custodial violence demands a holistic approach. We can endeavour to establish a criminal justice system that preserves justice, equity, and human rights for everybody by resolving systemic flaws, guaranteeing accountability, offering sufficient resources and training, and placing a high priority on the welfare of both detainees and law enforcement officers.

## **2.5. Historical Overview of Custodial Violence in India:**

The history of custodial violence in India is intertwined with the evolution of policing systems prevalent in the region<sup>89</sup>. Before the establishment of formal modern law enforcement, the Indian subcontinent relied on local structures and community-driven methods to maintain law and order<sup>90</sup>.

The genesis of law enforcement can be traced back to the early stages of human history when small, nomadic communities sought protection from animal attacks and individuals with malicious intent<sup>91</sup>. As these communities evolved into tribes and settled in small villages, they began to establish laws and norms for the protection of people and property. Concurrently, the organization responsible for upholding these tribal regulations emerged, possibly marking the inception of the first law enforcement organization in the form of a military police<sup>92</sup>. Throughout history, there have been police-like figures in nearly every society. India also had such system.

From 500 B.C. to 400 B.C., historical accounts indicate that torture was a prevalent method used by law enforcement to punish offenders and convicts. During this period, methods such as single combat, fire ordeals, and water ordeals were commonly employed<sup>93</sup>. References to torture and brutality in detention can be traced back to the Vedic era (2000-1400 B.C.). Throughout the legal and philosophical era (800–320 B.C.), torture took various forms<sup>94</sup>. The practice of force,

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<sup>89</sup> Abimanyu, Gokul. "Custodial Violence in India – A Case Study." Law Insider India, 9 July 2020

<sup>90</sup> Anupam Sharma, Police in Ancient India, Vol. 65, No. 1, The Indian Journal of Political Science, Jan.-March, 2004, pp. 101-110.

<sup>91</sup> B.N. Mullick, A Philosophy for the Police (1969) pp.1-5.

<sup>92</sup> John L. Sullivan, Introduction to Police Science (1966) p.123.

<sup>93</sup> Tripathi, Surendra. "History of Custodial Violence." Scribd.

<sup>94</sup> Sanker Sen, Police in Democratic Societies (2000) p.48.

compulsion, and torture persisted into the second century AD, is documented in the 1865 Madras Torture Commissions Report<sup>95</sup>.

Dharma and danda were foundational concepts in Indian governance throughout history. "Dandniti," or the use of punishment, was considered an essential component of statecraft. The proper application of "danda" was viewed as a critical duty of the king according to the Dharma Sutras<sup>96</sup>. Among his contemporaries, Manu is the foremost author of Dharamshastra. He discusses four types of punishment: bandhadanda (physical punishment, including the death penalty), vakdanda (admonition), dhikdanda (censure), and Dhanadanda (pecuniary punishment, such as fines)<sup>97</sup>. "Bandha danda encompassed beatings, limb amputations, body piercings, the death penalty, and immersion in boiling oil<sup>98</sup>. In ancient India, the punishment was determined by three factors: the caste system, trial by danda (rod), and the ordeal<sup>99</sup>.

Since the Vedic era (2000–1400 B.C.), torture and brutality have been associated with law enforcement in India<sup>100</sup>. The study of the Vedas reveals references to officials who appear to have been police officers in ancient India. These officials are designated Jivagribhs in the Rig Ved and Ugras in the Upanishads<sup>101</sup>. The Rigveda specifically mentions robbers (taskars) and thieves (taya or sutayas) being dealt with by the king's envoy with cruel and unusual punishment<sup>102</sup>. During this period, punishment was viewed as a form of atonement that purified the individual of wicked tendencies and transformed their nature. Justice was administered through extremely painful trials, including those involving fire, water, poison, and single combat<sup>103</sup>. These rituals and ordeals seemed almost magical, designed to compel the parties involved to confess the truth through intimidation.

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<sup>95</sup> Anuj Bhuwania, *Very Wicked Children: 'Indian Torture' And The Madras Torture Commission Report of 1855*, 06 IJHR 09, 10 (2009).

<sup>96</sup> *The First Report of National Police Commission*, 1979.

<sup>97</sup> Graves Champney Houghton & 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)

<sup>98</sup> Qadeer Alam, *Historical Overview of Torture and Inhuman Punishments in Indian Sub-Continent* 31(2), JPUHS 127, 128 (2018).

<sup>99</sup> Arthur Llewellyn Basham, *The Wonder That Was India: A Survey of the History and Culture of the Indian Sub-Continent Before the Coming of the Muslims* 122 New York Taplinger Publishing Company 1968.

<sup>100</sup> S.K. Ghosh, *Torture and Rape in Police Custody* P.15 (1993).

<sup>101</sup> Suman, Saurav. *The Police Brutality in India: A Critical Analysis*. Sept. 2020.

<sup>102</sup> GIRIRAJ SHAH, *INDIAN POLICE - A RETROSPECTS* P.9 (1992).

<sup>103</sup> P.V. KANE, *HISTORY OF DHARAMSASTRAS* PP.368-78(Vol. IIIrd, 1973).

During the epic era (1400–800 B.C.), it is evident that the police subjected detainees to torture<sup>104</sup>. This phase was succeeded by the legal and philosophical periods, during which torture and harsh punishment remained very common<sup>105</sup>. Indications suggest the presence of an indirect policing system between 600–300 B.C.<sup>106</sup>, as evidenced by texts such as the Yagnavalkyasmriti (c. 100–300 A.D.), the Naradasmriti (c. 100–400 A.D.), and the Katayanasmiti (c. 400–600 A.D.)<sup>107</sup>. However, these systems often perpetrated violent crimes against those apprehended under the guise of law enforcement.

Between 320 B.C. and 300 A.D., the Buddhist era exemplified strong humanitarian principles, prohibiting any form of torture during incarceration. Moreover, inmates who were elderly, female, or had large families were granted preferential treatment, reflecting a compassionate approach to custodial matters<sup>108</sup>. In the subsequent Gupta era (320–500 A.D.), four types of ordeals were utilized to punish prisoners when evidence against them could not be satisfactorily proven by available means. Thus, ordeal-based trials were prevalent during this period, representing a significant aspect of the judicial system<sup>109</sup>.

Not much is known about the criminal justice system during the six and a half centuries following the death of Harsha in 650 A.D. This period was characterized by dynasty warfare, with numerous small Hindu kingdoms engaged in perpetual conflict, resulting in constantly shifting borders and political landscapes<sup>110</sup>. As a result, detailed records regarding the criminal justice system from this era are scarce, and the focus was primarily on the military and political aspects of governance.

During Muslim rule from the 13th to the 18th century, offenses were subject to Shariat law, adhering to Islamic principles of justice and equity<sup>111</sup>. However, severe penalties were imposed, particularly in cases of robbery and murder. Criminals often faced execution by being trampled under elephants' feet, a traditional method carried out publicly as a deterrent<sup>112</sup>. Living conditions

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<sup>104</sup> S.K. GHOSH, THE OUTCRY OF POLICE BRUTALITY P.34 (1983).

<sup>105</sup> VENU GOPAL.RAO, FACETS OF CRIME IN INDIA P. 222 (1963).

<sup>106</sup> SURENDRNATH SEN, ADMINISTRATIVE SYSTEM OF MARATHAS (1925) p.511.

<sup>107</sup> Id.

<sup>108</sup> Supra Note 9.

<sup>109</sup> VENU GOPAL.RAO, FACETS OF CRIME IN INDIA P. 222 (1963).

<sup>110</sup> Supra Note 97.

<sup>111</sup> ANIL CHANDRA BANERJEE, A NEW HISTORY OF MEDIEVAL INDIA 393 (S. Chand, New Delhi 1986).

<sup>112</sup> Home Office, Report of Royal Commission on Capital Punishment 703 Her Majesty's Stationary Office, London (1949-53).

for convicts were harsh, with practices like mutilation and "eye for an eye" punishments being prevalent. Adulterers were stoned to death, and thieves had their hands severed, with no alternative compensation allowed for victims or their families<sup>113</sup>. Torture, notably in prisons, was widespread<sup>114</sup>, and often used to extract confessions. The monarch retained ultimate authority over the administration of justice<sup>115</sup>.

Emperor Akbar, motivated by a vision of impartial justice, pursued policies of tolerance and equality<sup>116</sup>. He sought to reform harsh treatment of prisoners. His successor, Jahangir, continued these principles but occasionally resorted to severe punishments for serious offenses<sup>117</sup>. Jahangir specifically prohibited the mutilation of ears and noses but did not outlaw other forms of amputation. Jahangir occasionally used severe methods, such as execution by elephants or wild beasts, to punish individuals convicted of serious social or political offenses<sup>118</sup>.

Shahjahan's reign was marked by his infamous captivity of his own son, reflecting a period where prisoners faced difficulties in obtaining leniency. Aurangzeb, who succeeded Shahjahan, aimed for more orderly justice, instructing officials to detain individuals only for valid reasons. His measures, including swift trials and release of innocents, aimed to reduce violence against inmates<sup>119</sup>.

Following the decline of the Mughal Empire, British colonial rule in India aimed to improve the legal system, drawing inspiration from English law. However, despite these intentions, harsh and brutal methods of punishment persisted. Instances of severe treatment, especially by the police, were not uncommon. Coercion became a cornerstone of British administration strategy in India<sup>120</sup>.

The criminal justice system was absent in India from the fall of the Mughal Empire until the arrival of British administration. During their earlier days in India, the British encountered bands of

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<sup>113</sup> Supra Note 97.

<sup>114</sup> Manu, Ch. VII, SI.1-13; also see Upendra Nath Ghoshal, *A History of Indian Political Ideas: The Ancient Period and The Period of Transition to The Middle Ages* 43 (Oxford University Press, Oxford 1959).

<sup>115</sup> Arif Majruddin & Pooja Singh, *Custodial Violence in India with Reference to The Prevention of Torture Bill and International Legal Framework*, Volume 8, Issue 1, IJLS, 2022.

<sup>116</sup> S.N. DHYANI, *MORALITY AND JUSTICE* P.92 (1984).

<sup>117</sup> MADAN, T.C., *INDIAN POLICE, ITS DEVELOPMENT UPTO 1905 AND HISTORICAL ANALYSIS* P.11 (1980).

<sup>118</sup> Justice Gulab Gupta, *Custodial Violence and Human Rights Commission* P.286 *Central Indian Law Quarterly*, Vol. 12, (July-Sept. 1999).

<sup>119</sup> Supra Note 9.

<sup>120</sup> Ibid.

professional robbers and killers known as "thugs," who operated in isolated areas. The Britishers came up with the Criminal Tribes Act of 1871 where several tribes were classed as hereditary, habitual offenders who were prone to committing minor offenses and they were under constant surveillance<sup>121</sup>. Under this act, many people, even before trial, residents were arbitrarily detained on false charges, leading to imprisonment and deaths. Officials, especially Kotwals, commonly tortured individuals, often resulting in fatalities. The British established courts, police forces, and jails, codified laws, and abolished administration of justice social traditions, bringing order and dismantling the thugs<sup>122</sup>.

In addition, if an individual couldn't pay their full debt, revenue collectors resorted to torture. In 1854, allegations against the East India Company were raised in the House of Commons<sup>123</sup>. Subsequently, the Madras government initiated a thorough investigation by appointing a three-person commission to probe the matter. Over seven months, the commission heard numerous cases related to the allegations<sup>124</sup>. The resulting Torture Commission report of 1855, commissioned by the British government, shed light on the prevalence of police torture in the Madras presidency. It underscored that torture was not an isolated incident but rather a systemic issue within policing. Consequently, the recommendations of the Torture Commission led to the establishment of the Police Commission in 1860<sup>125</sup>. Furthermore, it advocated for the formation of a unified civil police force under the proposed Police Act of 1861. The 1905 report from the Police Commission, appointed by Lord Curzon, highlighted instances where innocent individuals were intimidated, threatened, or coerced into providing information<sup>126</sup>.

Following forty years of the Police Act of 1861 being in effect, the Indian Police Commission (1902-03) conducted a comprehensive assessment of the police's performance. The commission found the police force to be highly inefficient, corrupt, and oppressive. It identified organizational and training deficiencies, inadequate supervision, and a failure to earn the trust and cooperation of

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<sup>121</sup> Kapadia, K. M. "The Criminal Tribes of India." *Sociological Bulletin*, vol. 1, no. 2, 1952, pp. 99–125. JSTOR, <http://www.jstor.org/stable/42864482>. Accessed 14 Apr. 2024.

<sup>122</sup> *Supra* Note 97.

<sup>123</sup> Speech of Danby Semour, at Hansard, 3rd ser., 135 (July 11, 1854), (1854) 61.

<sup>124</sup> A Letter issued from the Chief Secretary, H. C. Montgomery, Public Department, Fort St. George, 925 (Sept. 9, 1854).

<sup>125</sup> The Police Commission Report, (Sept. 01, 1860).

<sup>126</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).

the public. The commission deemed the state of the police across the nation as deplorable, with widespread abuses causing significant harm to the public and tarnishing the government's reputation. Urgent and substantial changes were deemed necessary. The commission recommended recruiting educated Indians into higher positions within the police force, separating law and order functions from investigative tasks, and establishing a cadre for sub-inspectors of police at police stations and state criminal investigation departments. However, in the ensuing decades, the colonial government increasingly resorted to coercive measures instead of addressing grievances, as evidenced by the rise of movements such as the Swadeshi Movement, Non-cooperation Movement, Civil Disobedience Movement, and Quit India Movement, as well as labor unrest, the emergence of the Kisan movement supported by the Communist Party, and rural insurrections<sup>127</sup>.

The agents of a foreign government were responsible for committing crimes and immoral acts. They established their own courts, police, jails, and laws to assert dominance over the nation for personal gain and convenience. The current police system is a legacy of British rule. This mindset likely persists among Indians in general and police personnel in particular<sup>128</sup>.

In the post-independence era, several Police Commissions were established by both the Union and State Governments to assess the functioning and effectiveness of the State Police. These commissions operated during the 1950s, 1960s, early 1970s, and 1980s. Many of these investigative bodies documented cases of third-degree torture carried out by the police while individuals were in custody for political reasons. Additionally, they highlighted instances of corruption and identified shortcomings in infrastructure support and training within the police force.

The recommendations put forth by these commissions primarily focused on administrative restructuring, the size of the police force across different units, the relationship between the police and the Principal District Collector, remuneration and benefits for police ranks, recruitment criteria for new officers, establishment of training facilities, and other pertinent issues.

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<sup>127</sup> Kamlesh Kumar, *Custodial Crimes in Police Custody: Causes, Consequences and Preventive Measures*, Tata Institute of Social Sciences (2011) p.39.

<sup>128</sup> *Supra* Note 97.



The Shah Commission, convened in 1978, specifically examined instances of police violence occurring between 1975 and 1977. It brought to light the actions of the police during the state of emergency when they operated without being accountable to any public authority. The Commission urged the government to take necessary measures to prevent improper political and administrative interference in law enforcement activities<sup>129</sup>.

In conclusion, the historical overview of custodial violence in India reveals a complex and enduring challenge that spans centuries. From ancient civilizations to colonial rule and into the post-independence era, the issue has persisted, reflecting systemic failures within the criminal justice system. As we confront this legacy, it is imperative to acknowledge the profound impact of custodial violence on individuals and society at large. As we move forward, coordinated efforts are required to address the underlying issues, implement significant reforms, and preserve the values of justice, accountability, and human rights. By doing this, we can aim to create a future in which all people are treated with respect and dignity under the law and where custodial violence is completely eliminated.

## **2.6. Custodial Violence against vulnerable sections of society:**

Most of the times it is the disadvantaged section of society that is affected by the custodial violence. People belonging to the lower caste are mostly subjected to custodial violence<sup>130</sup>. Gender further complicates the narrative of custodial abuse, as evidenced by the distinct forms of violence experienced by women, transgender individuals<sup>131</sup>. Socioeconomic factors exacerbate custodial violence, with caste and gender playing interconnected roles, amplifying the vulnerability of marginalized populations. Systemic neglect and economic disparity leave certain communities particularly susceptible to abuse and exploitation within the custodial system.

Thus men from underprivileged sections of society such as those belonging to lower class, religious minority, and marginalized castes in India are victims of torture and brutality during detention. Arrested and detained on unproven charges, the State uses violence against its own people. When looking into the circumstances and causes of the victims' initial imprisonment, the

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<sup>129</sup> Ibid.

<sup>130</sup> "Impunity and Complicity: The Role of the State and Non-State Institutions in Cases of Custodial Deaths in India the Polis Project." Thepolisproject.com.

<sup>131</sup> Varsha Purohit, Custodial Rights of Women in India, Volume 2, Issue 3, IJLJS.

idea of identitarian violence is crucial. Thus it important to comprehend the systemic and fundamental prejudices held by the Indian government towards individuals belonging to marginalized populations and minority communities.

### **2.6.1. Custodial Violence and Caste:**

Custodial Violence is committed in an increased scale against the underprivileged-section of society, especially against the Dalits, SCs and STs. There are Sociological aspects that contributes to the increased violence against these socially marginalized people. Some of these aspects are:

Custodial violence against the SC/ST community often stems from deep-rooted caste discrimination prevalent in India<sup>132</sup>. The caste system perpetuates a hierarchical structure where SC/ST communities are marginalized and subjected to structural violence<sup>133</sup>. This violence is not fueled by personal animosity but by the entrenched belief of superiority among upper castes. Any attempt to challenge this social order triggers tension and conflict, as higher castes perceive it as a threat to their status quo. Consequently, they institutionalize efforts to exclude lower castes from societal spheres, leading to their socio-economic marginalization<sup>134</sup>. Despite historical ignorance of their rights, educational expansion and reservation policies have heightened political awareness among marginalized communities, empowering them to challenge systemic discrimination.

Caste ethnocentrism is another factor that may contribute to an increase in incidents of custodial violence against the SC/ST population in India. Believing that one's own ethnic or cultural group is more significant than any other group in relation to oneself is known as ethnocentrism. Dalits and other minorities are frequently socially excluded due to caste-based ethnocentrism<sup>135</sup>.

75 people, or 60% of the 125 people who died in the 124 occurrences of police-related deaths that NCAT recorded in 2019 were from underprivileged and marginalized communities. Thirteen victims came from Dalit and tribal communities, fifteen from the Muslim minority community, and thirty-seven were arrested for minor offenses like theft, burglary, deception, illegal liquor sales, gambling, etc., which shows their socioeconomic status. Three of the victims were farmers,

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<sup>132</sup> R, Ameena. A Socio-Legal Study of Custodial Violence with Special Reference to SCs/STs in India. 2021.

<sup>133</sup> Satish Deshpande, The Contemporary Meaning of Caste, livemint ([www.livemint.com/caste](http://www.livemint.com/caste)).

<sup>134</sup> Mahmudul Hasan Laskar (2018), 'Ethnocentrism and Social Exclusion of Weaker Section in India', 4 (5), International Journal of Humanities and Social Science Research.

<sup>135</sup> Id.

one was a laborer, one was a refugee, two were security guards, one was a rag-picker, and two were drivers.

Thus caste inequality, rooted in historical and cultural contexts, plays a significant role. Social biases, religious prejudices, and economic disparities further compound the vulnerability of lower caste individuals. The influence of political motivations, ethnocentrism, and instances of police deviance contribute to the manifestation of custodial violence within this context<sup>136</sup>.

### **2.6.2. Women and Custodial Violence:**

A disturbing reality that disproportionately impacts women in the criminal justice system is custodial abuse. Historically, women have been suffering because of custodial violence. One of the form of custodial violence that is committed against women is custodial rape<sup>137</sup>. The Mathura rape case<sup>138</sup>, is one of the well-known case in this regard. In that a 16-year old girl was raped in the police custody. The Supreme Court ruled that since the girl did not express her non-consent, it did not amount to rape. This created an amendment in the criminal Law and shifted the burden of proof from accuser to the accused. Another case in this regard is the Arati Majhi case of 2014<sup>139</sup>. The victim's father claimed that his daughter, who was being held as a suspect in a sedition case, had been raped while in the police's custody in a nearby camp. The police had apprehended the daughter at 4 a.m. In accordance with CrPC section 176 (1-A), the petition was filed. Nevertheless, the victim was not medically examined, and since six months had passed by the time the case was taken up, it became pointless to do so at that point. As a result, the victim was found not guilty. The case was found in favor of the defendants due to insufficient evidence.

Victims of custodial violence, especially custodial rape, face significant hurdles in seeking justice. Proving such cases in court is challenging due to the authority entrusted to police personnel and the difficulty in obtaining evidence while in custody. Victims often struggle to file formal

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<sup>136</sup> Mahmudul Hasan Laskar (2018), 'Ethnocentrism and Social Exclusion of Weaker Section in India', 4 (5), International Journal of Humanities and Social Science Research.

<sup>137</sup> R.S. Saini, Custodial Torture in Law and Practice with Reference to India, Vol.36, Journal of the Indian Law Institute, 166-192 (1994).

<sup>138</sup> Tuka Ram and Anr vs State of Maharashtra, (1979) SCR (1) 810.

<sup>139</sup> Arati Majhi vs State of Odisha, LNIND (2014) ORI 156.

complaints, and evidence may be tampered with or destroyed by officials. Additionally, victims bear the burden of proving lack of consent, further complicating legal proceedings<sup>140</sup>.

Thus, custodial violence against vulnerable sections of society, particularly those belonging to lower castes and women, underscores deep-rooted systemic issues within the criminal justice system. Comprehensive changes are needed to combat custodial violence, including tearing down systemic injustices, opposing discriminatory beliefs, and making it a top priority to defend everyone's human rights, regardless of social or economic status.

## **2.7. Conclusion:**

In this chapter, we have explored the multifaceted concept of custodial violence, delving into its various types, underlying reasons, and historical context. Thus we can observe that the Custodial violence, manifests itself from two distinct perspectives. The first entails active participation by the police, whether as an organized force or as individual officers, in perpetrating violence against detainees. Equally significant yet often overlooked is the second form of police brutality, where officers passively observe the violence without intervening, thereby complicity facilitating the abuse.

Throughout our examination, we have consistently highlighted the paramount importance of understanding custodial violence within the broader framework of the criminal justice system. Justice, human rights, and due process are fundamental values that are seriously threatened by this problem. Ranging from subtle coercion to overt brutality, custodial violence has cast a long and dark shadow over the history of law enforcement in India. There are many reasons for custodial violence and systematic changes should be made in order to prevent custodial violence.

We also observed that Custodial Violence and Torture has been in existence for a very long period of time in India and how today the disadvantaged section of society are affected by it. Ultimately, our examination of custodial violence serves as a reminder of the persistent problem in our legal institutions. It is only through unwavering acknowledgment, profound introspection, and decisive, meaningful action that we can earnestly embark on the journey to dismantle these deeply entrenched patterns of abuse and uphold the sanctity of justice for all.

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<sup>140</sup> Id.

## **Chapter 3: Legal Analysis of Custodial Violence in India**

Prisons don't rehabilitate, they don't punish, they don't protect, so what the hell do they do?<sup>141</sup>

- Jerry Brown

### **3.1.Introduction:**

Custodial Violence which is blasphemy of criminal justice system of India, should be studied in the context of its legislative framework. This Chapter looks into the complex legal framework surrounding custodial violence in India. This examination tries to defines the legal landscape surrounding custodial violence, navigating from the foundational provisions of the constitution to various Indian legislation, international conventions, commission reports, NHRC guidelines, and judicial decisions. Fundamentally, this investigation aims to look into the intricacies, scrutinize the effectiveness, and evaluate the shortcomings of the legal frameworks intended to combat violence against prisoners.

For this purpose, there would be a detailed analysis of different provision in Indian Constitution of 1950 Indian Penal Code of 1860, the Code of Criminal Procedure of 1974 and Indian Evidence Act of 1872. As we set out on this far-reaching expedition, we examine the constitutional structure that ought to serve as a safeguard against such violations. At the same time, we also investigate the complex legal system in India, breaking down the laws that are meant to protect people from abuses in custody. We then look into the international conventions like The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, relating to custodial violence, various NHRC guidelines, Law Commission reports on Custodial Violence and the court's authoritative precedents.

Ultimately, our goal is to shed light on the constitutional safeguards designed to prevent custodial abuses and to critically assess the legal mechanisms in place to protect individuals during incarceration. By examining court precedents and authoritative rulings, we endeavour to provide a comprehensive understanding of the legal landscape surrounding custodial violence in India.

### **3.2. Constitutional Provisions on Custodial Violence:**

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<sup>141</sup> Jerry Brown, Thoughts (1976).

The Indian Constitution envisages dignity to every individual in the country. The Preamble, Fundamental Rights and Directive Principles of State Policy ensure protection of human rights of every individual. The preamble talks about justice- social, economic and political and also specifically talks about the dignity of the individual.

Part III of the Indian Constitution enshrines fundamental rights, including Article 21, guaranteeing the right to life and personal liberty. The interpretation in **Maneka Gandhi v. Union of India**<sup>142</sup> expanded Article 21 to include the right to live with human dignity. **Sunil Batra (II) v. Delhi Administration**<sup>143</sup> emphasized that handcuffs and irons violate human dignity. **Kadra Pahadia v. State of Bihar**<sup>144</sup> affirmed the right to a speedy trial under Article 21. Today, right to life includes right to live with human dignity and thus would also include right against torture especially by the state functionaries<sup>145</sup>. Thus it can be said the right against custodial violence arises from Article 21 of the Indian Constitution<sup>146</sup>. Article 14 ensures equality, extending to accused and convicted individuals. Article 20(1) prohibits conviction based on ex post facto laws. Article 20(2) prevents double jeopardy. Article 20(3) prohibits self-incrimination and torture. Moreover, Article 22 (1) and 22(2) also tries to prevent the abuse of power during arrest. Article 22(1) states that the accused while being arrested should be informed of the grounds on which a he/she is being arrested and that he/she has the right to consult a legal practitioner. In **A.K. Gopalan v. State of Madras**<sup>147</sup> the court established that the right to counsel is a statutory protection immune to legislative attack.

One lacuna in the Indian Constitution regarding custodial violence is the lack of specific and enforceable provisions explicitly addressing custodial violence and torture. While Article 21 guarantees the right to life and personal liberty, including the right to live with human dignity, there is no direct mention of custodial violence or torture. Additionally, while Article 20(3) prevents the accused from being compelled to be a witness against themselves, it does not provide comprehensive protection against all forms of torture and ill-treatment during interrogation or

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<sup>142</sup> AIR 1978 SC 597.

<sup>143</sup> AIR 1980 SC 1579.

<sup>144</sup> AIR 1997 SC 3750.

<sup>145</sup> AIR 1997 SC 610.

<sup>146</sup> Jitendra Mishra, Custodial Atrocities, Human Rights and The Judiciary, Vol. 47, No. 4, Journal of the Indian Law Institute, October-December 2005, pp. 508-521.

<sup>147</sup> AIR 1950 SC 27.

custody. Moreover, although Article 22 outlines certain procedural safeguards during arrest and detention, it does not explicitly address measures to prevent custodial violence or provide remedies for victims. Therefore, there is a need for comprehensive legislative measures specifically addressing custodial violence, ensuring accountability, and providing effective remedies for victims within the framework of the Indian Constitution.

### **3.3.Indian Legislation Relating to Custodial Violence:**

In addition to the constitutional provisions, there are other statutory provisions that also seek to protect the rights of the accused and protect him from being tortured. These provisions acts as a safeguard to the accused person and protects the arrested person from custodial violence.

#### **3.3.1. Code of Criminal Procedure, 1973:**

The CrPC contains provisions aimed at preventing arbitrary arrest and detention, as well as providing compensation for victims of custodial abuses<sup>148</sup>. Sections 46 and 49 protect detainees from torture, prohibiting police from touching or confining them without submission<sup>149</sup>, except in cases punishable by death or life imprisonment<sup>150</sup>. Also no unnecessary restraint can be exercised by the police officer to prevent the accused from being escaped<sup>151</sup>. Women are further protected from arrest during certain hours, requiring permission from a judicial magistrate if arrested during these times<sup>152</sup>. Section 160(1) prohibits the summoning of men under fifteen and women from their place of residence. Section 54 mandates magistrates to inspect detainees' bodies and document examinations when abuse is alleged. A medical practitioner may study it at his request<sup>153</sup>. Additionally, Section 176 requires a magistrate to investigate deaths of accused persons in police custody<sup>154</sup>.

Sections 56, 57, and 167 of the Criminal Procedure Code 1973 pertain to custodial matters. They require that a person who has been taken into custody by the police appear before a magistrate within twenty-four hours. Section 167 allows for detention beyond 24 hours if further investigation

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<sup>148</sup> Kumar, Abhijeet, *Crime Beneath the Rule of Law* (January 3, 2014).

<sup>149</sup> Section 46(1) of Code of Criminal Procedure, 1973.

<sup>150</sup> Section 46(3) of Code of Criminal Procedure, 1973.

<sup>151</sup> Section 49 of Code of Criminal Procedure, 1973.

<sup>152</sup> Section 46(4) of Code of Criminal Procedure, 1973.

<sup>153</sup> Section 54(1) of Code of Criminal Procedure, 1973.

<sup>154</sup> Section 176 of Code of Criminal Procedure, 1973.

is necessary<sup>155</sup>, with a maximum of 15 days in police custody. The Magistrate may extend custody for up to 90 days for serious offenses or 60 days for other offences<sup>156</sup> after recording the reasons in writing<sup>157</sup>. However, no such custody can be the accused is presented be granted unless the accused is produced before him<sup>158</sup>. The Supreme Court clarified in various cases the scope of the Magistrate's discretion in granting police custody. In **Inspector of Police vs. K.C. Palanisamy**<sup>159</sup>, held that investigation is one of the primary requisites especially with regard to investigating serious and heinous crimes. The Courts in a lot of cases has acknowledged how effective and imperative is the custodial interrogation in the collection of evidence and proving the offence<sup>160</sup>. Regarding the interpretation of Section 167(2), the Supreme Court ruled in **Central Bureau of Investigation vs. Anupam J. Kulkarni**<sup>161</sup>, that police custody can only be granted for a maximum of 15 days following the arrest. However, in **CBI vs. Vikas Mishra**<sup>162</sup>, the Court reconsidered this ruling and allowed for the extension of police custody beyond 15 days. In **Taluk Circle Inspector of Police vs. Nagaraj and another**<sup>163</sup>, the Madras High Court permitted police custody for an additional day following the initial 15 days. The Supreme Court, in **V. Senthil Balaji vs. State represented by Deputy Director & Ors**<sup>164</sup>, affirmed that the 15-day detention period can be spread out during the investigation, interpreting the term "from time to time" in Section 167 CrPC<sup>165</sup>. Section 309 Crpc gives the power to the court to adjourn the inquiry or the proceedings at any stage and may remand the accused from the custody. Sections 167 and 309 of the Code serve as the rationale for bringing the accused before a magistrate in order to protect the rights and interests of that individual.

Section 50 of the Code mandates informing the accused of the basis of arrest<sup>166</sup> and the right to bail, with non-compliance rendering the arrest unlawful<sup>167</sup>. Section 162 renders statements made

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<sup>155</sup> Section 167(1) of Criminal Procedure Code, 1973.

<sup>156</sup> Section 167 (2) (a) of Criminal Procedure Code, 1973.

<sup>157</sup> Section 167(3) of Criminal Procedure Code, 1973.

<sup>158</sup> Section 167 (2) (b) of Criminal Procedure Code, 1973.

<sup>159</sup> (2011) SCC OnLine Mad 1780.

<sup>160</sup> M. Ravindran vs. Intelligence Officer, Directorate of Revenue Intelligence, AIR 2020 SC 5245; P. Chidambaram vs. Directorate of Enforcement, AIR Online 2019 SC 1001.

<sup>161</sup> (1992) 3 SCC 141.

<sup>162</sup> (2023) 6 SCC 49.

<sup>163</sup> CrI.O.P.No.8883 of 2023.

<sup>164</sup> 2023 SCC Online SC 934.

<sup>165</sup> State of Rajasthan vs. Basant Agrotech, (2013) 15 SCC 1.

<sup>166</sup> Section 50(1) of Criminal Procedure Code, 1973.

<sup>167</sup> Ashen v. The State, 1987 Cri. LJ 1750



to police inadmissible as evidence, usable only for contradiction<sup>168</sup>. Section 164 stipulates that only confessions made to the Magistrate are admissible<sup>169</sup>. These provisions serve as cautionary measures against abuse of authority<sup>170</sup>. In **Khatri v. State of Bihar**<sup>171</sup>, the court affirmed the applicability of Sections 162 and 172 within the context of writ proceedings under Article 32 of the Indian Constitution.

Other provisions include examination of the accused in Court without the oath<sup>172</sup>, accused can be taken as witness on oath provided he on his own makes a request before the court of law<sup>173</sup> and the Compensation given to the victims<sup>174</sup>.

The CrPC provides safeguards under sections 197 and 132 to shield government servants from unjust allegations while acting in accordance with official orders. In **P.P. Unnikrishnan v. Puttiyottil Alikutty**<sup>175</sup>, the Supreme Court emphasized that Section 197(1) applies only when there is a reasonable nexus between the act and the discharge of official duty. Genuine circumstances, not fanciful assertions, must support the claim. In **Uttarakhand Sangharsh Samiti v. the State of Uttar Pradesh**<sup>176</sup>, the Court clarified that actions like wrongful confinement, use of excessive force resulting in fatalities, and instances of sexual harassment or assault are not protected under Section 197 and do not require prior authorization for prosecution. The judgment demonstrates the commitment to ensuring that victims of police misconduct receive justice and to holding law enforcement officials accountable for their acts.

One significant gap in the Code of Criminal Procedure (CrPC) concerning custodial violence is the absence of stringent enforcement mechanisms and penalties for perpetrators. Despite provisions aimed at safeguarding individuals' rights and preventing abuses, inadequate implementation and oversight often result in impunity for law enforcement officials. Moreover, the enforcement of compensation provisions for victims may be lacking, leaving them without adequate recourse. Clearer guidelines and protocols within the CrPC are needed for investigating

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<sup>168</sup> Section 162 (1) of Criminal Procedure Code, 1973.

<sup>169</sup> Section 164 of Criminal Procedure Code, 1973

<sup>170</sup> Supra 157.

<sup>171</sup> 1981 AIR (SC) 1068.

<sup>172</sup> Section 313 of Criminal Procedure Code, 1973.

<sup>173</sup> Section 315 of Criminal Procedure Code, 1973.

<sup>174</sup> Section 357 of Criminal Procedure Code, 1973.

<sup>175</sup> AIR 2000 SC 2952.

<sup>176</sup> (1996) 1 UPLBEC 461.

and prosecuting custodial violence cases, as existing provisions may lack explicit instructions, leading to inconsistencies and delays in justice. Incorporating specific measures to address the root causes of custodial violence, such as insufficient training and supervision of law enforcement personnel, and systemic issues within the criminal justice system, is essential. While the CrPC includes vital provisions to prevent custodial violence, there is scope for improvement in enforcement, accountability, and addressing underlying causes.

### **3.2.2. Indian Penal Code 1860:**

According to Section 166 of the Indian Penal Code, a public servant intentionally disobeying the law to cause harm to any person may face imprisonment for up to one year, a fine, or both. A public servant who creates a fraudulent document with the aim to inflict harm is subject to penalty under Section 167.

According to Section 220 of the Indian Penal Code, anyone with authority who knowingly acts against the law may face up to 7 years' imprisonment and/or a fine. In the **D.K. Basu & Ashok K. Jauhari v. State of West Bengal**<sup>177</sup> the court clarified that this section serves as a safeguard against police abuse of authority. It deems it illegal to detain someone on suspicion of an offense while knowing it violates the law, even if done by someone with legal authority. Such action constitutes a criminal offense under Section 220, reflecting malice<sup>178</sup>.

Sections 330 and 331 of the IPC address custodial violence, with the former punishing intentional harm inflicted to extract confessions or information. This provision aims to uphold the right against self-incrimination under Article 20(3) of the Constitution<sup>179</sup>. In **Public Prosecutor vs. Sheikh Ibrahim**<sup>180</sup> the Andhra Pradesh High Court convicted police officers for torturing a suspect to death for information. Similarly, in **Kashmeri Devi v. Delhi Administration**<sup>181</sup>, the court condemned custodial violence, emphasizing its impact on public trust in law enforcement.

Sections 340–348 of the IPC address unjust confinement and wrongful restraint. Wrongful confinement involves restricting someone from moving beyond a certain boundary<sup>182</sup> and is

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<sup>177</sup> AIR 1997 SC 610.

<sup>178</sup> Afzalaur Rahman v. Emperor AIR 1943 FC 18.

<sup>179</sup> Nandani Satpathy v. P.L. Dani AIR 1978 SC 1025.

<sup>180</sup> AIR 1964 AP 548.

<sup>181</sup> AIR 1988 SC 1323.

<sup>182</sup> Section 340 of Indian Penal Code, 1860.

punishable with up to 1 year of imprisonment or a fine<sup>183</sup>. Under Section 348, wrongful imprisonment for obtaining a confession or information is punishable with up to three years' imprisonment<sup>184</sup>. Section 376(2) was introduced to protect victims of crimes like custodial rape, covering any woman under the custody of certain officials who may be subject to offense under this section.

Sections 376B to 376D of the Indian Penal Code are also pertinent as they deal with offenses such having sexual relations with a woman who is in custody by a public employee, a superintendent of a jail or remand home, or a staff member of a hospital who is in contact with an inmate. Additionally, Sections 503 and 506 punish criminal intimidation.

The provisions granting police officers the authority to use lethal force under specific circumstances, are outlined in Sections 96, 100, and Exception 3 of Section 300 of the Indian Penal Code (IPC). Section 96 of the IPC states that nothing is an offense if it is done in the exercise of the right to private defence. Section 100 provides that the act of causing death in the exercise of the right of private defence against certain offenses is not an offense. According to Section 300 of the IPC's Exception 3, culpable homicide that is carried out in the exercise of the right to private defense is not considered murder. However, these provisions have unfortunately been subject to misuse by some police officials. Despite being intended for situations where the use of force is deemed necessary and justifiable, instances of misuse occur when officers exceed their authority or act beyond what is considered reasonable or lawful.

One common form of misuse of provisions granting police officers authority to use lethal force is their excessive or disproportionate application in situations where non-lethal methods could suffice, leading to unnecessary loss of life and violations of individuals' rights. Additionally, misuse extends to justifying extrajudicial killings or encounters, undermining the rule of law and eroding public trust. The lack of accountability mechanisms exacerbates such misuse, emboldening officers to engage in misconduct. Furthermore, gaps in the IPC regarding custodial violence demand more stringent penalties and clearer definitions to prevent evasion of accountability. Challenges in prosecuting cases of custodial violence stem from issues like inadequate evidence gathering and underreporting due to lack of monitoring mechanisms. Greater

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<sup>183</sup> Section 341 of Indian Penal Code, 1860.

<sup>184</sup> Section 348 of Indian Penal Code, 1860.

clarity and consistency in applying provisions related to the use of lethal force are necessary to prevent human rights violations and unjustified loss of life. Addressing these issues requires legal reforms, enhanced training, and oversight for law enforcement, as well as improved monitoring and reporting mechanisms to ensure accountability and justice for victims.

### **3.2.3. Indian Evidence Act, 1872:**

The admission made at any point by a person accused of a crime declaring or implying that he committed that crime is known as confession<sup>185</sup>. The provisions relating to confession is given under Sections 24 to 30 of the Indian Evidence Act, 1872

According to Section 24, a confession obtained by a person in a position of power by coercion or threats, to prevent the accused from experiencing any form of coercion is not considered to be relevant in a criminal case.

Section 25 of the Indian Evidence Act, 1872, renders confessions made to police officers inadmissible as evidence. This provision aims to prevent coercion and torture by police to extract confessions. Legal precedents like **Queen Empress v. Babu Lal**<sup>186</sup> (1898) and **Narayan Rao v. State of Andhra Pradesh**<sup>187</sup> reinforce this principle. The court's stance, as seen in **Pakala Narayana Swami V. King Emperor**<sup>188</sup> (1939) emphasizes the irrelevance of confessions obtained through coercion. However, exceptions exist, such as under the Narcotic Drugs and Psychotropic Substances Act of 1985, as highlighted in **Francis Stanley v. Narcotic Control Bureau, Thiruvananthapuram, Intelligence Officer**<sup>189</sup>.

According to Section 26, an accused person's confession made while in police custody cannot be used against him unless it is made in front of a magistrate.

Section 27 gives exception to the general rule laid down in Section 25 and 26 of the Indian Evidence Act<sup>190</sup>. It states that subject to the general rule that confession made to the police officer

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<sup>185</sup> Mr. Stephen J, Digest of the Law of Evidence.

<sup>186</sup> (1899) ILR 21 ALL 106.

<sup>187</sup> AIR 1957 SC 737.

<sup>188</sup> (1939) 41 BOMLR 428.

<sup>189</sup> Appeal (cr.) 996 of 2006.

<sup>190</sup> Queen Empress vs. Babul Lal, 6 All. 509 (FB) and in Jafarudheen v. State of Kerala AIR 2022 SC 3627.

is invalid, any information received by the police officer and because of the information a fact is discovered, such facts can be proved before the court of law.

In **Pandurang Kalu Patil & Anr. v. State of Maharashtra**<sup>191</sup>, it was ruled that while confessions made to police officers are generally inadmissible, if such a confession leads to the discovery of a fact, it becomes admissible under Section 27 of the Indian Evidence Act. This exception is based on the principle that a confession confirmed by subsequent facts is deemed valid<sup>192</sup>. However, only the portion of the statement relevant to the discovered fact is considered admissible in court<sup>193</sup>.

In **Pulukuri Kottaya and Ors. v. Emperor**<sup>194</sup>, the applicability of Section 27 of the Indian Evidence Act was outlined based on specific criteria. Firstly, for Section 27 to apply, a fact must be discovered, encompassing both physical objects and information known exclusively to the accused. Secondly, the fact must be uncovered as a direct result of information provided by the accused. Thirdly, this information must have been divulged while the accused was in police custody, and the discovered fact must have been removed. Finally, the information leading distinctly to the fact must be provable in court. These criteria serve as essential conditions for the admissibility of confessions under Section 27 of the Indian Evidence Act.

The main aim of this provision is to make sure that at least some part of the statement made before the police officer should be held valid and since this confessional statement is corroborated with the subsequent discovery of fact the statement is said to be valid. However, an accused person may be coerced or subjected to torture while in police custody. As a result, the accused person may divulge misleading information that leads to the recovery or discovery of false articles (facts)<sup>195</sup>.

The inadmissibility of confessions made to police officers aims to protect against custodial torture, but Section 27 of the Indian Evidence Act undermines this by allowing such confessions if they lead to the discovery of further facts. This provision can be misused by police officers,<sup>196</sup> as it focuses on the discovery of subsequent facts without considering coerced confessions. Proving coercion can be difficult, leading to potential abuse of this clause and unjust outcomes for the

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<sup>191</sup> AIR 2002 SC 733.

<sup>192</sup> Selvi v. State of Karnataka AIR 2010 SC 1974.

<sup>193</sup> Raju Manjhi v State of Bihar (AIR 2018 SC 3592).

<sup>194</sup> AIR 1947 Privy Council 67.

<sup>195</sup> Babudas v. State of M.P. 2003 Cr. L.J. 2536 (SC).

<sup>196</sup> Vijay Singh v. State of M.P. 2005 Cr. L.J. 299, M.P. High Court.

accused. The police may abuse their authority to quickly dispose of cases and improve conviction rates, as evidenced by data on property recovery<sup>197</sup>. While the Supreme Court has provided guidelines, such as those in **Subramanya v. State of Karnataka**<sup>198</sup>, mandating the presence of witnesses during the recording of confessions, these are seen as precautionary rather than essential steps.

One significant gap in the Indian Evidence Act concerning custodial violence is the potential misuse of Section 27. While this provision allows for the admissibility of information leading to the discovery of a fact obtained from an accused person in police custody, it fails to adequately address coerced or involuntary confessions. This loophole may encourage law enforcement officers to use coercive tactics to extract information, undermining safeguards against custodial violence and violating the rights of the accused. Additionally, proving coercion in confessions can be challenging, given the lack of controls over information obtained during custody. Strengthening oversight mechanisms, enhancing officer accountability, and ensuring voluntary confessions are vital to address this issue and uphold human rights standards.

### **3.2.4. Indian Police Act, 1861 and Model Police Act 2023:**

Section 29 of the Indian Police Act 1861 imposes penalties on police officers engaging in unwarranted personal violence against individuals in their custody, with punishment including fines or imprisonment. Additionally, Section 7 of the same Act empowers higher-ranking officials to take disciplinary action, such as dismissal or suspension, against officers involved in custodial violence. These provisions aim to deter misconduct and ensure accountability within law enforcement agencies.

The Model Prisons Act 2023 primarily addresses gang violence, security assessments, and rehabilitation of prisoners. It includes provisions for segregating prisoners deemed a threat to themselves, establishing grievance redressal mechanisms, and creating a Prison Development Board for oversight. The act also mandates separate accommodation based on gender, introduces technologies like video conferencing and electronic monitoring, and establishes various types of prisons. Legal aid and rewards such as parole and premature release are provided to eligible

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<sup>197</sup> D.K. Basu v. State of West Bengal (AIR 1997 SC 610) and Pulukuri Kottaya v. Emperor (AIR 1947 PC 67).

<sup>198</sup> (2022 SCC OnLine SC 1400).

prisoners. While the act serves as a guiding document, it is not binding on states. Its main objective is the reintegration of offenders into society and fostering a humane prison environment<sup>199</sup>.

A judicial magistrate must investigate every death that occurs while a person is in custody under Indian law<sup>200</sup>. A police station or agency other than the one accused is expected to investigate the deceased once the police file a First Information Report (FIR). It is also mandatory to notify all cases of death in custody to the National Human Rights Commission (NHRC). Along with the post-mortem report, the police must also disclose to the NHRC the results of the magistrate's inquiry. According to NHRC regulations, the autopsy must be recorded on camera, and the report must be formatted using a template.

In addition to this, if an act of custodial violence is committed against a person belonging to Scheduled Caste and Scheduled Tribe, a case can be instituted against police officer under Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Section 3 of SC ST Act punishes the atrocities committed against member of a Scheduled Caste or Scheduled Tribe. As per Section 3 (2) (vii), public servants who commit atrocities face a minimum sentence of one year in jail, which may be extended to the maximum punishment specified for the offense<sup>201</sup>. Section 4 punishes the public servant who neglect his duties willfully will be punishable for a term not less than six months but which may extend to one year<sup>202</sup>.

### **3.4. New Criminal Laws on Custodial Violence:**

The new criminal bills namely the Bharatiya Nyaya Sanhita, the Bharatiya Nagarik Suraksha Sanhita and the Bharatiya Sakshya Adhiniyam are to be replacing the Indian Penal Code, Criminal Procedure Code and Indian Evidence Act respectively.

The Bharatiya Nagarik Suraksha Sanhita have many similar provisions to the Criminal Procedure Code like

- Like Section 57 of the CrPC, Clause 58 of the BNSS states that the arrested person cannot be detained in police custody beyond 24 hours.

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<sup>199</sup> Since it is Entry 4, List II of the Indian Constitution, the Union Government does not have power in this matter.

<sup>200</sup> Section 176 of Criminal Procedure Act 1973.

<sup>201</sup> Section 3 (2) (vii) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

<sup>202</sup> Section 3 (2) (vii) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

- Similar to the provision is Section 167 of the CrPC, Clause 187 of BNSS states that the investigation should be concluded within a period of 24 hours and the accused should be produced before the magistrate.
- Also, under Clause 187 of BNSS, the timeline for the grant of bail is similar to Section 167 of CrPC.

The changes made in the Bharatiya Nagarik Suraksha Sanhita are

**Extended duration of police custody** – Under the CrPC, the detention in the police custody cannot extend beyond fifteen days. But in BNSS the Magistrate can authorize police custody beyond the period of 15 days. A Magistrate who does not have jurisdiction can put a person in police custody for a period of 15 days and the magistrate who has jurisdiction can place a person in police custody for a period beyond 15 days. This change is in stark contrast to not only CrPC but also special legislations like Unlawful Activities (Prevention) Act 1967. Even under UAPA, the duration of police custody is 30 days and any extension beyond this date is to be requested with an affidavit by the Investigating officer<sup>203</sup>. But such a provision is not there in BNSS. This increases the possibility of custodial violence happening on an accused and the accused is vulnerable to forced confessions. It undermines the Fundamental Right of the accused guaranteed under Article 21 of the Constitution<sup>204</sup>. This affects the accused in the marginalized background who do not have access to a lawyer at this stage before bail<sup>205</sup>. Forced Confession especially under Section 127 of Indian Evidence Act has been many a times observed by the courts<sup>206</sup>.

**Police custody beyond first fifteen days:** The question as to whether police custody can be granted beyond a period of 15 days has been in dispute for many years. The Supreme Court recently in **V. Senthil Balaji vs. State**<sup>207</sup>, held that police custody under section 167(2) of CrPC does not mention that the police custody should be granted only at the first fifty days and thus can be given at any time during investigation. Clause 187(2) BNSS, explicitly states that the police

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<sup>203</sup> Section 43D, The Unlawful Activities (Prevention) Act 1967.

<sup>204</sup> *Shabnam v. Union of India* (2015) 6 SCC 702.

<sup>205</sup> The 2016 Death Penalty India Report, Project 39A: Of the 373 inmates on death row, 76% were from the socioeconomically most marginalized groups. During their police interrogations, 97% of the 191 inmates lacked legal representation. Out of them, 155 inmates discussed their encounters with violent treatment while in custody, with 82.6% of them—or 128 prisoners—stating they had been subjected to torture.

<sup>206</sup> *Ashish Jain v. Makrand Singh* (2019) 3 SCC 770 and *Nathu v. State of Uttar Pradesh* AIR 1956 SC 56.

<sup>207</sup> *V. Senthil Balaji v. State* 2023 SCC Online SC 934



custody can be allowed for the first forty or sixty days of investigation of sixty or ninety days respectively. This allows the police to fabricate the evidence. Courts have many a times refused to believe the evidence due to high possibility of them being obtained by pressure given by the police<sup>208</sup>. This extended period of detention is contrary to aim of constitution and legislature which tries to limit the detention and the BNSS's own objective to finish the investigation without any delay.

**Decision of Police Custody on the basis of Bail Status:** According to Clause 187 (2) of BNSS, requires magistrate to consider whether neither the accused is released in bail not his bail has been cancelled. It is however unclear as to how the accused bail status guides the decision as to whether a person needs to be remanded or not.

**Kinds of Custody under BNSS:** According to Section 167 of CrPC, custody has been stated as “other than in custody of the police” and thus always interpreted as judicial custody and police custody<sup>209</sup>. However, under Clause 187 BNSS defines custody as 1. police station – police custody, 2. Prison – judicial custody or 3. Place declared as a prison by the central or state government. Making the custody limited to police or judicial custody helps the family of the accused to locate the place of detention. However, it restricts a broader interpretation of custody under this provision. Many a times the custody under Section 167 of CrPC to include custody of investigating agencies like Enforcement Directorate and Central Bureau of Investigation<sup>210</sup>, transit remands – for transporting accused from one state to another and house arrest<sup>211</sup>. These kind of custody is useful in reality and exclusion of them would result in violation of accused's right as for example if transit custody is not considered as custody then for the purpose of Clause 187 of BNSS it won't be counted for bail. That would amount to violation accused right.

These are some of the changes brought in Bharatiya Nagarik Suraksha Sanhita.

### **3.5. International Convention Relating to Custodial Violence:**

Torture has long been condemned globally for its tendency to elicit false confessions and unreliable testimony. The Universal Declaration of Human Rights (UDHR) of 1948 explicitly

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<sup>208</sup> Ashish Jain v. Makrand Singh (2019) 3 SCC 770; Sattatiya v. State of Maharashtra (2008) 3 SCC 210.

<sup>209</sup> Gautam Navlakha v. National Investigation Agency 2021 SCC Online SC 382.

<sup>210</sup> V. Senthil Balaji v. State 2023 SCC Online SC 934.

<sup>211</sup> Ibid Note: 210.

prohibits torture and cruel, inhuman, or degrading treatment or punishment<sup>212</sup>”. This principle is reiterated in various international conventions such as European Convention for the Protection of Human Right and Fundamental Freedoms, 1949<sup>213</sup>, American Convention on Human Rights, 1969<sup>214</sup> and International Covenant on Civil and Political Rights (ICCPR), 1966<sup>215</sup> which remain applicable even during emergencies<sup>216</sup>. The Fifth United Nations Congress held in Geneva in 1975 recommended the adoption of a Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, as well as the formulation of an international code for the conduct of law enforcement officials. As a result, on December 9, 1975, General Assembly resolution 3452 (XXX) was passed, establishing the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

### **United Nation Convention against Torture (UNCAT):**

The UN Convention against Torture, adopted in 1984, aims to combat torture globally. It mandates member states to criminalize torture, investigate and prosecute complaints, educate personnel on human rights, and provide redress to victims. The convention aims to establish domestic institutions to prevent torture and includes a monitoring system to oversee its implementation. The main obligations of the Convention are Criminalize and prosecute torture,<sup>217</sup> excluding any evidence obtained through torture<sup>218</sup>, Implement legislative, executive, and judicial measures to prevent torture<sup>219</sup>, Educate law enforcement personnel, especially those involved in detention and interrogation<sup>220</sup>, Review and update rules regarding interrogation methods and detention<sup>221</sup>, Investigate, prosecute, and punish torture complaints with appropriate severity<sup>222</sup> Cooperate with

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<sup>212</sup> Article 5 of the Universal Declaration of Human Rights, 1948.

<sup>213</sup> Article 3 of the European Convention for the Protection of Human Right and Fundamental Freedoms, 1949.

<sup>214</sup> Article 5(2) of American Convention on Human Rights.

<sup>215</sup> Article 7 of International Covenant on Civil and Political Rights (ICCPR), 1966.

<sup>216</sup> Article 15 (2) of European Convention for the Protection of Human Right and Fundamental Freedoms, 1949, Article 27 (2) of American Convention on Human Rights, 1969 and Article 4 of International Covenant on Civil and Political Rights (ICCPR), 1966.

<sup>217</sup> Article 4 of UNCAT, 1984.

<sup>218</sup> Ibid, Article 15.

<sup>219</sup> Ibid, Article 2.

<sup>220</sup> Ibid, Article 10.

<sup>221</sup> Ibid, Article 11.

<sup>222</sup> Ibid, Article 4(2).

other member states in extraditing those guilty of torture<sup>223</sup> Establish redressal mechanisms for torture victims to ensure justice, compensation, and rehabilitation<sup>224</sup> and Submit a report every four years on the implementation of the Convention<sup>225</sup>.

### **3.5.1. Committee Against Torture:**

The Committee against Torture, established under the UN Convention Against Torture<sup>226</sup>, monitors member states' compliance with the treaty. Comprising 10 members elected by member states for four-year terms, the committee reviews state reports on anti-torture measures and performance. It addresses concerns, provides recommendations, and plays a crucial role in ensuring adherence to the convention's commitments globally <sup>227</sup>.

Other functions of the Committee include Initiating confidential inquiries and examinations in member states where there are well-founded indications of torture, including conducting in-country visits with the cooperation of the State party<sup>228</sup>, Receiving individual complaints from victims alleging violations of the convention, provided the complainant has exhausted all domestic remedies<sup>229</sup> and Addressing complaints from one member state against another for non-compliance with the convention's provisions<sup>230</sup>.

### **3.5.2. Optional Protocol to the Convention against Torture:**

The United Nation General Assembly adopted the Optional Protocol to the Convention against Torture and the Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) on 18<sup>th</sup> December 2002. The protocol aims to defend against torture and other cruel, inhuman, and degrading treatment, as well as to prevent the deprivation of liberty. They are

1. **National Preventive Mechanism:** Every state under the optional protocol has to create an independent National Preventive Mechanism (NPM) for the prevention of the torture at the

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<sup>223</sup> Ibid, Article 8.

<sup>224</sup> Ibid, Article 14.

<sup>225</sup> Ibid, Article 19.

<sup>226</sup> Ibid, Article 17.

<sup>227</sup> Ibid, Article 19.

<sup>228</sup> Ibid, Article 20.

<sup>229</sup> Ibid, Article 22 (4).

<sup>230</sup> Ibid, Article 21.

domestic level<sup>231</sup>. It should function independently and will have the power to undertake regular and unannounced visits to places of detention. They will also have power to make recommendations regarding legislations relating to torture<sup>232</sup>.

2. **Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture<sup>233</sup>**: The member state should also permit the United Nation Subcommittee on Prevention of Torture to conduct visits and to make recommendations to the state party. The SPT performs three main functions namely: to visit the state party and to visit places where there has been deprivation of liberty, guide the state party on the establishment of NPM and cooperate with the relevant UN organ to prevent torture<sup>234</sup>.

India has signed the United Nation Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). However, it is one of the five that is yet to ratify the Conventions others being Sudan, Brunei and Haiti.

Moreover, the Universal Periodic Review (UPR), conducted by the Human Rights Council, mandates that each UN member state undergo a review of its human rights records every 4.5 years. The UPR offers every state the opportunity to: report on the steps taken to address obstacles to the enjoyment of human rights and to improve the state of human rights within their respective nations; and receive suggestions for ongoing improvement from UN Member States, based on pre-session reports and input from multiple stakeholders. The UN General Assembly created the UPR in March 2006 with resolution 60/251, intending to support, encourage, and expand the global promotion and protection of human rights. Since the initial periodic evaluation in 2008, there have been three reviews of all 193 UN Member States. In November 2022, the fourth review cycle commenced. In all four sessions, other countries recommended India to ratify UNCAT, but India has not ratified it as of today.

Thus, the international framework against custodial violence, anchored by instruments like the United Nations Convention against Torture (UNCAT) and its Optional Protocol, underscores the

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<sup>231</sup> Article 3 of Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 2002.

<sup>232</sup> Ibid, Article 4.

<sup>233</sup> Ibid, Article 2.

<sup>234</sup> Ibid, Article 11.

global commitment to eradicating torture and ensuring accountability for perpetrators. The Committee against Torture plays a pivotal role in monitoring state compliance and addressing concerns, while mechanisms like the Universal Periodic Review provide avenues for scrutiny and improvement. However, India's delay in ratifying UNCAT raises concerns about its commitment to combating custodial violence and upholding human rights. India and other countries must emphasize the prevention and compensation of abuses committed while detained in order to create a society free from torture and degrading treatment, even while the international community pushes for ratification and implementation.

### **3.6. Commission reports on Custodial Violence:**

There are four main Law Commission reports that talk about Custodial Violence. They are

**The 113th Law Commission of India Report on Injuries in Police Custody (1985):** It was suggested to add S. 114-B to the Indian Evidence Act, which would reverse the burden of proof in situations involving custodial assault, in reaction to the Supreme Court's statement in **State of U.P. v. Ram Sagar Yadav**<sup>235</sup> regarding sentencing for crimes committed while a person is in custody. This clause would require police officers to prove that victims were not subjected to torture while in custody, shifting the burden from the prosecution to the police in cases of custodial death<sup>236</sup>.

**The 135<sup>th</sup> Law Commission of India Report on Women in Custody (1989):** The report suggested taking further precautions to guarantee the safety of women detained. It was suggested that the Code of Criminal Procedure include a new chapter with guidelines specifically for the arrest, confinement, and treatment of women while they are in custody<sup>237</sup>. It also suggested changes to the Mental Health Act of 1987<sup>238</sup>, the Probation of Offenders Act of 1968<sup>239</sup>, and the Indian Penal Code<sup>240</sup>.

It was suggested that a new clause be added to the Cr.P.C. that would list guidelines for making an arrest, such as not making an arrest after dusk or before dawn, not touching the woman's body while making an arrest, and if an arrest is to be made outside of the allotted time, it must be done

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<sup>235</sup> AIR 1985 SC 416.

<sup>236</sup> Chapter V (2) of 113<sup>th</sup> Law Commission of India Report on Injuries in Police Custody (1985).

<sup>237</sup> Chapter II of 135<sup>th</sup> Law Commission of India Report on Women in Custody (1989).

<sup>238</sup> Chapter VI of 135<sup>th</sup> Law Commission of India Report on Women in Custody (1989).

<sup>239</sup> Chapter V of 135<sup>th</sup> Law Commission of India Report on Women in Custody (1989).

<sup>240</sup> Chapter III (5) of 135<sup>th</sup> Law Commission of India Report on Women in Custody (1989).

with a senior officer's written consent<sup>241</sup>. It would also state that custody would only be presumed after an oral notification of an arrest is made<sup>242</sup>. It was suggested that the female arrestee be informed by the magistrate that a medical checkup is required at the time of arrest. A female registered practitioner must do this examination, and the arrestee must receive a copy of the report<sup>243</sup>.

**The 152nd Law Commission of India Report on Custodial Crimes (1994):** The report admitted that police frequently and excessively torture suspects while they are being questioned and investigated<sup>244</sup>. It covered the structure of police organization<sup>245</sup>, the conditions that lead to crimes committed while a person is in custody<sup>246</sup>, the laws that try to act as protections<sup>247</sup>, and International Convention<sup>248</sup>. It examined the laws governing arrest procedures and evidence<sup>249</sup>, payment of compensation<sup>250</sup>, and other related topics.

It suggested that clauses about the arrest process<sup>251</sup>, the recognition of offenses committed by officers against an accused person in custody, the medical examination of an arrested individual<sup>252</sup>, and other topics be added to the current penal statutes. It was suggested that the police force be divided into two units: one for investigating and the other for maintaining law and order<sup>253</sup>. There would be no relationship between these two groups. There were additional suggestions for changes to the Indian Evidence Act<sup>254</sup>, Indian Penal Code<sup>255</sup>, and Code of Criminal Procedure<sup>256</sup>.

**The 273rd Law Commission of India Report on Implementation of the ‘United Nations Convention Against Torture and other Cruel, Inhuman and Degrading Treatment’ through Legislation (2017):** The report was written in response to the Central Government's July 2017

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<sup>241</sup> Chapter II (3) of 135<sup>th</sup> Law Commission of India Report on Women in Custody (1989).

<sup>242</sup> Chapter II (2) of 135<sup>th</sup> Law Commission of India Report on Women in Custody (1989).

<sup>243</sup> Chapter II (3) of 135<sup>th</sup> Law Commission of India Report on Women in Custody (1989).

<sup>244</sup> Chapter I (1) of the 152nd Law Commission of India Report on Custodial Crimes (1994).

<sup>245</sup> Chapter XIII of the 152nd Law Commission of India Report on Custodial Crimes (1994).

<sup>246</sup> Chapter II of the 152nd Law Commission of India Report on Custodial Crimes (1994).

<sup>247</sup> Chapter III of the 152nd Law Commission of India Report on Custodial Crimes (1994).

<sup>248</sup> Chapter IV of the 152nd Law Commission of India Report on Custodial Crimes (1994).

<sup>249</sup> Chapter V of the 152nd Law Commission of India Report on Custodial Crimes (1994).

<sup>250</sup> Chapter XII of the 152nd Law Commission of India Report on Custodial Crimes (1994).

<sup>251</sup> Ibid Note 250.

<sup>252</sup> Chapter VII of the 152nd Law Commission of India Report on Custodial Crimes (1994).

<sup>253</sup> Chapter XIV (17) of the 152nd Law Commission of India Report on Custodial Crimes (1994).

<sup>254</sup> Chapter XIV (14) of the 152nd Law Commission of India Report on Custodial Crimes (1994).

<sup>255</sup> Chapter XIV (2) of the 152nd Law Commission of India Report on Custodial Crimes (1994).

<sup>256</sup> Chapter XIV (4) of the 152nd Law Commission of India Report on Custodial Crimes (1994).

request that the Law Commission of India look into the UNCAT's ratification. The study looked at the duties under several international treaties to prevent torture as well as the fundamentals of customary international law<sup>257</sup>. It examined the UNCAT's provisions and how those provisions were being applied in the ratified states<sup>258</sup>. It covered the observations made by several Commissions on matters pertaining to torture<sup>259</sup> as well as the prohibitions against torture included in the Indian Constitution of 1950 and other laws<sup>260</sup>. The report also covered historic cases involving deaths and mistreatment in detention. In the conclusion, it proposed that the Government ratify the UNCAT and consider passing a draft anti-torture law as a stand-alone piece of domestic anti-torture legislation<sup>261</sup>. Some of the important recommendations made by the law commission were Broadening the definition of torture to encompass intentional or involuntary infliction of physical, mental, or psychological injury<sup>262</sup>, Drafting "The Prevention of Torture Bill, 2017" to penalize torture, inhuman treatment by public servants, and provide compensation to victims<sup>263</sup>, promoting the Convention Against Torture's ratification<sup>264</sup>, Recommending amendments to the Indian Evidence Act and CrPC to include provisions for compensation<sup>265</sup> and transfer the onus of proof for injuries received while under police custody to the police<sup>266</sup>, Calling for severe penalties for perpetrators of torture<sup>267</sup>, Suggesting a compensation policy for victims, with courts empowered to determine appropriate compensation<sup>268</sup>, Emphasizing the need for a robust system to protect witnesses, complainants, and victims from mistreatment and intimidation<sup>269</sup> and arguing that sovereign immunity should give way to constitutional rights and that the state should be held accountable for any harm done by its agents<sup>270</sup>.

### **Other Commission reports on prevention of torture:**

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<sup>257</sup> Para 1.19. of the 273rd Law Commission of India Report (2017).

<sup>258</sup> Chapter II of the 273rd Law Commission of India Report (2017).

<sup>259</sup> Chapter III of the 273rd Law Commission of India Report (2017).

<sup>260</sup> Chapter IV of the 273rd Law Commission of India Report (2017).

<sup>261</sup> Chapter VII of the 273rd Law Commission of India Report (2017).

<sup>262</sup> Para 7.1. of the 273rd Law Commission of India Report (2017).

<sup>263</sup> Annexure of the 273rd Law Commission of India Report (2017).

<sup>264</sup> Para 7.2. of the 273rd Law Commission of India Report (2017).

<sup>265</sup> Para 7.4. of the 273rd Law Commission of India Report (2017).

<sup>266</sup> Para 7.5. of the 273rd Law Commission of India Report (2017).

<sup>267</sup> Para 7.6. of the 273rd Law Commission of India Report (2017).

<sup>268</sup> Para 7.7. of the 273rd Law Commission of India Report (2017).

<sup>269</sup> Para 7.8. of the 273rd Law Commission of India Report (2017).

<sup>270</sup> Para 7.9. of the 273rd Law Commission of India Report (2017).

Based on the dicta established in numerous Supreme Court rulings acknowledging torture in our constitutional jurisprudence, the Law Ministry's National Commission to Review the Working of the Constitution (2002) specifically recommended for "prohibition of torture and cruel, inhuman or degrading treatment or punishment" as one of the additions to the fundamental rights chapter as Article 21(2)<sup>271</sup>.

In its 177th Report, the Law Commission of India recommended that section 55A be added to the Criminal Procedure Code, with the proposed amendment being as follows: "Health and Safety of the Arrested Persons: The person in charge of an accused person has an obligation to ensure the accused person's health and safety<sup>272</sup>."

The Commission noted in the 185th Report that the Supreme Court had, in fact, cited the Law Commission's 113th Report in **State of MP v. Shyam Sunder Trivedi**<sup>273</sup>, addressing challenges in gathering clear evidence of police involvement in custody deaths or torture due to police reluctance to testify. Courts were urged not to rigidly demand proof beyond a reasonable doubt in such cases, acknowledging the difficulty in prosecuting officers. Despite penalties outlined in Sections 330 and 331 of the Penal Code, convictions for coercive confession cases remain rare due to evidentiary challenges.

In its 268th Report, the Commission recommended adding section 41(1A) and amending 41B, Cr. PC to make it mandatory for the police officer to advise the detained individual of their rights before granting bail and to loosen the guidelines for the bail process<sup>274</sup>.

In its Fourth Report (1980), the National Police Commission acknowledged the prevalence of torture in detention, deeming it the most dehumanizing form of abuse under police custody. The public's perception of the police was not favorable<sup>275</sup>. Police use brutal ways to get fast outcomes by taking shortcuts<sup>276</sup>. Despite legal provisions in Sections 330–331 of the Indian Penal Code, convictions for such crimes within police stations are rare due to the lack of evidence. Over time, various Commissions have repeatedly highlighted deficiencies in safeguarding people's

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<sup>271</sup> Chapter III (9) of National Commission to Review the working of the Constitution (2002).

<sup>272</sup> Annexure I of 177th Report of the Law Commission (2001) titled "Law Relating to Arrest".

<sup>273</sup> (1995) 4 SCC 262.

<sup>274</sup> Annexure A of 268<sup>th</sup> Report of the Law Commission on Amendment to Criminal Procedure Code, 1973 – Provisions Relating to Bail.

<sup>275</sup> Para 27.33 of 4<sup>th</sup> Report of National Police Commission 1980.

<sup>276</sup> Para 27.26 of 4<sup>th</sup> Report of National Police Commission 1980.



constitutionally guaranteed rights to life and liberty. These findings underscore the need for comprehensive reforms to address custodial violence effectively<sup>277</sup>.

### **3.7. National Human Rights Commission Guidelines on Custodial Violence:**

The NHRC issued guidelines to prevent custodial violence, emphasizing prompt investigations, adherence to arrest guidelines, and reporting custodial deaths within 24 hours. Videotaping post-mortem exams, using Model Autopsy forms, and providing detailed inquest reports are mandated. New guidelines cover police encounter deaths, lock-up visits, and pre/post-arrest procedures, with provisions for Polygraph Tests and banning the detention of mentally ill persons in prisons. Advocating for periodic medical check-ups, under trial release guidelines, and Magisterial Inquiries into custodial deaths, the NHRC aims to uphold human dignity and prevent custodial violence.

NHRC guidelines mandate inquests for all custodial deaths under CrPC Section 176. Executive magistrates handle non-unnatural deaths, while judicial magistrates investigate unnatural deaths. NHRC developed a model autopsy pro-forma based on the Minnesota protocol and requires video recording of autopsies. Autopsies should be conducted by a forensic medicine expert, with thorough examinations for deep-seated contusions. These guidelines ensure transparent and accountable investigations, upholding human rights and delivering justice to victims and families.

NHRC recommends establishing special courts in prisons for expedited trials of under trial prisoners, emphasizing meticulous assessment of bail petitions to prevent torture. District Magistrates, SSPs, and Judicial Officers urged to conduct meaningful prison visits to document efforts for case resolutions. Collaboration with reformation departments advocated for skills training and post-release career prospects. Compassionate treatment for vulnerable groups like women, elderly, and mentally ill inmates stressed, with separate housing and medical care for mentally ill inmates. Recommendations aim to address systemic issues, promote timely justice, and uphold inmate dignity and rights.

### **3.8. Judicial Decisions on Custodial Violence:**

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<sup>277</sup> Chapter IX of 4th Report of National Police Commission 1980.

One of the earliest case that was linked to Custodial Violence was **Premankar v. Delhi Administration**<sup>278</sup>. It talks about right against handcuffing. It was decided that unless there is an immediate risk of escape from police custody, a person should not be shackled. If the person is handcuffed in addition to it, the behavior is irrational and arbitrary. Concerns about handcuffing were raised in the cases of **Sunil Batra v. Delhi Administration**<sup>279</sup>, **Altemesh Rein v. Union of India**<sup>280</sup>, and **Sunil Gupta v. State of MP**<sup>281</sup>.

In **D.K. Basu vs State of West Bengal**<sup>282</sup>, the Supreme Court addressed concerns raised by Legal Aid Services, West Bengal, regarding fatalities in police custody. Treating the letter as a writ petition, the Court prohibited torture or any form of cruel, inhuman, or degrading treatment, emphasizing violation of Article 21 of the Indian Constitution. It issued detailed preventive guidelines covering arrest procedures, notification of family, and medical evaluation. Public law remedies, including compensation under Article 32 or 226, were upheld, with the state held accountable for violations. Monetary compensation serves as a suitable remedy, recoverable from the wrongdoer.

#### **Guidelines of D.K. Basu:**

Police personnel must wear name tags and enter their information into a register during arrests and questioning. An arrest memo must be prepared at the time of arrest, countersigned by the arrested person, and witnessed by at least one person. Every arrestee has the right to be informed of their arrest and detention promptly. Next of kin must be notified within 8-12 hours if the arrestee does not reside in the district or town. The arrested person must be informed of their right to have someone notified of their arrest. Details of the arrest must be recorded in the case diary, including the name of the person notified and contact information of the police officers. Upon request, the arrested person should be examined for injuries, and an "Inspection Memo" provided. Medical examination by a licensed physician must occur every 48 hours during detention. All documentation, including the arrest memo, needs to be sent to the magistrate in duplicate. Access

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<sup>278</sup>(1980) 3 SCC 526.

<sup>279</sup> 1978 AIR 1975.

<sup>280</sup> Manu/SC/0051/1981.

<sup>281</sup> AIR 1990 SC 268.

<sup>282</sup> (1997) 1 SCC 416.

to a lawyer may be permitted during questioning. Police control rooms must be notified within 12 hours of arrest, and information should be displayed prominently on a notice board.

In **Joginder Kumar vs. State of Uttar Pradesh**<sup>283</sup>, the Supreme Court ruled against the unlawful detention of an advocate summoned for interrogation, emphasizing that arrests without cause are unlawful. It also emphasized that while police have authority, they cannot abuse it for illicit activities.

In **State of Madhya Pradesh v. Shyamsunder Trivedi**<sup>284</sup>, police torture led to a suspect's death, yet acquitted individuals faced minimal consequences due to lack of visual evidence. The Supreme Court criticized rigid standards of proof, emphasizing accountability despite police "brotherhood."

In **Prakash Singh & Ors vs Union of India (2006)**<sup>285</sup>, police reforms were highlighted, including the creation of State Security Commissions, Police Complaints Authorities, and a National Security Commission. Measures aimed to ensure merit-based appointments, separate investigative functions, and establish complaint mechanisms at various levels.

In **Sube Singh Vs. State of Haryana and Ors**<sup>286</sup>, the court outlined preventive measures to address inequality, including: (a) Prioritize human rights and scientific investigative techniques in police training. (b) Establish regular monitoring of lower-level police officers by superiors to prevent custodial violence. (c) Ensure adherence to D.K. Basu vs State of West Bengal criteria for arrest and detention. (d) Implement protocols for timely FIR registration for all offenses. (e) Utilize computerization and video recording to enhance transparency in FIRs, Mahazars, and witness statements. (f) Empower impartial investigative bodies like the CBI or Human Rights Commission for effective investigations.

The Supreme Court in cases like **Munshi Singh Gautam v. State of Madhya Pradesh**<sup>287</sup> and **J. Prabhavathamma v. the State of Kerala**<sup>288</sup>, expressed concern over rising incidents of torture, assault, and custodial deaths, highlighting threats to the legitimacy of the criminal justice system

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<sup>283</sup> AIR 1994 SC 1349.

<sup>284</sup> (1995) 4 SCC 262.

<sup>285</sup> Writ Petition (civil) 310 of 1996.

<sup>286</sup> AIR 2006 SC 1117.

<sup>287</sup> Appeal (Crl.) 919 of 1999.

<sup>288</sup> WP(C). No. 24258 of 2007 (K)

and public trust in police administrations. In cases such as **Om Prakash vs State of Jharkhand**<sup>289</sup>, and **People's Union for Civil Liberties and Ors. vs State of Maharashtra**<sup>290</sup>, the Court condemned extra-judicial killings, emphasizing their illegality and harmful impact on the rule of law. The Court issued a 16-point guideline for the police, stressing the importance of thorough investigations, prosecution of perpetrators, and protection of human rights. The following are the guidelines: i) Submit tips on illegal activity in writing or electronically. ii) Immediately file a FIR and send it to the court in case of force resulting in death. iii) Conduct an independent investigation into such deaths by an agency or police team from a different station. iv) Hold a mandatory magisterial investigation for all encounter deaths. v) Notify the SHRC or NHRC promptly. vi) Provide emergency medical attention to wounded criminals or victims, and document their statement. vii) Send police diary entries, sketches, FIRs, and panchnamas to the relevant court without delay. viii) Submit a report detailing investigation findings to the court for a prompt trial. ix) Notify the accused criminal's next of kin promptly in case of death. x) DGPs must submit bi-annual reports on encounter killings to the NHRC. xi) Discipline officers involved in inappropriate encounters immediately. xii) Use the compensation plan outlined in Section 357A of the CrPC to compensate the victim's dependents. xiii) Turn over firearms of concerned officers for ballistic and forensic examination. xiv) Inform the family of the accused officer about the incident and provide legal assistance. xv) Officers implicated in encounter deaths won't receive out-of-turn promotions or immediate gallantry medals. xvi) Allow family members of the victim to complain to the Sessions Judge if procedures are not followed.

However, the Supreme Court has reaffirmed that, in cases involving fatalities in custody, police brutality against an accused person cannot be justified because it instills fear in the community and is a subject of grave public concern.

In the case of **Prakash Kadam v. Ramprasad Vishwanath Gupta**<sup>291</sup>, the Supreme Court ruled that law enforcement officials have a duty to enforce the law; therefore, if a crime is committed by an individual, they should face more severe penalties for their actions.

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<sup>289</sup> AIR Online 2012 SC 604.

<sup>290</sup> AIR 2015 SC (SUPP) 1659.

<sup>291</sup> SLP(Criminal) No. 3865-69 of 2011.

In **Dr. Ashwini Kumar v. Union of India, Ministry of Home Affairs**<sup>292</sup>, Former Law Minister Dr. Ashwini Kumar petitioned for independent laws against custodial torture, akin to UNCAT. The Court affirmed the separation of powers, stating that while courts interpret laws, Parliament legislates. It declined to compel Parliament, noting ongoing debates on anti-torture laws. The Court advocated creative expansion of existing laws to safeguard inmates' rights.

These are some of the cases which deal with Custodial Violence.

### **3.9. Findings of the Interview with Non – Governmental Organizations dealing with Custodial Violence on Existing Legal Framework**<sup>293</sup>:

An interview was conducted to study the problems in the existing laws relating to custodial violence. The interview focused on the effectiveness of existing laws, the challenges in their implementation, and the systemic issues contributing to custodial violence. It was observed that:

The current laws are considered adequate and sufficient to control custodial violence by one organization. However, the effectiveness of these laws is often undermined by poor enforcement and weak oversight mechanisms, with the success of any law depending on its diligent application by competent authorities. On the other hand, another organization argues that while Indian laws like the Constitution and the Indian Penal Code (IPC) provide a framework, they are insufficient for addressing custodial violence, highlighting the absence of specific laws targeting custodial violence despite existing Supreme Court guidelines on related issues.

Despite the adequacy of the laws, their implementation is often ineffective due to inadequate enforcement. Laws become ineffective when those in power do not adhere to them. Moreover, systemic issues such as entrenched caste prejudices, structural and procedural blockages in the criminal justice system, and deficiencies in prosecution and prison systems are significant barriers to effective implementation.

Significant obstacles exist in the process of filing complaints. Despite legal mandates, individuals often face formidable challenges in lodging grievances, with police officers sometimes requiring

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<sup>292</sup> (2019) 12 SCALE 125.

<sup>293</sup> See Annexure 11.

personal influence to accept complaints. Additionally, challenges such as caste prejudices, low judge-population and police-population ratios, delayed investigations, dysfunctional prisons, and issues related to poverty and illiteracy contribute to the persistence of custodial violence.

The overburdened and non-specialized police force is under pressure to quickly solve cases, increasing the likelihood of resorting to violent means. Both work and political pressures contribute to this issue, emphasizing the need for police reform, including restricted duty hours to alleviate some of these pressures.

A significant lack of public awareness about their rights makes individuals more vulnerable to custodial violence. Efforts are needed to build victims' confidence to proceed with legal actions. Fear of the police and a lack of safe mechanisms prevent people, particularly from Scheduled Castes (SC) and Scheduled Tribes (ST) communities, from filing complaints against police officers.

The camaraderie among police officers, often demonstrated by settling cases through compensation, discourages victims from pursuing complaints. Police officers protect each other, often with support from the ruling party, discouraging victims from filing complaints due to fear of retaliation and lack of confidence in the system.

Collecting evidence in cases of custodial violence is challenging as victims are often threatened. Establishing encounters as genuine is problematic due to planned actions by police, and the involvement of police officers in the investigation creates a conflict of interest that complicates the collection of evidence.

Thus we can observe that the insufficiency of the legal framework and the need for specific laws against custodial violence. There are systemic challenges, such as police solidarity, lack of public awareness, and difficulties in collecting evidence, which perpetuate the problem of custodial violence. Comprehensive reforms in the legal, enforcement, and public awareness domains are essential to effectively address custodial violence in Tamil Nadu.

### **3.10. Analysis of Custodial Violence Laws in Other Countries:**

**United States:** It is illegal for public authorities to torture anyone they are in charge of or under their custody under **Section 2340A, Title 18, United States Code**. Acts meant expressly to cause great bodily or mental agony or suffering are classified as torture. (It excludes any pain or suffering that is a result of legal sanctions. It applies to acts of torture committed outside US. The goal of it is to make US citizens accountable for torturing anyone, including foreign victims. It also holds true for international criminals who are nationals of the nation. Because of these broad laws, the American legal system can hold a foreign national accountable for torturing someone.

**United Kingdom:** Article 3 of Human Rights Act 1998 talks about freedom from torture and inhuman or degrading treatment. It protects people from both from mental and physical torture and all kinds of inhuman or degrading treatment or punishment. It outlines exactly what is considered cruel and inhumane treatment, as well as what to do in the event that these rights are violated. In **Chahal vs United Kingdom**<sup>294</sup>, an Indian Sikh residing in the UK stated that, as a prominent advocate of Sikh separatism, he would face torture if sent back to India. Even so, the UK attempted to deport him on the grounds that he might be a terrorist. The European Court of Human Rights ruled in a landmark decision that, because of the genuine danger of torture and other cruel or inhuman treatment, his transfer was forbidden by Article 3. The Court emphasized that regardless of the victim's behavior (including alleged involvement in terrorism), torture and cruel or humiliating treatment or punishment are expressly forbidden by Article 3.

### **3.11. Conclusion:**

In conclusion, the examination of custodial violence laws in India and abroad highlights the urgent need for comprehensive legal reforms and international cooperation to combat this pervasive issue and safeguard human rights.

Firstly, while the Indian Constitution guarantees fundamental rights such as the right to life, personal liberty, and protection against self-incrimination, there is a noticeable absence of explicit provisions directly addressing custodial violence. This underscores the necessity for tailored legislative measures to address custodial violence, ensure accountability, and provide effective remedies for victims. Despite existing legislation such as the Code of Criminal Procedure (CrPC) and the Indian Penal Code (IPC) containing provisions aimed at preventing custodial violence,

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<sup>294</sup> 23 EHRR 413.

notable gaps and challenges remain, including inadequate enforcement mechanisms and the potential for abuse of legal provisions.

Furthermore, international conventions such as the United Nations Convention against Torture (UNCAT) play a crucial role in combating custodial violence globally. Ratifying UNCAT would demonstrate India's commitment to upholding human rights standards and aligning with international efforts to eradicate torture. Additionally, Law Commission reports have proposed legislative reforms to address custodial violence, emphasizing the need for continued efforts to enact meaningful changes and ensure accountability within the criminal justice system.

Judicial decisions and guidelines issued by institutions like the National Human Rights Commission (NHRC) have also been pivotal in shaping legal standards and promoting accountability. Landmark cases such as *Premankar v. Delhi Administration* and *D.K. Basu vs. State of West Bengal* have established guidelines to prevent custodial violence and promote police accountability.

The interview revealed that while current laws are deemed adequate by some, their effectiveness is often compromised by poor enforcement and weak oversight. Other views suggest that Indian laws, though providing a framework, lack specific provisions against custodial violence. Systemic issues such as caste prejudices, procedural blockages, and deficiencies in the criminal justice system further hinder effective implementation. Significant obstacles in filing complaints, pressure on the police to quickly solve cases, lack of public awareness, and police solidarity all contribute to the persistence of custodial violence. Therefore, comprehensive reforms in legal, enforcement, and public awareness domains are essential to effectively address custodial violence in Tamil Nadu.

Moreover, the analysis of custodial violence laws in other countries, such as the United States and the United Kingdom, underscores a global commitment to protecting individuals from torture and inhumane treatment. Legal frameworks like Section 2340A of Title 18 in the United States and Article 3 of the Human Rights Act 1998 in the United Kingdom guarantee freedom from torture and degrading treatment, reflecting a shared commitment to human dignity and justice.

In summary, addressing custodial violence requires a multifaceted approach, including legislative reforms, enhanced enforcement mechanisms, international cooperation, and judicial oversight. By



strengthening legal frameworks, promoting accountability, and upholding human rights standards, both domestically and internationally, meaningful progress can be made in combating custodial violence and ensuring justice for all individuals.

## **Chapter 4: Analysis of Victim Compensation in Custodial Violence**

“The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield”.

**Rudul Sah vs State of Bihar<sup>295</sup>**

### **4.1. Introduction:**

In cases of custodial violence, victim compensation plays a crucial role in acknowledging and rectifying the profound harm inflicted upon individuals at the hands of those entrusted with their welfare. Custodial violence, encompassing acts of torture, abuse, and even fatalities, not only violates the fundamental rights of victims but also undermines the core principles of justice and human dignity.

Victim of custodial violence has to be compensated as a means to acknowledge their suffering and hold perpetrators accountable. This analysis delves into various aspects of victim compensation in custodial abuse cases, examining legal principles, precedents, and challenges associated with determining and awarding compensation.

By scrutinizing constitutional provisions, legal doctrines, and judicial interpretations related to victim compensation, this analysis sheds light on victims' rights and the state's obligations in addressing custodial violence. It also explores the complexities involved in assessing appropriate compensation levels and ensuring victims receive fair and adequate restitution.

This study contributes to ongoing discourse on enhancing access to justice and fostering accountability in cases of custodial violence by critically evaluating existing frameworks and proposing avenues for enhancement. The ultimate goal is to advocate for the development of a more comprehensive and effective victim compensation system that upholds the rights, dignity, and justice of all individuals impacted by custodial abuse.

### **4.2. History of Compensatory Jurisprudence in India:**

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<sup>295</sup> AIR 1983 SC 1086.

One of the state's executive branch is the police. It was established to uphold social order, look into criminal matters, and stop crimes from being committed. But today Police have begun violating people's rights after being appointed protectors of citizens' liberty and guardians of such rights. Concerns should be raised about more than only police abuse or violations of human rights. The police official's casual attitude toward custodial assault is a result of lack of accountability for the atrocities they do and the also feeling that they are justified in doing it.

Reducing violence against prisoners has been made possible in large part by the Indian judiciary. There is a historical timeline connected to the legal action taken by police against third degree defendants in the form of precedents. Undoubtedly, if a police officer takes such a conduct, they may be held personally liable under criminal and tort laws. Therefore, these officials will be held accountable under Indian criminal law as individuals, just like any other. In a similar vein, under tort law, a lawsuit for damages may be brought against these authorities individually. This was resolved already<sup>296</sup>.

But the question remains: Is the state liable in a vicarious capacity for the torture committed by the police officials? The law of torts clearly recognizes the master-servant relationship as a means of imposing vicarious liability upon the master for the acts of the servant, which arises if the servant commits any tort or civil wrong while he is employed. The basis for imposition of such liability is the master's financial capacity and the servant's inability to provide compensation. Public servants and state employees are like the state's extended arms; the state is their master and they are its instrumentalities under law of torts. In the past, the crown in England was immune from vicarious accountability for the deeds of its officials or subordinates. But the servant himself remained accountable all the same. If the master had been a regular person, he would be held accountable for the servant's actions vicariously. A crown, however, could not be. In 1947, this prejudice was abolished. The Crown Proceedings Act of 1947 made the crown liable for the torts committed by its employees, just like any other ordinary person.

Both the state and the Union of India are legal entities. Article 300 of the Indian Constitution stipulates that the Indian states, the provinces, and the dominion of India may bring or accept lawsuits for the same reasons as the Union of India and State Governments. Nonetheless, this

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<sup>296</sup> Diganth Raj Sehgal, Constitutional Tort: The law that deals with Vicarious Liability of the State, iPleaders (2019).

responsibility has been subject to any laws enacted by state or federal legislatures. This means that in order to assess a state's vicarious liability for the actions of its employees, one must comprehend the state of India's pre-constitutional obligations, such as those of the Dominion of India and the Indian states or provinces as they were before to the commencement of the constitution. Neither the Government of India Act 1935 nor the Government of India Act 1858 talks directly about the vicarious liability of the state. Government of India Act 1858 states that the liability of the Secretary of State in Council shall be the same as that that of the liability of East India Company prior to 1858. Thus state is liable to the extent the East India Company is liable before 1858.

In **Peninsular and Oriental Steam Navigation Company V. Secretary of State for India**<sup>297</sup>, the East India Company's accountability for the tortious activities of its servants was acknowledged for the first time. The plaintiff's servant was traveling in a carriage pulled by a horse. He was strolling past the Kidderpore dockyard located in Kolkata. The government of the accused owned the Dockyard. A large chunk of iron fell to the ground as a result of the defendant government's employees' carelessness. As a result, the horse became scared and suffered injuries. The government was sued by the plaintiff to recover damages. The East India Company was then in charge of governance. The court acknowledged the East India Company's vicarious culpability. It was decided that the business, like any other regular citizen, was accountable for the negligent behavior of its employees. The court did, however, distinguish between different government duties. It divided the government's operations into two groups: those that were sovereign and those that were not. The only entities authorized to carry out the sovereign functions are the state, or the government, or the people to whom such authority has been granted by law. It implies that private individuals cannot carry out these tasks. Police, defense, prosecution, and other related tasks are a few instances of sovereign functions. The court observed that the East India Company is liable for the acts which the normal citizen is liable. Since, sovereign function cannot be done by private persons the state is not liable for acts done in exercise of sovereign function.

### **4.3. Compensation for The Violation of Right to Life Caused by Custodial Death:**

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<sup>297</sup> (1861) 5 Bom H.C.R.

However, this principle of sovereign immunity lost its relevance when the court began to interpret tortious acts of the state as violations of fundamental rights. According to Article 21 of the Constitution, "No person shall be deprived of his life or personal liberty except in accordance with a procedure established by law." The Supreme Court has progressively expanded the protections afforded to the right to life, including the right to live with human dignity and all that encompasses, as observed in the Francis Coralie Mullin Case<sup>298</sup>. Nevertheless, these rights often fail to extend to those who are detained. Custodial death and violence constitute grave violations of fundamental and basic human rights, presenting a serious issue.

Numerous deaths occur in custody, with many victims belonging to society's marginalized groups. While authorities implicated in such cases may face legal action, the most pressing question remains: What about the families left behind, particularly those who lose breadwinners? It is disheartening that the Indian constitution does not explicitly mandate compensation in cases of wrongful imprisonment or death in custody, despite Article 21 inherently encompassing the right to compensation. The Supreme Court's development of "Compensatory Jurisprudence" stands as one of its most notable innovations. India became a signatory to the International Covenant on Civil and Political Rights (ICCPR) in 1966. Article 9(5) of the ICCPR guarantees compensation to anyone who has been wrongfully imprisoned or detained.

The goal of the criminal justice system is to uphold social order and the law, with police authorized to use force only in certain circumstances. However, this immunity is often unchecked. In **Prem Chand v. Union of India**<sup>299</sup>, Justice Krishna Iyer raised the pertinent question: "Who would police the police?"

In the famous case of **Rudal Shah v. the State of Bihar and Others**<sup>300</sup>, the Supreme Court granted compensation for the first time for the infringement of the fundamental right to life. Rudal Shah, acquitted by the Muzaffarpur Court of Sessions in June 3, 1968, was released only on October 16, 1982, over 14 years after his acquittal. He claimed unlawful imprisonment and sought compensation for his unjustified 14-year incarceration, along with associated medical care and rehabilitation costs.

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<sup>298</sup> Francis Coralie Mullin vs The Administrator, Union Territory of Delhi & Ors, AIR 1981 SC 746.

<sup>299</sup> AIR 1981 SC 613.

<sup>300</sup> (1983) 3 S.C.R. 508.

One of the main questions before the Supreme Court was whether compensation could be claimed under Article 32 of the Indian Constitution. The court established a test for compensation claims under Article 32: if the claim is factually dubious, compensation isn't granted, but if it's indisputable, compensation must be given. The petitioner was unlawfully detained for 14 years following his acquittal, a fact documented without refutation by the state administration. Thus, while the precise amount of damages may be uncertain, the petitioner's complaint would likely be decreed in his favor by a civil court. Given the undisputed facts, compensation was rightfully granted.

In **Bhim Singh, M.L.A. v. State of Jammu and Kashmir**<sup>301</sup>, Mr. Bhim Singh, who served as an MLA representing Jammu and Kashmir, was detained by the police while on his way to a legislative assembly session. Despite being wrongfully imprisoned; he was eventually released by the police. In retaliation, his spouse filed a writ of habeas corpus with the court, requesting his release and damages for his wrongful imprisonment. Although Mr. Bhim Singh had already been released by the police, the court deemed it appropriate to award him compensation for the violation of his basic rights. The Supreme Court asserted its authority to grant damages in cases involving the protection of fundamental rights. Consequently, the court ordered the payment of Rs. 50,000 in compensation in this particular instance.

In **Khatri vs. State of Bihar**<sup>302</sup>, the Bhagalpur Blindings incident exposed a horrific episode of police torture, where acid was poured into the eyes of 33 detainees. The Supreme Court consolidated writ petitions into a single bench hearing, ruling that the state violated Article 21 of the Constitution by failing to provide free legal representation to impoverished defendants. The court mandated free legal assistance and directed the state to pay damages to the victims, highlighting the judiciary's commitment to upholding constitutional rights and ensuring state accountability.

In **Smt. Nilaabeti Behera v. State of Orissa and others**<sup>303</sup>, a letter addressed to India's Chief Justice revealing that the deceased had been apprehended at home and taken into police custody, with the mother learning of their demise the following day was treated as a writ petition,. His

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<sup>301</sup> 1986 AIR (SC) 494.

<sup>302</sup> (1981) 1 SCC 627.

<sup>303</sup> 1993 AIR (SC) 1960.

lifeless body was found near the police station on a railroad track, displaying multiple injuries suggestive of a non-natural death. The letter contended it was a case of death in custody, demanding accountability from the state. The Supreme Court acknowledged the letter as a petition under Article 32 of the Constitution and created the statute governing compensatory jurisprudence, which holds states responsible for offering compensation in cases of torture or death in detention.

In **D.K. Basu v. State of West Bengal**<sup>304</sup>, the court recognized that India reserved the right to compensate for victims of wrongful arrest or detention when it joined the International Covenant on Civil and Political Rights in 1979. However, the court observed that subsequent rulings of Supreme Courts and High Courts awarded compensation when fundamental rights were violated, rendering the reservation irrelevant.

Cases like **Murti Devi v. State of Delhi**<sup>305</sup>, **Ajab Singh v. State of U.P.**<sup>306</sup>, and **Rohtash Kumar v. State of Haryana**<sup>307</sup> highlight the blatant violation of prisoners' rights resulting in custodial death. Article 21 of the Constitution offers relief to the surviving family members of the deceased, including the right to compensation.

Thus, the Supreme Court has permitted writ petitions against the state in cases of custodial abuse and death under Articles 32 and 226. Today, public law is not concerned with sovereign immunity but with how the state upholds citizens' fundamental rights. Holding the state vicariously accountable allows victims of torture or death in custody to seek compensation from the government.

#### 4.4. Existing Legislations on the Grant of Compensation:

Torture, abuse, and even death committed by members of the judicial or law enforcement machinery constitute forms of custodial violence that strike at the heart of human dignity and threaten the entire basis of the rule of law. In reaction to such serious transgressions, compensation functions not just as a financial settlement but also as a sign of recognition, an act of accountability, and a road to recovery for the affected parties. International human rights norms, legal frameworks,

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<sup>304</sup> (1997) 1 SCC 416.

<sup>305</sup> (1998) 9 SCC 604.

<sup>306</sup> (2000) 3 SCC 521.

<sup>307</sup> (2013) 14 SCC 290.

ethical concerns, and constitutional imperatives all heavily influence the principles guiding the award of compensation in cases of custodial violence.

Under the Compensatory Jurisprudence, Article 32 under the Indian Constitution is interpreted as the power of the Supreme Court to give compensation in “appropriate cases”. The Question as to whether monetary compensation can be granted under Article 32 through writ petition was first raised in **Khatri (II) v. State of Bihar**<sup>308</sup>. In that case, Bhagwati, J observed that “Why shouldn't the court be willing to create new instruments and remedies in order to defend the most valuable of all basic rights—the right to life 111 and the right to personal liberty?<sup>309</sup>”. Thus the Supreme Court for the violation Article 21 of the constitution started to provide compensatory remedy under Article 32 of the Constitution. After this the court in many cases like **Rudul Sah v. State of Bihar**<sup>310</sup>, **Sebastian M. Hongray v. Union of India**<sup>311</sup>, **Bhim Singh v. State of J&K**<sup>312</sup>, **Saheli v. Commr. of Police**<sup>313</sup> and **Nilabati Behera v. State of Orissa**<sup>314</sup> the compensation was granted to the aggrieved party for the violation of Article 21 of the Constitution.

International conventions explicitly address compensation for victims of torture. Article 5(5) of the European Convention for the Protection of Human Rights and Fundamental Freedoms guarantees "an enforceable right to compensation" for individuals subjected to arrest or detention in violation of its provisions. In addition, the International Covenant on Civil and Political Rights' Article 9(5) guarantees the right to compensation for anyone wrongfully detained or imprisoned. However, India accepted the Covenant with reservations. The Government of India's Declaration, dated April 10, 1979, clarifies that Article 9 of the Covenant must align with Article 22 of the Indian Constitution, specifically clauses (3) through (7).

However, there is no domestic law that provides for which provides for compensation for victims of custodial violence. Normally, when there has been some kind of custodial violence committed against an aggrieved party compensation is claimed under Section 357 of Criminal Procedure

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<sup>308</sup> (1981) 1 SCC 627.

<sup>309</sup> Ibid., p. 630, para 4.

<sup>310</sup> (1983) 4 SCC 141.

<sup>311</sup> (1984) 3 SCC 82.

<sup>312</sup> (1985) 4 SCC 677.

<sup>313</sup> (1990) 1 SCC 422.

<sup>314</sup> (1993) 2 SCC 746.



Code, 1973. Accordingly, the court may order compensation to the wrongdoer for any loss or injury caused by the offence<sup>315</sup>.

Every State Government in collaboration with the Central Government shall create a plan for allocating monies in order to compensate victims who have suffered loss or harm as a result of the crime, as per Section 357A of the Victim Compensation Scheme<sup>316</sup>. The quantum of the compensation is to be recommended by the District or State Legal Service Authority<sup>317</sup>.

Furthermore, compensation is given under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 if an individual belonging to a scheduled caste or scheduled tribe is charged under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Because of this, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 provide the victims with compensation fairly quickly.

In the case of **Inhuman Conditions in 1382 Prisons**<sup>318</sup>, several principles were established regarding compensation for victims of custodial violence. Illegally imprisoned individuals are entitled to compensation even if later found guilty, and relatives of missing persons may also claim compensation. Despite the lack of specific constitutional provisions, courts can grant compensation for unconstitutional impairments of life or personal liberty. The State is vicariously liable when public personnel violate fundamental rights, mandating monetary compensation under strict liability with no defense of sovereign immunity. The State must pay the compensation and can subsequently hold the offender accountable. The amount of compensation is determined on a case-by-case basis, with no fixed formula. Additionally, court-awarded compensation is meant to complement traditional remedies and may be deducted from damages in civil actions.

#### **4.4. Cases in which Compensation can be received:**

Some of the cases in which compensation are granted are

In **Khatri (I) Vs. State of Bihar**<sup>319</sup>, in this case, some of the prisoners were tortured by the police by pouring acid in the eyes of several under-trial prisoners by some Bihar police. The court held

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<sup>315</sup> Section 357(1) of Criminal Procedure Code, 1973.

<sup>316</sup> Section 357 A (1) of Criminal Procedure Code, 1973.

<sup>317</sup> Section 357 A (1) of Criminal Procedure Code, 1973.

<sup>318</sup> *Inhuman Conditions in 1382 Prisons*, In re, (2017) 10 SCC 658.

<sup>319</sup> (1981) 1 SCC 623.

that the state was liable to pay compensation to blinded prisoners for violation of the fundamental right under Article 21 of Indian Constitution.

In **Rudal Sah vs. State of Bihar**<sup>320</sup>, the petitioner was detained in the prison even after acquittal. The Court held that petitioner was entitled to compensation for the illegal detention. In **Sebastian M. Hongray v. Union of India**<sup>321</sup>, several person went missing from police custody and the court observed that these missing person might have had unnatural death and ordered for compensation to be paid to the petitioner.

In **Supreme Court Legal Aid Committee Vs. State of Bihar**<sup>322</sup>, the newspaper reported an incident of inhumane treatment in police custody. Mahesh, accused of looting, was beaten by a crowd, rendering him unconscious. Instead of providing immediate medical aid, officers tied him to a rickshaw's footboard, and he later died in the hospital. The Supreme Court cited the authorities' failure to provide timely medical assistance as grounds for granting compensation.

In **Nilabati Behera Vs. State of Orissa**<sup>323</sup>, the court clarified that Article 32 of the Constitution, which guarantees fundamental rights, can provide relief beyond civil and criminal proceedings. It held that the State must ensure no violation of the right to life, ordering compensation for custodial deaths.

In **Kewal Pati vs. State of Uttar Pradesh**<sup>324</sup>, there was death of the prisoner by a co-prisoner. In this case, the court noted that everyone has the fundamental right to life guaranteed by Article 21 of the Constitution, regardless of whether they are in jail or not. The Jail authorities had the duty to protect the prisoner and it was due to the lack of care taken by the respondent authorities the right to life of the prisoner was infringed. The Supreme Court thus held that the Government of Uttar Pradesh must compensate the petitioner for the loss suffered. Here, the State of Uttar Pradesh was ordered by the court to pay one lakh rupees.

In **Sube Singh Vs. State of Haryana and Ors**<sup>325</sup>, in this case, the petitioner and his family were tortured by the police. The Court in this case very elaborately dealt with the question of

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<sup>320</sup> (1983) 4 SCC 141.

<sup>321</sup> (1984) 3 SCC 82.

<sup>322</sup> (1991) 3 SCC 482.

<sup>323</sup> (1993) 2 SCC 746.

<sup>324</sup> (1995) 3 SCC 600.

<sup>325</sup> AIR 2006 SC 1117.

compensation and in which circumstances compensation can be provided under writ petition under Article 32 of the Constitution. The Court held that the before giving compensation the Court should consider the following questions namely: (a) Whether the infringement of Article 21 is evident and unarguable (b) if the claimed abuse occurred in a way that would have shocked the court's conscience; (c) if the alleged abuse occurred in a way that resulted in death; or (d) if a medical report or obvious injuries, scars, or disabilities supports the allegations of abuse.

In **Ashwani Kumar Vs. Union of India (UOI) and Ors.**<sup>326</sup>, the Supreme Court once again reiterated that for the violation of Article 21, compensation can be claimed under Article 32 or 226 of the Indian Constitution. In these situations, where a defense of sovereignty might not be available, a citizen's claims were tried under the strict liability doctrine.

In **Pravat Chandra Mohanty and Ors. Vs. The State of Odisha and Ors.**<sup>327</sup>, there was custodial violence committed against the accused person and the accused died. In this instance, the appellant was tried in accordance with Indian Penal Code Sections 304 and 34. The appellant was convicted but the Supreme Court in this case felt that the Compensation given to the legal representative of the deceased was less and inadequate. The court reduced the sentence period as the appellants were very old and in return awarded more compensation to the victim.

In addition to this there are various High Court cases in which compensation for the unnatural death of a person in custody. Some of the are

In **Mst. Madina v. State of Rajasthan and Ors**<sup>328</sup>, the victim passed away while being held by the police as a result of third-degree techniques. The Rajasthan High Court granted compensation to the deceased's next of kin due to their untimely death while in jail.

In **Mrs. Meena Singh v. State of Bihar**<sup>329</sup>, the victim was attacked by other prisoners, who used belts, iron rods, and chhura to kill her. The Patna High Court granted compensation to the deceased's kin for the victim's untimely death while in jail.

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<sup>326</sup> (2020) 13 SCC 585.

<sup>327</sup> AIR 2021 SC 1067.

<sup>328</sup> 2000 Cri. LJ 4484.

<sup>329</sup> 2001 Cri. L J 3573.

In **Forum for Fact Finding Documentation and Advocacy Vs. State of Chhattisgarh**<sup>330</sup>, the accused died in the police custody. Initially it was considered to be suicide and later through the autopsy report it was found that it was custodial violence. Since the accused's fundamental right was violated sufficient monetary compensation was granted to the victim's dependents.

In **Tmt. Rohini Lingam v. State of Tamil Nadu**<sup>331</sup>, while imprisoned, the victim was murdered by his adversaries. His next of relatives received compensation from the Madras High Court due to his untimely death while in detention. In **C.A. Sabu vs State of Kerala**<sup>332</sup>, after being subjected to abuse in a police station, the victim passed away from his wounds. The Kerala High Court granted the deceased's next of kin temporary compensation until the criminal trial against the implicated police personnel was finished, in light of the untimely death that occurred while the person was in prison. In **Santosh Kumari v. State of H.P. and Ors.**<sup>333</sup>, the victim's injuries to his knees, private areas, eyes, shoulders, head, and knees were discovered after he passed away while in the police's custody. Due to a delay in receiving medical attention, he passed away at the hospital. The Himachal Pradesh High Court granted compensation to the deceased's next of kin due to their untimely death while in jail.

In **Ravindra Nath Awasthi v. State of U.P.**<sup>334</sup>, an advocate who had been found in contempt of court was the victim. He died in the hospital from his wounds after being brutally abused by prison officials while serving his sentence. Owing to the untimely demise while in prison, the Allahabad High Court ordered that compensation be given to the relatives.

In **Nina Rajan Pillai and Ors. v. Union of India**<sup>335</sup>, the jail officials did not provide proper medical care and the petitioner's husband passed away while he was under court supervision. The petitioner's spouse passed away, and the Lieutenant Governor of Delhi established a Commission of Inquiry, headed by Justice Leila Seth, a former Chief Justice of the Himachal Pradesh High Court, to look into the circumstances surrounding the death. The unnatural death in detention was compensated for by the Delhi High Court. In **Dukharam v. State of Chhattisgarh and Ors**<sup>336</sup>,

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<sup>330</sup> MANU/CG/0073/2006.

<sup>331</sup> (2008) 5 MLJ 822.

<sup>332</sup> WP(C). No. 18570 of 2008.

<sup>333</sup> 2008 ACJ 1684.

<sup>334</sup> 2009 2 AWC 2090.

<sup>335</sup> 180 (2011) DLT 104.

<sup>336</sup> 2011 (3) MPHT 81.

the deceased was removed from the police station in order to retrieve stolen goods that he was said to have concealed at a secret place. He was forced to jump into a pond after being taken there. He was in chains and handcuffs at the time. The deceased person's lifeless body was later discovered floating in the pond. Since the deceased died unnaturally while in the custody of police, compensation was granted by the Chhattisgarh High Court.

In **Banalata Dash v. State of Orissa and Ors.**<sup>337</sup>, the body of the deceased was discovered hanging from a tree with his hands behind his back and a towel tied around his wrist. The Orissa High Court granted compensation for the unnatural death of the deceased while in the custody of the prison officials.

In **Kewalbai v. The State of Maharashtra**<sup>338</sup>, while the victim was in police custody, he was killed by a policeman. The unnatural death in detention was compensated for by the Bombay High Court. In **Bheduki Buragohain v. State of Assam**<sup>339</sup>, the victim who was under trial in judicial custody passed away under dubious circumstances. According to the post mortem analysis, the victim's asphyxia was caused by blunt weapon injuries sustained prior to death and strangling. The unnatural death in detention was compensated for by the Gauhati High Court. In **Madhuben Adesara v. State of Gujarat**<sup>340</sup>, the deceased was subjected while in jail to severe torture by police officials, and during his medical care, he passed away due to his injuries. The victim exhibited many ante mortem injury marks, according to the postmortem report. The untimely death in jail was compensated for by the Gujarat High Court. In **Amandeep v. State of Punjab and Anr.**<sup>341</sup>, the deceased passed away in the hospital from wounds sustained during an attack by another prisoner. The Punjab & Haryana High Court granted compensation to the deceased's next of kin due to the unnatural death that occurred while they were in detention.

In **State of Jammu & Kashmir v. Sajad Ahmad Dar**<sup>342</sup>, the victim, who was being held in the District Jail in accordance with the Jammu and Kashmir Public Safety Act of 1978, passed away from cardiopulmonary arrest. It was decided that the lack of medical attention and carelessness were the causes of the death. The deceased's next of kin received compensation from the Jammu

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<sup>337</sup> AIR 2012 Ori 97.

<sup>338</sup> 2013 (3) Bom CR (Cri.) 601.

<sup>339</sup> 2013 (2) GLT 370

<sup>340</sup> 2013 (3) BomCR (Cri) 601, 2013 (2) GLT 370.

<sup>341</sup> (2013) 169 PLR 191.

<sup>342</sup> LPAHC No. 36 of 2015.

& Kashmir High Court due to their unnatural death while in jail. In **Lawyers for Justice (Non-Government Organization) v. State of M.P.**<sup>343</sup> the defendant was on trial for offenses under Indian Penal Code Section 302. He was shot and killed by an unidentified assailant while receiving medical attention in a hospital. The victim's next of kin received compensation from the Madhya Pradesh High Court due to the unnatural death that occurred while the person was in jail.

In **Saroj Shrivastava Vs. State of Chhattisgarh**<sup>344</sup>, it was clearly established that the death occurred due to failure of the jail authorities to take precautions and to provide sufficient security in jail. The court in this without hesitation held that the widow of the victim was entitled to compensation for wrongful loss of her husband.

In **Maria Kadaisima Vs. State of Odisha and Ors**<sup>345</sup>, the issue before the court was whether the state authority shall be held liable for the custodial death of the petitioner's husband and whether a compensation can be claimed. The Court held that even if the accused is labelled as "Maoist" and even if the accused allegedly belonged to some "banned" organization, his fundamental rights under Art 14, 21 and 22 cannot be denied. In this case the Odisha State Police and Central Reserve Police Force (CRPF) were ordered to pay compensation.

**In Reference Suo Motu Custodial Violence and other matters relating to prison conditions Vs. State of Meghalaya and Ors**<sup>346</sup>, the question before the court was whether state is liable for custodial death in all circumstances irrespective of whether it is natural or unnatural. The High Court of Meghalaya in this case held that compensation will be payable only in cases of unnatural death. The court held that irrespective of the exact cause of death the compensation will be granted if the unnatural death happens in the police custody. However, for natural death in police custody no compensation would be payable. The Court however, did not go into detail as to whether compensation can be claimed when the person was injured or death is caused when the accused escapes. This judgment makes it clear that most of the times the compensation is granted when there is unnatural death in the police custody.

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<sup>343</sup> AIR 2015 MP 212.

<sup>344</sup> MANU/CG/0110/2018.

<sup>345</sup> MANU/OR/0302/2023.

<sup>346</sup> MANU/MG/0345/2023.

These cases highlight a recurring pattern of custodial deaths and violence in India, revealing systemic failures within law enforcement agencies. Despite varied circumstances, a common theme emerges: authorities' failure to uphold constitutional rights, notably the right to life under Article 21. Judicial responses underscore the judiciary's role in ensuring accountability, consistently holding the state liable and awarding compensation to victims or their families. However, the question of compensating for natural deaths in police custody remains unresolved. While compensation is granted for unnatural deaths or deaths from custodial violence, clarity is lacking for natural deaths. Absence of specific guidance leaves room for interpretation and potential inconsistency in judicial decisions. Addressing this may require legislative or judicial intervention to establish a comprehensive framework for compensating victims and their families. Until then, uncertainty persists within the legal system.

#### **4.5. Quantum of Compensation:**

Though Supreme Court has been giving compensation to the victims of custodial violence there is no uniform principles with regard to awarding compensation. In the absence of specific legislation, the courts have adopted their own standard in deciding the quantum of compensation. One of the main issue in *Rudal Sah vs State of Bihar*<sup>347</sup> is the quantum of compensation to be provided. In order to support the deceased's dependents, compensation has been granted by the Supreme Court<sup>348</sup>. The legal heirs of the victims who passed away while in police custody were given interim measures of Rs. 75,000<sup>349</sup>, Rs. 1,50,000<sup>350</sup>, and Rs. 2,00,000<sup>351</sup>, according to an examination of Supreme Court rulings. This suggests that there hasn't been a consistent payment schedule and that no rules have been established or adhered to. Awards of compensation have varied from case to case, perhaps because each has its own special set of facts.

In determining compensation for wrongful death cases, Indian courts have relied on two main formulas: the interest theory and the multiplier theory<sup>352</sup>. The interest theory focuses on accruing

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<sup>347</sup> (1983) 4 SCC 141.

<sup>348</sup> *Rudal Shah v. State of Bihar* (1983) 4 SCC 141; (1983) 3 SCR 508; *Sebastian M. Hongray v. Union of India*, (1984) All SCC 339 (1); *Bhim Singh v. State of Jammu & Kashmir*, 1984 Supp SCC 504; *Bhim Singh v. State of Jammu & Kashmir*, (1985) 4 SCC 677; *Saheli v. Commissioner of Police, Delhi*, (1990) 1 SCC 422.

<sup>349</sup> *People's Union of Democratic Rights V. Police Commissioner*, (1984) 4 SCC 730.

<sup>350</sup> *Nilabati Bahera v. State of Orissa*, (1993) 2 SCC 746.

<sup>351</sup> *Sarvinder Singh Grover v. State of West Bengal*, (1993) 1 Cr LR 163.

<sup>352</sup> Law Commission, *Custodial Crimes* (Law Com No 152, 1994).

interest over time to match yearly dependency, while the multiplier theory considers the fundamental dependency amount multiplied by a factor to account for life's uncertainties. These principles consider various factors such as mental suffering, anxiety, and loss of freedom, aligning with guidelines established by English courts<sup>353</sup>. The following are these guiding principles: Assess the deceased's expected life expectancy based on age, physical condition, and potential accidents. Evaluate the amount the deceased used to spend on their spouse and assess the future provision needed. Multiply the estimated annual sum by the number of years in the expected life expectancy. Deduct the amount for accelerated interest in the estates to determine the equivalent lump sum payable upon death. Consider the possibility of the widow's financial improvement if remarried and the chance of her passing away sooner if the deceased lived longer.

In **D.K. Basu v. State of West Bengal**<sup>354</sup>, the court noted that there is no fixed formula for determining compensation, as each case's unique circumstances must be considered. Public law remedies for violations of fundamental rights are complementary to traditional remedies, and any damages awarded in a civil lawsuit may be deducted from the compensation granted by the court and paid by the State.

In **Malkiat Singh vs. State of U.P.**<sup>355</sup>, the supreme court granted the father of a boy who was murdered in a reported police encounter compensation of Rs. 5 lakhs.

In **Sube Singh Vs. State of Haryana and Ors.**<sup>356</sup>, the court in this case held that the quantum of compensation will depend on facts and circumstances of each case.

In **Smti. Meena S Marak vs State of Meghalaya**<sup>357</sup>, the next of kin of a person under 30 years old may be entitled to compensation in the amount of Rs. 15 lakhs in the event of death while in detention. The amount of compensation for victims between the ages of 30 and 45 should be Rs. 12 lakhs, and for victims beyond 45, it should be Rs. 10 lakhs.

The court in **Reference Suo Motu Custodial Violence and other matters relating to prison conditions Vs. State of Meghalaya and Ors**<sup>358</sup>, held that the compensation should be both

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<sup>353</sup> Saheli v. Commissioner of Police.

<sup>354</sup> AIR 1997 SC 610.

<sup>355</sup> AIR 1999 SC 1522.

<sup>356</sup> AIR 2006 SC 1117.

<sup>357</sup> 2018 CRI. L. J. 2885.

<sup>358</sup> Supra Note 340.



compensatory and punitive so as to act as a deterrent. In this case, the court directed to pay compensation as equivalent to the amount paid for major accident or natural calamity. The Court also directed the state to consider enhancing compensation by 25%. The court upheld the quantum of compensation given in *Meena S. Marak*.

The Haryana government classified deaths that occurred while a person was in prison and announced compensation rates in June 2021. The amount of compensation varied according to the cause of death, which may be anything from a prisoner fight to official torture, carelessness, suicide, or other causes. The National Human Rights Commission asked other state governments and Union Territories to bring such a policy as framed by the Haryana Government.

There are several High Court judgment that talks about Quantum of compensation in respect of custodial violence. Some of them are

In **Dev Kala and Ors. Vs. State of Himachal Pradesh and Ors.**<sup>359</sup>, the court took into account the age of the deceased who was 22 years and was earning Rs. 1000 per month. The dependents namely the wife, mother and the three daughters were considered before providing for compensation. The court awarded Rs. 1,00,000 as compensation to the petitioners.

In **R. Dhanalakshmi v. Government of Tamil Nadu**<sup>360</sup>, the learned single Judge of the Court applied the multiplier specified by the Motor Vehicles Act to determine a compensation of Rs. 9 lakhs for the custodial death, taking into account the deceased's age, income, family situation, and dependency, among other factors.

In **Rajammal v. State of Tamil Nadu**<sup>361</sup>, in determining the appropriate amount of compensation for a person who died while under police custody after being assaulted by one of the officers, the court determined that the deceased's family should receive a reasonable compensation, raising the award from Rs. 3 lakhs to Rs. 5 lakhs.

In **Saroj Shrivastava Vs. State of Chhattisgarh**<sup>362</sup>, the court emphasized the deterrent effect of compensation awards to prevent custodial violence, ensuring protection of Article 21 rights.

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<sup>359</sup> MANU/HP/0137/1997.

<sup>360</sup> MANU / TN / 1399 / 2003.

<sup>361</sup> MANU / TN / 0215 / 2008.

<sup>362</sup> MANU/CG/0110/2018.

Considering factors such as dependents, age of the deceased, and petitioner, compensation of Rs. 15,00,000 was awarded, supplementing state compensation.

In **Ramkhilawan Dansena & another Vs. State of Chhattisgarh & others**<sup>363</sup>, the court awarded Rs. 15,00,000 compensations to the legal heirs, considering the deceased's dependents. Similarly, in **Nirmala Bai Sahu Vs. State of Chhattisgarh and Ors.**<sup>364</sup>, Rs. 15 Lakhs compensation was awarded. In **Purna Chandra Mohapatra and Ors. Vs. State of Odisha and Ors.**<sup>365</sup>, the court awarded Rs. 5,00,000 compensations, considering the economically disadvantaged status of the claimants and the prolonged wait for justice.

The pattern observed in cases concerning the quantum of compensation for custodial violence reveals a lack of uniformity and consistency in determining the amount awarded to victims or their families. Despite the absence of specific legislation, courts have relied on their own standards and principles to decide the compensation amount. This has led to varying compensation awards from case to case, reflecting the unique circumstances of each incident.

Courts have occasionally taken into account variables including the deceased's age, ability to support themselves financially, reliance on family members, and the effect of the death on the surviving. Various methods, including the interest theory and multiplier theory, have been utilized to calculate compensation amounts, but no standardized formula has been established.

In addition, the court's determination of the seriousness of the infringement, the necessity of deterrence, and the intention to grant both compensatory and punitive relief sometimes influence the amount of compensation. Courts have also taken into account the duration of legal proceedings, the socioeconomic status of the victims, and the prolonged suffering endured by the affected families.

However, despite the diverse approaches taken by courts, a common thread emerges: the recognition of the need to provide adequate compensation to victims of custodial violence as a means of redress and deterrence. Courts have consistently emphasized the importance of ensuring

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<sup>363</sup> WPC No. 6242 of 2009 (decided on 19.07.2019).

<sup>364</sup> MANU/CG/0774/2021.

<sup>365</sup> 2021 (I) ILR-CUT 503.

that compensation awards serve as a deterrent against future violations of human rights by state authorities.

In conclusion, while there is no uniform pattern in determining the quantum of compensation for custodial violence, courts have sought to address the unique circumstances of each case and provide relief to the victims and their families. However, the lack of standardized guidelines underscores the need for legislative intervention or further judicial clarity to ensure consistency and fairness in compensating victims of custodial violence.

#### **4.6. Findings of the Interview with Non – Governmental Organizations dealing with Custodial Violence on Victim Compensation Mechanism<sup>366</sup>:**

An interview with non-governmental organizations (NGOs) dealing with custodial violence reveals significant issues in the victim compensation mechanism. The majority of victims and their families are largely unaware of their rights to seek compensation for custodial violence. This lack of knowledge means that many do not pursue compensation claims unless NGOs intervene and the case gains public attention. Consequently, an estimated 98% of cases go uncompensated.

The determination of compensation lacks consistency. While Section 357 of the Criminal Procedure Code (CrPC) and the SC ST Act provide some guidelines, there is no fixed quantum for compensation, and the government often decides on a case-by-case basis. This inconsistency leads to uncertainty and variability in the compensation awarded to victims.

The timeliness of compensation disbursement is also a significant issue. Although the SC ST Act specifies a time limit for granting compensation, this is frequently not adhered to, resulting in delays that can extend for years. Even when the government announces compensation, it is not always promptly given, exacerbating the financial and emotional strain on the victims and their families.

Victims often face concerns about potential intimidation or retaliation from law enforcement authorities when attempting to seek compensation. This fear discourages many from filing for compensation. Furthermore, employing lawyers to navigate the compensation process can significantly reduce the net amount received due to high legal fees.

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<sup>366</sup> See Annexure 12.

These findings underscore the critical need for improving public awareness about compensation rights and ensuring a more consistent, transparent, and timely compensation process. Addressing these challenges requires comprehensive reforms to protect and support victims of custodial violence effectively. Enhanced legal frameworks, robust enforcement of existing laws, and active involvement of NGOs can play a vital role in ensuring victims receive the compensation they deserve without fear of retribution.

#### **4.8. Conclusion:**

In summary, the matter of compensating victims of custodial violence is still intricate and influenced by a variety of legislative frameworks, international agreements, and court decisions. While acknowledging custodial violence as a violation of the fundamental right to life, determining appropriate compensation amounts poses significant challenges.

Guidelines for compensating victims are provided by international agreements like Article 9(5) of the International Covenant on Civil and Political Rights and national legislation like Section 357 of the Criminal Procedure Code. However, the interpretation and application of these laws often rely on judicial discretion.

Eligibility criteria for compensation primarily centre on cases of unnatural deaths in detention, often excluding suicides in police stations. There is no clear rule as to whether suicide in the police custody can be compensated or not. Furthermore, the absence of clear guidelines for determining compensation quantum adds complexity to the process.

Courts commonly use interest and multiplier theories to calculate compensation, yet the lack of defined factors for consideration introduces ambiguity. As a result, compensation amounts vary widely between cases, contributing to inconsistency and potential injustice.

An interview with non-governmental organizations revealed significant issues in the victim compensation mechanism for custodial violence cases. A lack of awareness among victims and their families about their rights to seek compensation is prevalent, with most only pursuing claims when NGOs are involved. The quantum of compensation is inconsistent, primarily determined under Section 357 CrPC and the SC ST Act, with the government providing compensation on a case-by-case basis. Disbursal of compensation is often delayed, sometimes taking years despite legal time limits. Victims frequently face fears of retaliation and intimidation from law

enforcement, which discourages them from seeking compensation. These challenges highlight the need for greater public awareness and a more streamlined, transparent, and timely compensation process to support victims of custodial violence.

Addressing these challenges requires comprehensive legislation aimed at regulating and standardizing the compensation process for custodial violence victims. Such legislation should clarify eligibility criteria, establish transparent methodologies for calculating compensation, and ensure equitable outcomes.

## **Chapter 5: Use of Technology in preventing custodial violence**

“Transparency of action and accountability perhaps are two possible safeguards which Supreme court must insist upon”.

- **D.K. Basu vs State of West Bengal**<sup>367</sup>

### **5.1. Introduction:**

In contemporary society, technological advancements have transcended traditional boundaries. Today, technology is being used by judiciary, law enforcement agencies, and the criminal justice system. Surveillance technology, long recognized for its role in crime prevention, is now being explored for its potential in curbing custodial violence.

At the forefront of this discourse is the deployment of surveillance technology, notably Closed-Circuit Television (CCTV) cameras, dash-cams, and body-worn cameras within police stations. These tools serve as formidable instruments of accountability and transparency, enabling oversight of law enforcement activities.

However, despite the undeniable benefits, the integration of technology in preventing custodial violence faces significant challenges. Questions regarding the efficacy of surveillance persist, alongside practical concerns such as officers disabling CCTV cameras during acts of violence, perpetrating violence outside police stations, and manipulating camera footage.

While the Supreme Court, in cases like **Paramvir Singh Saini v. Baljit Singh**<sup>368</sup>, has imposed rules for the use of CCTV cameras and required their installation in all police stations; nonetheless, compliance is still a problem.

Therefore, a comprehensive examination of surveillance technology, coupled with empirical data collection methodologies and emerging digital innovations, is essential to unlock its full potential in combating custodial violence.

In this exploration, we aim to study both the promise and complexities inherent in the implementation of surveillance technology. This approach should uphold the principles of justice,

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<sup>367</sup> AIR 1997 SC 610.

<sup>368</sup> AIR 2021 SC 64.

dignity, and human rights for all individuals, particularly those most vulnerable within custodial settings.

## **5.2. Role of Surveillance Technology in Ensuring Accountability and Transparency:**

The usage of CCTV and dash cams, has undoubtedly increased, quickly, and globally—especially in wealthy nations. Surveillance Technologies are being used as an attempt to stop misconduct or as a response to long-standing records of corruption or power abuse in law enforcement agencies. At least 75 of the 176 countries surveyed in a 2019 Carnegie Endowment for International Peace research employ artificial intelligence (AI) technologies for surveillance<sup>369</sup>.

Collection of evidence is one of the very difficult task in custodial violence. Since the offence happens inside the four walls of the police station, collecting evidence is very difficult. Lack of transparency is one of the reason why custodial violence has become uncontrollable in India. The difficulty in proving that a detainee was ill-treated is one of the main reasons why police officers act rashly<sup>370</sup>. The need for accountability among the police officials along with technological advancements in the recent years has led to the use of surveillance technology like Closed – Circuit Television (CCTV), dash-cams and body-worn cameras both preventing and also for accountability in the cases of custodial violence<sup>371</sup>.

According the theory of situational crime prevention, crimes are often opportunistic and it can be prevented by altering the circumstances that facilitate criminal acts<sup>372</sup>. The use of surveillance technology increases the perceived risk of getting caught. It is claimed that monitoring reduces police use of force, improves police accountability and transparency, and offers a "objective" account of the events that occur<sup>373</sup>. Consequently, a police officer may be deterred from resorting to custodial violence or from accepting bribe “because of the cognizance that someone else is

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<sup>369</sup> Feldstein, Steven. “The Global Expansion of AI Surveillance.” Carnegie Endowment for International Peace, 17 Sept. 2019, [carnegieendowment.org/2019/09/17/global-expansion-of-ai-surveillance-pub-79847](https://carnegieendowment.org/2019/09/17/global-expansion-of-ai-surveillance-pub-79847).

<sup>370</sup> “Technology Alone Will Not Prevent Custodial Torture.” Asian Human Rights Commission, 2014, [www.humanrights.asia/resources/journals-magazines/eia/vol-8-no-6-december-2014-2/http-www-humanrights-asia-resources-journals-magazines-eia-eiav8n6-eiav8n6p9/](http://www.humanrights.asia/resources/journals-magazines/eia/vol-8-no-6-december-2014-2/http-www-humanrights-asia-resources-journals-magazines-eia-eiav8n6-eiav8n6p9/).

<sup>371</sup> DCAF – Geneva Centre for Security Sector Governance. *The Use of Video Surveillance for Police Accountability: Benefits, Limitations, And Considerations Thematic Brief*. 2021.

<sup>372</sup> Clarke, Ronald V. “Situational Crime Prevention.” vol. 19, *Crime and Justice*, 1995, pp. 91–150. JSTOR.

<sup>373</sup> Welsh, Brandon C., and David P. Farrington. “Effects of Closed-Circuit Television on Crime.” vol. 587, *The Annals of the American Academy of Political and Social Science*, 2003, pp. 110–35. JSTOR.

watching<sup>374</sup>. Thus, the widespread use of CCTV will limit police officials' authority by creating avenues for both internal and external oversight and control. Officers will act more cautiously as a result of the use of surveillance technology.

CCTV is primarily used in police stations for the following reasons<sup>375</sup> to guarantee general surveillance of activities occurring in the premises of the police station (security and protection); to prevent violent incidents, suicides, and self-harm (deterrence and protection); to stop torture and other cruel treatment; and to shield police officers from malicious accusations (deterrence and protection).

By leveraging these tools to enhance transparency, oversight, and accountability within law enforcement, societies strive towards a more just and accountable policing paradigm, where the rights and dignity of all individuals are safeguarded.

### **5.3. Installation of CCTV Cameras in Police Station:**

In order to ensure accountability among the police officials the Supreme Court in several cases has ordered for the installation of CCTV Cameras in Police Station. This is a well-intentioned move, as CCTV serves as a monitoring tool, reacts to any threats, and alerts the operator(s) to negative incidences and activities that occur both during and after the incident. CCTVs were successful in cutting police misconduct by 40% in Spain<sup>376</sup>.

In addition, a 2016 Human Rights Watch report<sup>377</sup> police officer impunity and abuse against detainees were examined, attributing the rise in assault and torture cases to disregard for arrest protocols. Families from underprivileged groups face intimidation, hindering justice in custodial crimes. Police often report suicides and natural deaths without scrutiny. Accountability is challenging due to police "brotherhood," but CCTVs enhance evidence reliability, boosting confidence in legal recourse against violence.

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<sup>374</sup> Ariel, Barak, et al. "The Deterrence Spectrum: Explaining Why Police Body-Worn Cameras "Work" or "Backfire" in Aggressive Police–Public Encounters." vol. 12, no. 1, *Policing: A Journal of Policy and Practice*, 31 Jan. 2017, pp. 6–26.

<sup>375</sup> Penal Reform International. *Video Recording in Police Custody*.

<sup>376</sup> *The State of the World's Human Rights*, Amnesty International Report 2010.

<sup>377</sup> Bajoria, Jayshree. "'Bound by Brotherhood.'" *Human Rights Watch*, 19 Dec. 2016.



In **Leonard Xavier Valdaris v. Officer-in-Charge & Ors**<sup>378</sup>, the legal discussion over the effectiveness of CCTV cameras in preventing violence against inmates was started in this cases by the Bombay High Court. It also mandated that the State government install CCTVs that rotate in all police stations. The Law Commission of India's Report No. 239, detailed the requirements for filming at the time of filing a formal complaint and at crime sites<sup>379</sup>.

In **V. Prakash Kapadia v. Commissioner of Police (Ahmedabad City)**<sup>380</sup>, in a PIL, the petitioner requested that the court issue a notice of many instances of torture in detention. The Court stated that it was necessary to install CCTV cameras in police stations in order to reduce the number of torture cases, and it requested that the state government provide information regarding this. The State Government's position was that all police stations in the state should have CCTV cameras installed. The Court ruled that the state government must see to it that the cameras are installed, and that the tender process for their installation should be completed as soon as possible.

In **D.K Basu v. State of West Bengal**<sup>381</sup>, one of the important consideration that came up before the court is the installation of CCTV Cameras in all Police Station and Prisons. The court noted that many states in their affidavits favored the recommendation for installation of CCTV cameras in Police Station and prisons with the view to check the human rights abuse. It also noted that several states like Bihar, Tamil Nadu, Haryana and Union Territory of Andaman and Nicobar and Puducherry has already installed CCTV cameras in its police station. The court also noted that some other states are taking steps to install CCTV cameras in its police station. However, there were several states that did not even consider about installing cameras in police station. The court held that the installation of cameras cannot be left with the discretion of the states and ordered that the state should install the CCTV cameras. The court ordered the State Government to identify the police station where human rights violation is frequent and to install CCTV cameras in the police station and to cover all the police station in phased manner. The court also observed that the CCTV cameras in will help in preventing violation of human rights of those detained in jail. It also helps the authorities in maintain discipline among inmates and take corrective measures wherever abuses are noticed. Thus the Supreme Court in this case ordered the state government to take steps to

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<sup>378</sup> Criminal Writ Petition No. 2110 of 2014.

<sup>379</sup> Law Commission Report No. 239, Expeditious Investigation and Trial of Criminal Cases Against Influential Public Personalities.

<sup>380</sup> 2014 SCC ONLINE GUJ 11365.

<sup>381</sup> AIR 2015 SC 2887.

install CCTV cameras in all prisons in their respective states within one year and not later than two years. It also stated that the installation can be done in a phased manner.

In **Shafiq Mohammad and Ors. Vs. The State of Himachal Pradesh**<sup>382</sup>, the court reiterated the requirement under D.K. Basu's case of installing CCTV cameras in police stations and issued further directions to create oversight mechanisms whereby an independent committee can study the CCTV footage and periodically publish reports of its observations. Some of the directions given by the Supreme Court are: recommends incorporating videography into investigations, particularly for crime scenes, to strengthen the Rule of Law, immediate establishment of a Central Oversight Body (COB) is advised to implement the Committee's Plan of Action, issuing instructions and overseeing final planning and implementation, initial funding from the Center and establishment of a central server are suggested, with the COB considering these proposals and each State should establish an oversight framework allowing an impartial committee to review CCTV footage and release regular reports, with the COB providing necessary instructions and monitoring compliance, reporting findings to the Court within three months.

States and Union Territories disregarded the SC's directives even after these rulings. On December 2, 2020, a three-judge Supreme Court bench led by Justices R.F. Nariman, K.M. Joseph, and Aniruddha Bose rendered a decision in the case of **Paramvir Singh Saini v. Baljit Singh**<sup>383</sup>. The court issued stringent directives mandating the installation of CCTV cameras throughout police stations and establishing the responsibilities and makeup of oversight committees.

Paramvir Singh Saini filed a special leave petition to bring the issue of CCTV installation in police stations to the attention of the court. Numerous studies and reports revealed India's alarming rise in deaths in custody. The Supreme Court directed the States and Union Territories to look into the current situation after the petition was submitted. Important information was omitted from the records submitted to the Supreme Court, such as the percentage of operational cameras in police stations, the overall number of installed cameras, their positions, and so forth. The majority of States and Union Territories have not submitted their petitions to be as Central Oversight Bodies, in accordance with the standards set down by the Supreme Court in the well-known D.K. Basu and Shafiq Mohammad instances. In light of this, some directions were issued.

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<sup>382</sup> (2018) 5 SCC 311.

<sup>383</sup> AIR 2021 SC 64.

The Supreme Court has issued comprehensive guidelines for the installation and oversight of CCTV cameras to ensure transparency and accountability in police stations and other investigative agencies. Each state is mandated to create a State Level Oversight Committee (SLOC) comprising the Secretary/Additional Secretary of the Home and Finance Departments, the Director General/Inspector General of Police, and the Chairperson or member of the State Women's Commission. Additionally, each district must establish a District Level Oversight Committee (DLOC), including the Divisional Commissioner, District Magistrate, a Superintendent of Police, and a mayor or Zilla Panchayat head, depending on whether the area is urban or rural.

The SLOC is tasked with the purchase, distribution, and installation of CCTVs, securing funding, monitoring maintenance, conducting inspections, addressing DLOC grievances, and responding to issues such as equipment malfunctions. The DLOC oversees the supervision, maintenance, and constant observation of CCTVs, liaises with the Station House Officer (SHO) on equipment operations, submits monthly reports to the SLOC, and examines CCTV footage for unreported human rights violations. The State Finance Commission and Union Territories Finance Commission must allocate funds for camera installation and maintenance.

SHOs are responsible for reporting any equipment faults or malfunctions to the DLOC and ensuring the proper working, maintenance, and recording of CCTV cameras. State and Union Territory Governments must ensure that every police station is equipped with CCTV cameras covering specific areas, including the main gate, lock-ups, corridors, lobbies, verandas, inspectors' rooms, areas outside lock-up rooms, station halls, outside restrooms, duty officer rooms, and the back of the station. These cameras should have night vision and audio-video capabilities, with footage stored for a minimum of six months, preferably eighteen months. Central investigative agencies such as the CBI, NIA, ED, NCB, DRI, and SFIO must also install CCTV cameras, overseen by the Central Oversight Body. Notices in English, Hindi, and the local language must be posted in police stations, informing the public of the surveillance and the procedure for filing human rights violation complaints with the Superintendent of Police, Human Rights Court, or National or State Human Rights Commission. The goal of the *Paramvir Singh Saini vs. Baljit Singh & Ors* lawsuit is to confront and resolve several systemic problems with Indian law enforcement authorities, with a particular emphasis on human rights protection, accountability, and transparency. The purpose of the case was probably to require the installation of CCTV

cameras in order to improve the accountability of law enforcement organizations, especially police stations. Through the monitoring of activity within police stations, this technique helps to guarantee that law enforcement personnel follow set protocols and act legally when conducting investigations, making arrests, and interacting with the public.

Since police is a state subject, complete information about the number of police stations with CCTVs is not provided to the Central Government. The 7th Schedule of the Constitution lists "public order" and "police" as part of the State List. However, under the program "Assistance to States for Modernization of Police," the Central government is permitted to give money to states in order to support the growth of their police forces. Furthermore, the Ministry of Home Affairs was ordered by the Apex Court on April 6, 2021, to provide funding to central agencies for the installation of CCTV cameras<sup>384</sup>. The Court also earlier voiced dissatisfaction with the state's and central agencies' indifferent attitude to its directions from December 2 and emphasized the critical relevance of CCTV installation<sup>385</sup>. It expressed the opinion that the careless approach is absurd and harmful to citizens' rights guaranteed by Article 21 of the Indian Constitution.

Therefore, while the stringent standards for installing CCTV cameras are a good thing, it is imperative that they be strictly enforced in order to address the issue of custodial violence in its purest form<sup>386</sup>.

#### 5.4. Evidentiary Value of CCTV Cameras:

The evidentiary value of CCTV cameras is a longstanding concern in court proceedings, particularly in cases involving custodial violence. Statutes determine if this footage can be used as evidence<sup>387</sup>, and it's crucial for prosecutors to prove its source and reliability. If there are doubts

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<sup>384</sup> ANI. "“Install CCTV Cameras in All Police Stations”, Ministry of Home Affairs Tells States and UTs.” The New Indian Express, 27 July 2021, [www.newindianexpress.com/nation/2021/Jul/27/install-cctv-cameras-in-all-police-stations-ministry-of-home-affairstells-states-and-uts-2336185.html](http://www.newindianexpress.com/nation/2021/Jul/27/install-cctv-cameras-in-all-police-stations-ministry-of-home-affairstells-states-and-uts-2336185.html). Accessed 17 Mar. 2024.

<sup>385</sup> "“You Are Dragging Your Feet; This Concerns Citizenry’s Rights”: Supreme Court Pulls up Centre over Non-Installation of CCTVs in Central Probe Agencies.” Www.livelaw.in, 2 Mar. 2021, [www.livelaw.in/top-stories/supreme-court-pulls-up-centre-over-non-installation-of-cctvs-in-central-probe-agencies-170578](http://www.livelaw.in/top-stories/supreme-court-pulls-up-centre-over-non-installation-of-cctvs-in-central-probe-agencies-170578).

<sup>386</sup> Nagori, Nishant. “CCTVs Cameras in Police Stations: A Comprehensive Step to Deter Custodial Violence? INDIAN LEGAL SYSTEM against FALSE ALLEGATION.” Indianlegalsystem.org, 2021, [indianlegalsystem.org/cctvs-cameras-in-police-stations-a-comprehensive-step-to-deter-custodial-violence%EF%BF%BC/](http://indianlegalsystem.org/cctvs-cameras-in-police-stations-a-comprehensive-step-to-deter-custodial-violence%EF%BF%BC/). Accessed 17 Mar. 2024.

<sup>387</sup> ‘Guidelines for implementation of the sub-scheme of “Assistance to States for Modernisation of Police” (Government of India, 13 December 2017). [https://www.mha.gov.in/sites/default/files/Guidelines14pages\\_19022018.pdf](https://www.mha.gov.in/sites/default/files/Guidelines14pages_19022018.pdf)

about the footage, it could affect the case outcome<sup>388</sup>. Thus, understanding the evidentiary value of CCTV cameras is crucial in legal proceedings.

CCTV footage can be classified as either primary or secondary evidence depending on how it is stored and presented in court. When recordings are saved directly on hard drives or one drive storage, they are considered primary evidence. However, if portions or all of the recordings are extracted and saved in secondary sources like CDs, DVDs, SD cards, or pen drives, they are classified as secondary evidence.

In **Kishan Painter v. The State**<sup>389</sup>, primary storage devices like pen drives, CDs, and DVDs are accepted forms of evidence in constitutional courts. For primary evidence, data must be stored directly on the device itself. However, if data is copied from other sources, authenticity tests under Section 65-B of the Indian Evidence Act are required. **Anvar P.V. v. P.K. Basheer and others**<sup>390</sup> establishes guidelines for secondary storage devices, emphasizing validity tests under Section 65(B). These precedents are crucial for determining the evidentiary value of CCTV footage<sup>391</sup>.

When a crime is committed, the evidence gathered determines who is guilty or innocent. The courts are frequently faced with the following issues namely<sup>392</sup>:-

1. Can CCTV be utilized as the only substantial evidence against the accused to prove actus reus at the accused's request when it is the only source of evidence available?
2. If an eyewitness's statement, the evidence he provided, and the evidence from the CCTV film contradict one another, what weight would the CCTV footage evidence have?

The answers to both queries are that if the CCTV footage is of a high enough quality and its viability is shown beyond a reasonable doubt, it will be sufficient to be shown as evidence in court. Several courts have noted the significance of CCTV admissibility throughout the trial, even on an international scale. In reality, the High Court in Aberdeen, Scotland noted in **Gubinas and**

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<sup>388</sup> Raj Shekhar, 'No getting away: CCTVs in Delhi helped police solve over 100' (Times of India, 28 August 2021), <https://timesofindia.indiatimes.com/city/delhi/no-getting-away-cctvs-helped-police-solve-over-100-keycases-this-yr-alone/articleshow/85698576.cms>

<sup>389</sup> Kishan Tripathi @ Kishan Painter v. The State Criminal Appeal No 108/2013.

<sup>390</sup> Anvar P V vs. PK Basheer & Ors Civil Appeal No 4226/2012.

<sup>391</sup> 'Is Certification Under Section 65B (4) Of Indian Evidence Act Mandatory for The Production of Electronic Evidence?' (Khurana & Khurana, 30 September 2020).

<sup>392</sup> Bajpai, Prakhar. Admissibility of CCTV Evidence. 2021.

**Radavicius v. HM Advocate**<sup>393</sup> that even if all witnesses are saying anything different and the CCTV film turns out to be in conflict with it, the electronic evidence will take precedence.

In **Shafi Mohammad vs The State of HP**<sup>394</sup>, the Supreme Court ruled that electronic evidence is admissible under the Indian Evidence Act. Sections 65A and 65B are procedural and clarifying but not exhaustive. Even without complying with Section 65B(4), secondary evidence can be presented under Sections 63 and 65 if the circumstances allow. Denying justice due to the absence of a Section 65B(4) certificate would be unjust, so evidence can be provided under Sections 63 and 65 without meeting Section 65B(4) requirements.

Thus CCTV cameras have been accepted as valid evidence and it is accepted as evidence in the court of law.

### **5.5. Empirical Data on Compliance of Paramvir Singh Saini vs. Baljit Singh Case:**

Findings of India Justice Report 2022 through RTI on compliance of Supreme Court's directions on installation of CCTVs in all police stations:

Of all the installed CCTVs, only Arunachal Pradesh and the Andaman and Nicobar Islands reported having a storage capacity of eighteen months. Andaman & Nicobar Islands, Arunachal Pradesh, Ladakh, Madhya Pradesh, Tripura, Karnataka, and Goa have audio and video capabilities in all installed CCTVs, while Andaman & Nicobar Islands, Arunachal Pradesh, Kerala, Ladakh, Tripura, Karnataka, Delhi, and Goa have night vision installed in their CCTV cameras. Several states and Union Territories, including Tamil Nadu, Rajasthan, Bihar, Jammu & Kashmir, Tripura, Sikkim, Delhi, Mizoram, Assam, Maharashtra, Kerala, Madhya Pradesh, Arunachal Pradesh, Puducherry, and Karnataka, have made specific budgetary allocations for the installation of CCTV cameras. States such as Andaman & Nicobar Islands, Arunachal Pradesh, Assam, Jammu & Kashmir, Kerala, Ladakh, Madhya Pradesh, Maharashtra, Mizoram, Rajasthan, Tamil Nadu, Tripura, Andhra Pradesh, Himachal Pradesh, Telangana, Uttarakhand, Chandigarh, Karnataka, Jharkhand, and West Bengal have established District Level Oversight Committees (DLOCs). Additionally, Karnataka, Jharkhand, West Bengal, Puducherry, Chhattisgarh, Dadra and Nagar

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<sup>393</sup> Gubinas and Radavicius V HM Advocate [2017] HCJAC 25.

<sup>394</sup> Shafi Mohammad v State of HP Special Leave Petition (CrI) No 2302/2017.

Haveli and Daman and Diu, Uttar Pradesh, Andaman & Nicobar Islands, Arunachal Pradesh, Assam, Jammu & Kashmir, Kerala, Ladakh, Madhya Pradesh, Maharashtra, Mizoram, Rajasthan, Tamil Nadu, Tripura, Andhra Pradesh, Himachal Pradesh, Telangana, and Uttarakhand have formed State Level Oversight Committees (SLOCs).

With regard to installation of camera in police station in Delhi, as per the judgment **in the matter of court on its own motion vs. Union of India**<sup>395</sup>, the cameras has been installed in all the police station in Delhi. 10 cameras in all the 10 police stations has been installed. The budget allotted is Rs. 43,94,441. The fund is also being given to major cities like Ahmedabad, Mumbai, Chennai, Hyderabad, Kolkata and Bengaluru for installation of CCTV Cameras in Police Station<sup>396</sup>.

**RTI Report on the Establishment and Budget Allocation for CCTV Cameras in Police Stations in Tamil Nadu**<sup>397</sup>:

The State of Tamil Nadu has established a State Level Oversight Committee for monitoring CCTV cameras in police stations to prevent custodial violence, formed as per G.O. (Ms.) No. 65 Home (Police XIIX) Department on 09.02.2021. The committee includes the Secretary/Additional Secretary of the Home and Finance Departments, the Director General/Inspector General of Police, and the Chairperson/member of the State Women's Commission. Additionally, a District Level Oversight Committee has been established for every district. For the fiscal year 2023-2024, the government, through Home (Police – XII) Department G.O. (D) No. 404 dated 11.04.2023, approved in principle the installation/upgrade of CCTV systems with a storage capacity of 1 year to 18 months in 1567 police stations with a budget of 38.35 Crores in two phases, though no funds have been allocated yet. A copy of the G.O. is enclosed.

**RTI Reply to various questions from Commissioner / Superintendent of Police of Chennai, Madurai and Thoothukudi**<sup>398</sup>.

A District Level Oversight Body for monitoring CCTV cameras in police stations to prevent custodial violence has been established in the district. CCTV cameras have been installed in every police station for this purpose. Across all police stations, a total of 816 CCTV cameras have been

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<sup>395</sup> WP(C) No.7927/2012.

<sup>396</sup> Answered by the then Minister Shri Om Birla in the Lok Sabha on 13th March, 2018.

<sup>397</sup> See Annexure 13.

<sup>398</sup> See Annexure 14.

installed. In Thoothukudi, there are 306 cameras, 186 with audio-video facilities, 276 with night vision, and 290 functioning; in Madurai, 81 cameras with night vision are installed, with 52 functioning; Mylapore has 20 functioning cameras; Theyagaraya Nagar has 105 cameras, 62 with audio-video and night vision, all functioning; Triplicane has 54 cameras, 48 with audio-video, all functioning; Kolathur has 39 cameras, all with audio-video and night vision, all functioning; Koyembedu has 40 cameras, all with audio-video and night vision, all functioning; Anna Nagar has 46 cameras, all with audio-video and night vision, all functioning; Kilpauk has 65 cameras, all with audio-video and night vision, all functioning; and St. Thomas Mount has 60 cameras, 6 with audio-video, all with night vision, all functioning.

The storage capacity of installed CCTV cameras varies: Thoothukudi, Mylapore, Theyagaraya Nagar, Triplicane, Madurai, Kolathur, Koyembedu, Anna Nagar, Kilpauk, Flower Bazaar District, and St. Thomas Mount have specific capacities that are not detailed here. In terms of public awareness, 28 police stations in Thoothukudi display posters indicating CCTV surveillance; all stations in Theyagaraya Nagar, Koyembedu, Anna Nagar, and Kilpauk have such posters, while other areas lack these notifications or did not provide information.

CCTV footage has been used as evidence in cases relating to custodial violence in specific instances: one case in Thoothukudi (Sathankulam PS) and one in Madurai (C5 Karimedu L&O). No cases were reported or data provided for Mylapore, Theyagaraya Nagar, Triplicane, Kolathur, Koyembedu, Anna Nagar, Kilpauk, Flower Bazaar District, and St. Thomas Mount.

After analyzing the responses received from the Commissioner and Superintendent of Police of Chennai, Madurai, and Thoothukudi regarding the implementation and effectiveness of CCTV surveillance in police stations for the prevention of custodial violence, it is evident that while progress has been made in some areas, there are still significant gaps and inconsistencies.

In terms of oversight and monitoring, it appears that efforts vary across districts. While some districts have established a District Level Oversight Body and prominently display posters indicating CCTV surveillance in police stations, others lack such initiatives. Additionally, the availability and functionality of CCTV cameras differ, with some stations having a significant number of cameras equipped with audio-video and night vision capabilities, while others have fewer or none.



Storage capacity also varies, with some stations able to retain footage for extended periods, while others have limited capacity or unclear data. Furthermore, the utilization of CCTV footage as evidence in cases of custodial violence remains sporadic, indicating a need for more consistent and widespread implementation of this technology.

In conclusion, while there have been efforts to utilize CCTV surveillance for the prevention and accountability of custodial violence, there is a clear need for standardization, improvement, and increased transparency across all police stations. A cohesive and comprehensive approach, coupled with regular assessment and accountability measures, is essential to ensure the effective utilization of CCTV surveillance in upholding the rights and safety of individuals in police custody.

## **5.6. Other Mechanisms for controlling custodial violence:**

The term "body camera," "wearable camera," "body-worn camera," or simply "body camera" refers to a wearable audio, video, or photographic recording equipment that law enforcement uses to capture occurrences in which they are engaged from the perspective of the wearing officer. Usually, they are pinned to the officer's uniform and worn on the torso. Law enforcement-specific requirements are addressed with police body cameras, which are akin to those of firefighters, citizens, or members of the armed forces. Since its introduction in the UK in 2005, body cameras have been used by many police departments and forces across the globe.

With regard to the CCTV Cameras in police station, one of the primary issue is it being stationary. India needs to equip police officers with body cams. Although they can't completely prevent police aggression, bodycams have shown to be an effective deterrent. They have standards for data storage, are inexpensive, and can and should be employed extensively. When police are accused of something they did not do, body cams can sometimes aid them as well<sup>399</sup>. India's police force must wear body cams at all times, just like law enforcement in certain other nations. Body cameras that meet all the necessary specifications—such as GPS tracking and audio recording—should be made available as soon as feasible since they will discourage the police.

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<sup>399</sup> "Death by Cops: Cameras, Including Bodycams, Can Deter Police Violence. But Are Politicians Serious?" *The Times of India*, 15 June 2022, [timesofindia.indiatimes.com/blogs/toi-editorials/death-by-cops-cameras-including-bodycams-can-deter-police-violence-but-are-politicians-serious/?source=app&frmapp=yes](https://timesofindia.indiatimes.com/blogs/toi-editorials/death-by-cops-cameras-including-bodycams-can-deter-police-violence-but-are-politicians-serious/?source=app&frmapp=yes).

Other Surveillance Technology that can be used for prevention of violence by police officers is Dashcams in Cars. A dashboard camera, or dashcam, is an onboard camera that records the image via a car's front windshield and sometimes its rear or other windows. It is also known as a vehicle digital video recorder (car DVR), driving recorder, or event data recorder (EDR). Certain dashcams have an inbuilt 360-degree camera that records the inside of the vehicle in ball shape. These cameras can also broadcast images and videos automatically over 4G. These cameras can be evidence especially traffic police who involves in corruption<sup>400</sup>.

### **5.7. Findings of the Interview with Non – Governmental Organizations dealing with Custodial Violence on CCTV Installation in Police Station<sup>401</sup>:**

Interviews with representatives from two NGOs revealed several key observations regarding the installation and effectiveness of CCTV cameras in police stations. While both State Level and District Level Oversight Bodies exist, there is a significant lack of awareness about their roles among key officials, such as District Collectors, which hampers effective oversight. Despite this, CCTV cameras are installed in almost all police stations in the areas where these NGOs operate, indicating compliance with government directives. The presence of CCTV cameras is believed to act as a deterrent to custodial violence, although their effectiveness depends on the proper functioning of the oversight bodies. The installation of CCTV cameras is seen as a critical measure to prevent torture and custodial violence, underscoring the need for widespread implementation and proper maintenance. These observations highlight the importance of raising awareness about the roles of oversight bodies and ensuring the comprehensive installation and maintenance of CCTV systems to enhance accountability and transparency in police stations.

### **5.8. Conclusion:**

To summarize, technology, particularly surveillance tools like CCTV cameras, plays a pivotal role in curbing violence against detainees and ensuring accountability within law enforcement. CCTV cameras serve as indispensable resources for gathering information, corroborating witness testimonies, and preserving critical incident details by impartially recording interactions in

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<sup>400</sup> Preston, Benjamin. "Dash Cams Can Be Silent Witnesses during Police Traffic Stops and Other Incidents." *Consumer Reports*, 29 July 2020, [www.consumerreports.org/law-enforcement/dash-cams-can-be-silent-witnesses-during-police-traffic-stops-and-other-incidents/](http://www.consumerreports.org/law-enforcement/dash-cams-can-be-silent-witnesses-during-police-traffic-stops-and-other-incidents/).

<sup>401</sup> See Annexure 15.

correctional facilities. They enhance transparency and fairness in investigating and resolving allegations of misconduct or violence during detention, fostering trust and confidence among the public.

The establishment of State Level and District Level Oversight Bodies for monitoring CCTV cameras in police stations is a crucial step towards preventing custodial violence. Despite the existence of these oversight bodies, there is a notable lack of awareness about their roles among key officials, which hampers effective oversight. CCTV cameras have been installed in almost all police stations across various districts, with a total of 816 cameras featuring varying functionalities, including audio-video and night vision capabilities. However, the storage capacity of these cameras varies, and public awareness through surveillance posters is inconsistent, with only some districts displaying them.

The presence of CCTV cameras is believed to act as a deterrent to custodial violence, but their effectiveness is contingent upon the proper functioning of the oversight bodies. The use of CCTV footage as evidence in custodial violence cases in Thoothukudi and Madurai highlights the potential of these systems in enhancing accountability and transparency. To maximize the impact of CCTV surveillance in preventing custodial violence, it is imperative to raise awareness about the roles of oversight bodies, ensure consistent public notifications, and maintain the functionality and storage capacity of the cameras. Furthermore, fostering collaboration among law enforcement agencies, government entities, civil society organizations, and the community is essential for promoting transparency, accountability, and public trust in CCTV surveillance initiatives. Only through a holistic approach that addresses systemic issues can the full potential of surveillance technology be realized in enhancing accountability and transparency within custodial settings.

In conclusion, law enforcement organizations may carry out their responsibility to guarantee the safety and well-being of people in custody while respecting the concepts of justice and human rights by working toward uniformity, improvement, and more transparency. CCTV monitoring may greatly aid in establishing more secure and responsible correctional settings via teamwork and a dedication to ongoing development.

## **Chapter 6: Findings and Conclusion**

### **Legal Framework relating to Custodial Violence:**

Custodial Violence is still considered to be one of the important problem that still cannot be controlled. According to recent remarks made by former Indian Chief Justice N.V. Ramana, "the police station poses the greatest threat to human rights<sup>402</sup>." In our society, issues like torture in detention and other police brutalities persist. In spite of proclamations and safeguards found in the constitution, those who are arrested or detained suffer greatly from the absence of competent legal counsel at police stations.

### **Findings:**

India's failure to enact specific legislation against custodial violence and torture has significantly contributed to a culture of impunity for officials responsible for such acts. Despite signing the Convention against Torture in 1997, India has not ratified it, highlighting a troubling lack of commitment to implementing measures that could prevent custodial violence. This legislative gap is glaring, given the persistent reports and evidence of abuse within the criminal justice system.

One of the critical issues exacerbating custodial violence is the lack of access to legal counsel for individuals who are arrested or detained. This denial of basic legal rights significantly impacts the outcomes for these individuals within the criminal justice system. Without timely and adequate legal representation, detainees are left vulnerable to abuse and have limited means to challenge unlawful detention or mistreatment. The formal and often costly procedures of the legal system further deter marginalized individuals from seeking justice, thereby exacerbating disparities in access to legal recourse. The prohibitive cost and complexity of the legal system serve as significant barriers for marginalized communities, preventing them from pursuing justice and holding perpetrators accountable.

The opaque nature of India's prison system and the absence of necessary reforms perpetuate deplorable conditions within these institutions, further hindering accountability for custodial violence. Transparency and accountability are crucial for addressing and preventing human rights

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<sup>402</sup> "Threat to Human Rights & Bodily Integrity Highest at Police Stations: CJI NV Ramana." *Www.livelaw.in*, 8 Aug. 2021.

abuses, yet India's prison system remains shrouded in secrecy. This lack of transparency allows for the continuation of inhumane conditions and abusive practices, with little to no oversight or accountability.

Marginalized groups and dissenting voices are disproportionately subjected to torture and violence in custody, reflecting systemic discrimination and abuse of power. This disproportionate impact on marginalized communities underscores the deeply entrenched biases within the criminal justice system. The culture of solidarity among law enforcement officials poses significant challenges in gathering evidence against police perpetrators of custodial violence. This culture of impunity and mutual protection among law enforcement officials makes it extremely difficult to hold those responsible for abuses accountable.

Families seeking justice for victims of custodial deaths often face severe intimidation and threats, further hindering their pursuit of accountability. The pressure to solve cases quickly can lead to the use of torture as a means of coercion, highlighting systemic issues within law enforcement culture and practices. This pressure often results in a reliance on torture and coercion to extract confessions, rather than thorough and lawful investigative practices.

Insufficient training on non-coercive interrogation methods and human rights standards contributes to the perpetuation of custodial violence. Many law enforcement officials lack the necessary training to conduct interrogations without resorting to violence or coercion. This deficiency in training reflects a broader systemic issue within the law enforcement community, where human rights are often not prioritized or adequately integrated into standard practices.

The cumulative effect of these issues is a criminal justice system that is ill-equipped to prevent custodial violence and hold perpetrators accountable. Without specific legislation, comprehensive reforms, and a commitment to upholding human rights standards, custodial violence and torture will continue to plague India's justice system. The need for legislative action, improved transparency, better training for law enforcement, and greater support for marginalized communities is urgent. Only through such comprehensive measures can India hope to address the scourge of custodial violence and fulfill its commitments under international human rights conventions.

**Measures which should be taken:**

Enacting robust legislation to criminalize custodial torture and ensuring impartial investigations are essential steps in addressing and mitigating the scourge of custodial violence in India. One of the most significant legislative proposals is the insertion of Section 114B of the Indian Evidence Act, which shifts the burden of proof to police officers accused of custodial torture. This change is a pivotal move towards holding perpetrators accountable and ensuring justice for victims. By presuming the guilt of the officer in cases where custodial torture is alleged, the law would necessitate a higher standard of accountability and provide a stronger deterrent against such abuses.

Educating police officials about human rights and promoting police accountability are crucial components of any comprehensive strategy to combat custodial violence. Training programs for law enforcement should prioritize respect for individual rights, emphasizing the legal and ethical consequences of misconduct. These programs must be thorough and continuous, ensuring that all officers are aware of the rights of detainees and the severe repercussions of violating these rights. Human rights education should be embedded within the police training curriculum and reinforced through regular workshops and evaluations.

Involving civil society and human rights organizations is vital for effective advocacy, monitoring, and providing support to victims of custodial violence. These organizations play a critical role in ensuring oversight and accountability mechanisms are in place and functioning properly. Their active participation can bring transparency to the investigation process, offer legal and psychological support to victims, and advocate for policy changes. Civil society's involvement also ensures that the voices of the marginalized and oppressed are heard and represented in policy-making and implementation processes.

Imposing stringent punishments for custodial violence, including substantial fines and life imprisonment for severe cases, sends a strong deterrent message to potential perpetrators. Such measures would underscore the seriousness with which custodial violence is regarded and signal a zero-tolerance policy towards such abuses. Allocating fines to the victims' families not only provides restitution but also addresses their immediate and long-term needs, offering some measure of justice and compensation for their suffering.

Independent and unbiased investigations, coupled with immediate medical examinations of victims, are critical for ensuring justice and preventing further harm. The independence of

investigative bodies from the police force is essential to avoid conflicts of interest and ensure impartiality. Immediate and thorough medical examinations help document injuries and provide essential evidence for legal proceedings. These practices, if consistently implemented, can significantly enhance the credibility and effectiveness of investigations into custodial violence.

Adhering to established guidelines, such as those outlined in the DK Basu case, is essential for ensuring procedural safeguards against custodial torture. These guidelines mandate prompt access to legal counsel, the right to be informed of one's rights, and the necessity of maintaining arrest records, among other protections. Ensuring strict compliance with these guidelines can prevent abuses and provide a framework for holding officers accountable.

Government-led awareness campaigns, complemented by active participation from law enforcement agencies, can significantly enhance public understanding of rights and responsibilities. Increasing awareness empowers individuals, making them more likely to demand their rights and report abuses. Public awareness campaigns should utilize various media, including social media, traditional media, and community outreach programs, to educate citizens about their rights and the mechanisms available to seek redress.

Restructuring the police department to separate law and order and investigation wings can help streamline operations and reduce the work pressure on officers. This structural change could enhance efficiency and accountability within the force, allowing for specialized training and focus in each area. A dedicated investigation wing would ensure that officers handling investigations are specifically trained in evidence collection, forensic techniques, and legal procedures, reducing the reliance on coercive methods.

To summarize, addressing custodial violence in India requires a multifaceted approach that includes legislative reforms, education and training for police, active involvement of civil society, stringent punishments for offenders, independent investigations, adherence to legal guidelines, public awareness campaigns, and structural changes within the police department. Implementing these measures can create a more just and accountable criminal justice system, where the rights and dignity of every individual are respected and protected.

### **Compensation to victims of Custodial Violence:**

With regard to compensation given to the victims of Custodial Violence, awarding of compensation is ex-gratia payment by the courts. There is uncertainty as there is no specific legislation to deal with compensation and court have adopted their own standards in awarding the compensation or in determining the quantum of compensation. Also another question that arises for consideration is whether compensation can be granted to every unnatural death that happens in the prison irrespective of the fault on the public officials. Also proving liability of the police officers is difficult as it happens inside the police station and the police officials might threaten the victim and witness. Lack of evidence is also one of the main issues in awarding compensation. Government officials may occasionally refuse to compensate victims of crimes committed while they are in custody out of fear of creating precedents, facing financial repercussions, or risking harm to the standing of law enforcement.

#### Measures to Enhance Compensation for Custodial Violence Victims:

Enacting precise laws that address compensation for victims of custodial violence is a crucial step in ensuring justice and accountability. These laws should include clear guidelines and establish the government's strict liability for any acts related to custodial violence, regardless of fault. Such legislation must unequivocally state that the government is responsible for compensating victims of custodial violence, thereby reinforcing the principle that the state has an undeniable obligation to protect the rights and well-being of individuals under its custody.

To provide comprehensive compensation for all unnatural deaths in police custody, it is essential to outline specific compensation amounts for different types of harm. For custodial deaths, a compensation amount of Rs. 10,00,000 should be mandated, reflecting the gravity of the loss of life and the need to support the victim's family. For major injuries sustained in custody, a compensation of Rs. 5,00,000 should be provided, acknowledging the long-term impact on the victim's health and livelihood. For minor injuries, a compensation of Rs. 1,00,000 should be established, ensuring that all forms of harm are addressed and that victims receive adequate redress.

In cases where a prima facie case of torture or injury is established, interim compensation should be provided to victims. This interim compensation serves as immediate financial relief to address urgent needs such as medical treatment, legal fees, and support for the victim's family. By offering



interim compensation, the government demonstrates its commitment to justice and ensures that victims are not left in a state of vulnerability while awaiting the outcome of legal proceedings.

To further enforce accountability, the government should be empowered to recover compensation amounts from delinquent officers found responsible for custodial violence. This measure ensures that officers who engage in misconduct are held financially accountable, thereby reinforcing the deterrent effect of the law and promoting a culture of responsibility and integrity within law enforcement agencies.

Ensuring that victims have access to low-cost or free legal aid is paramount for assisting them with claims and navigating the legal system. Legal aid services should be readily available to victims, providing them with the necessary support to file claims, understand their rights, and pursue justice effectively. This access to legal aid helps to level the playing field, especially for marginalized and economically disadvantaged individuals who might otherwise be unable to afford legal representation.

Establishing victim support centers or helplines staffed by qualified specialists is another critical component of a comprehensive strategy to address custodial violence. These centers should provide emotional support and counseling to victims, helping them cope with the trauma and psychological impact of their experiences. Victim support centers can also offer guidance on legal and medical services, creating a holistic support system for those affected by custodial violence.

Drawing inspiration from the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the compensation framework for custodial violence victims should include specific amounts given at every stage of the legal proceedings. This staged compensation approach ensures that victims receive timely and continuous support throughout the legal process. For instance, initial compensation could be provided at the time of filing the complaint, followed by additional amounts at key milestones such as the conclusion of investigations, the commencement of trials, and the final verdict. This structured compensation system ensures that victims are not left unsupported at any point during their pursuit of justice.

A robust and comprehensive legal framework addressing compensation for victims of custodial violence should include clear legislation with strict government liability, defined compensation amounts for various degrees of harm, provisions for interim compensation, mechanisms for

recovering compensation from delinquent officers, and access to low-cost or free legal aid. Additionally, establishing victim support centers and a staged compensation system akin to the SC/ST Act would provide continuous and holistic support to victims. Implementing these measures can significantly enhance the protection and support for victims of custodial violence, ensuring justice, accountability, and a more humane criminal justice system.

### **Use of Technology in preventing custodial violence:**

Custodial violence remains a significant human rights concern in India, despite initiatives like installing CCTV cameras in police stations. While CCTV footage is admissible as evidence, ensuring its accountability remains a challenge. The 2020 Supreme Court rules aimed at addressing this issue have not been fully implemented, and there are often operational issues with CCTV systems in police stations. Closing these gaps is essential to effectively address custodial violence and uphold human rights<sup>403</sup>.

Measures that needs to be taken with regard to surveillance

Ensuring the installation of CCTV cameras in every police station across all states is paramount for upholding public order and protecting citizens' rights. CCTV surveillance acts as a deterrent against custodial violence and misconduct, providing an essential layer of transparency and accountability within law enforcement agencies. To maximize the effectiveness of this surveillance, it is critical that an impartial organization, comprising judicial members, oversees CCTV operations. This oversight is necessary to prevent the manipulation or deletion of recordings, which can undermine the integrity of the surveillance system and obstruct justice.

Collaboration between central and state authorities is crucial for the nationwide monitoring of CCTV effectiveness and for addressing any deficiencies promptly. This cooperative approach ensures that standards are uniformly applied and that any issues with the surveillance system are quickly identified and rectified. Regular audits and assessments conducted by these authorities can help maintain the functionality and reliability of CCTV systems, thereby strengthening the overall accountability framework within police stations.

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<sup>403</sup> Mohammed, Syed. "CCTV Cameras Not Working at Police Station, Hearing at Information Commission Reveals." *The Hindu*, 2 Dec. 2021.

Conducting research on CCTV operations in police stations is essential for enhancing monitoring efficiency and reducing violence against detainees. This research should focus on the technological aspects of CCTV systems, their placement within police stations, and the protocols for handling and storing footage. Insights gained from such research can inform best practices and lead to the development of more effective surveillance strategies that protect the rights of detainees and ensure that police conduct remains above reproach.

A comparative analysis of CCTV surveillance practices in other countries can provide valuable lessons for India in combating custodial violence. By examining how other nations have implemented and benefited from CCTV surveillance in law enforcement, India can adopt and adapt successful strategies to fit its unique context. This analysis can also highlight potential pitfalls and challenges, allowing India to proactively address these issues and implement a robust and effective surveillance system.

Given the potential involvement of Station House Officers (SHOs) in custodial violence, it may be necessary to reconsider their duty to report non-functioning CCTV cameras. While SHOs play a critical role in the day-to-day operations of police stations, their involvement in the reporting process could create conflicts of interest, particularly if they have a stake in the non-functioning of the cameras. Instead, an independent body should be tasked with monitoring the operational status of CCTV cameras and ensuring that any malfunctions are promptly reported and repaired. This independent oversight would help mitigate potential biases and ensure that the surveillance system remains effective and trustworthy.

Furthermore, implementing stringent protocols for the maintenance and regular inspection of CCTV systems is essential. These protocols should include scheduled checks, prompt repairs of any identified issues, and thorough documentation of all maintenance activities. By institutionalizing such protocols, authorities can ensure that CCTV cameras are consistently operational and that any lapses in surveillance are minimized.

The integration of advanced technologies, such as real-time monitoring and automated alerts for camera malfunctions, can further enhance the effectiveness of CCTV systems. These technologies can provide immediate notifications to relevant authorities when cameras are not functioning, enabling swift corrective actions. Additionally, incorporating data analytics can help identify

patterns of misconduct or violence, allowing for proactive interventions and targeted training for police personnel.

Public awareness and transparency regarding the presence and purpose of CCTV cameras in police stations are also vital. Informing citizens about the surveillance measures in place can help build trust in the criminal justice system and encourage the reporting of misconduct. Publicly accessible reports on the performance and findings related to CCTV surveillance can further enhance transparency and accountability.

In conclusion, the installation and effective management of CCTV cameras in every police station are crucial steps toward upholding public order and protecting citizens' rights. An impartial organization with judicial members should oversee CCTV operations to prevent any manipulation or deletion of recordings. Collaboration between central and state authorities is necessary to monitor the effectiveness of CCTV systems nationwide and address any deficiencies promptly. Research on CCTV operations, along with a comparative analysis of international practices, can enhance monitoring efficiency and reduce custodial violence. Reconsidering the duty of SHOs to report non-functioning cameras and implementing independent oversight are essential for maintaining the integrity of the surveillance system. By adopting these comprehensive measures, India can significantly strengthen the accountability and transparency of its law enforcement agencies, ensuring justice and protection for all citizens.

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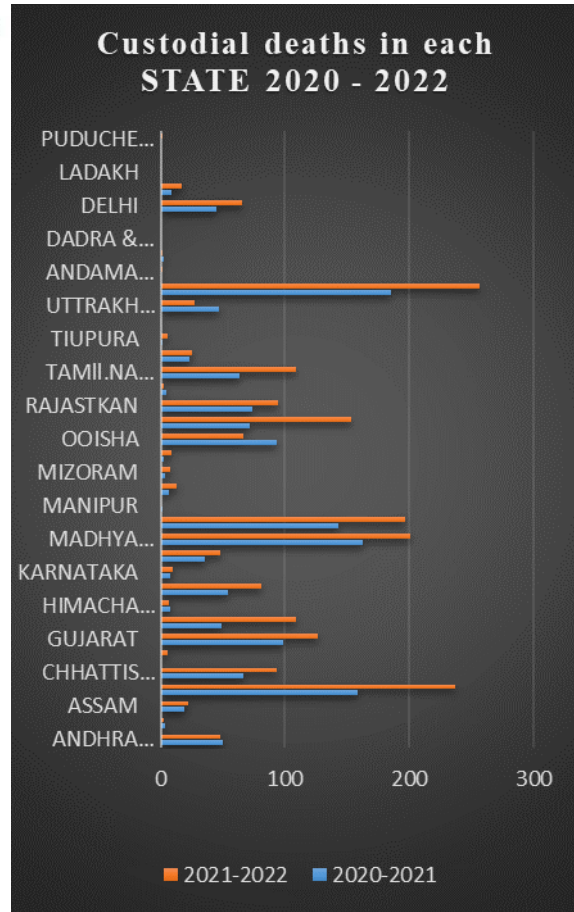
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## Annexure

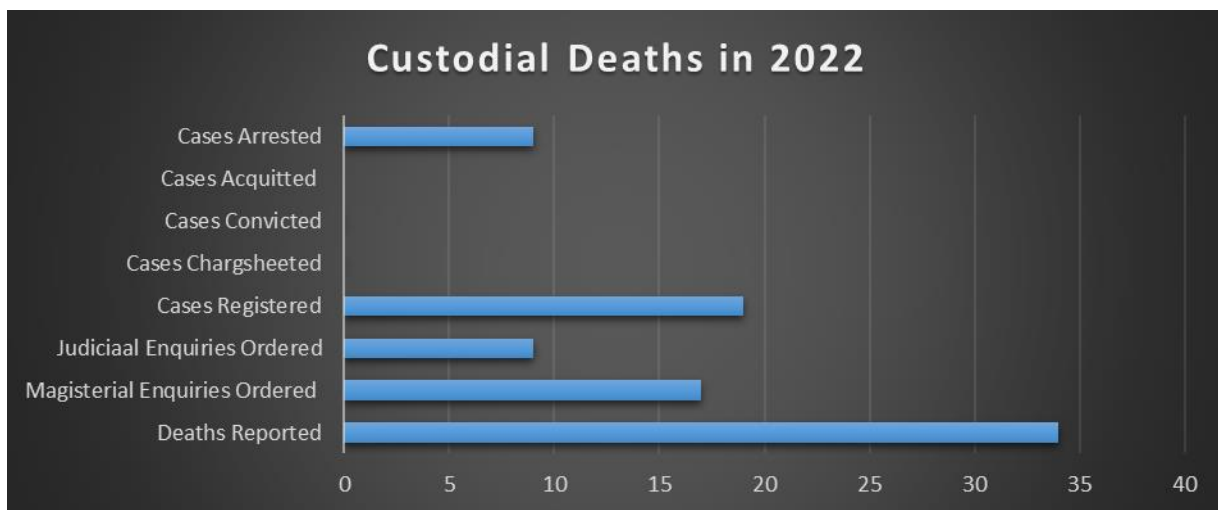
### Annexure 1

Information in respect of part (a) to (c) of Lok Sabha Unstarred Question No. 1459 for 26.07.2022  
Statement Showing State-wise No. of Cases Registered in respect of Custodial Deaths from 01.04.2020 to 31.03.2022

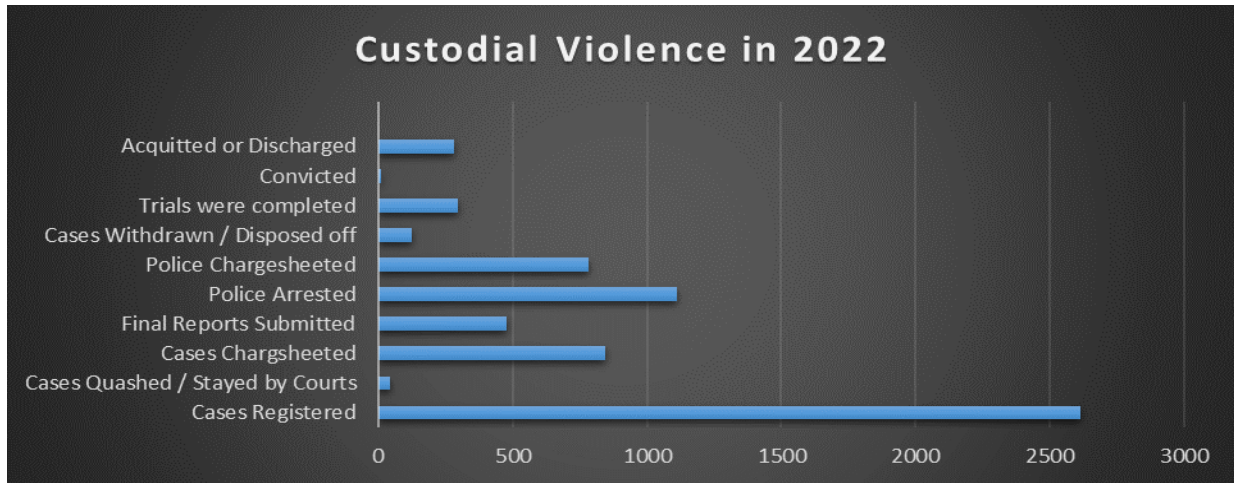
S No.	State/UT Name	2020-2021	2021-2022
1	ANDHRA PRADESH	50	48
2	ARUNACHAL PRADESH	3	2
3	ASSAM	19	22
4	BIHAR	159	237
5	CHHATTISGARH	67	93
6	GOA	1	6
7	GUJARAT	99	126
8	HARYANA	49	109
9	HIMACHAL PRADESH	8	7
10	JHARKHAND	54	81
11	KARNATAKA	8	10
12	KERALA	35	48
13	MADHYA PRADESH	163	201
14	MAHARASHTRA	143	197
15	MANIPUR	1	1
16	MEGHALAYA	7	13
17	MIZORAM	3	8
18	NAGALAND	2	9
19	ODISHA	93	67
20	PUNJAB	72	153
21	RAJASTHAN	74	94
22	SIKKIM	4	2
23	TAMIL NADU	63	109
24	TELANGANA	23	25
25	TRIPURA	1	6
26	UTTAR PRADESH	451	501
27	UTTARAKHAND	47	27
28	WEST BENGAL	185	257
29	ANDAMAN & NICOBAR	0	1
30	CHANDIGARH	2	1
31	DADRA & NAGAR HAVELI	0	0
32	DAMAN & DIU	0	0
33	DELHI	45	65
34	JAMMU & KASHMIR	9	17
35	LADAKH	0	0
36	LAKSHADWEEP	0	0
37	PUDUCHERRY	0	1
	<b>TOTAL</b>	<b>1940</b>	<b>2544</b>



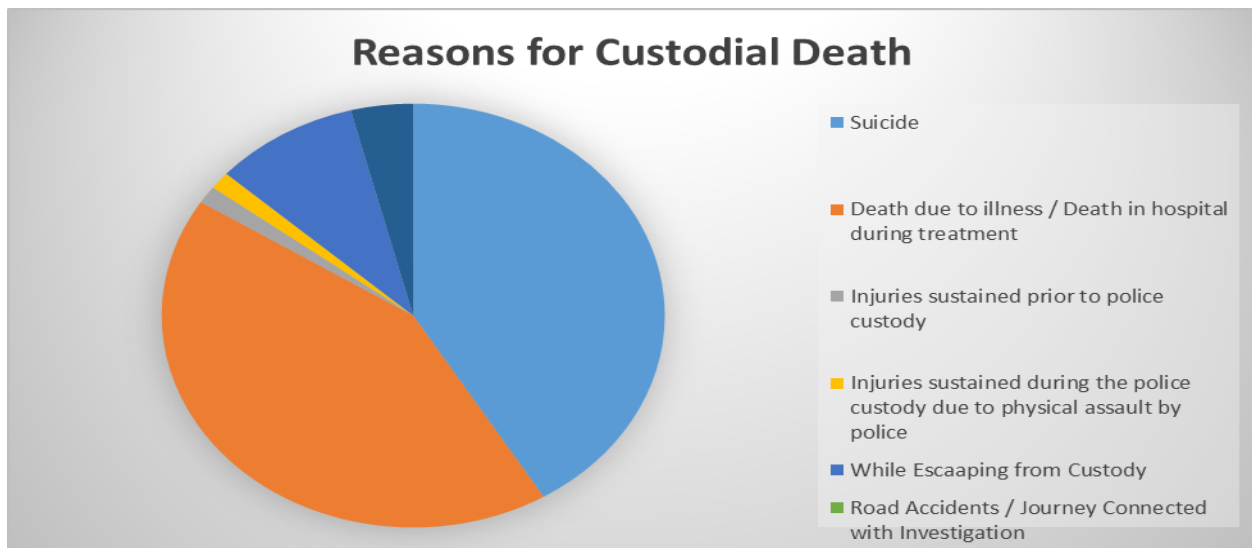
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### Annexure 3

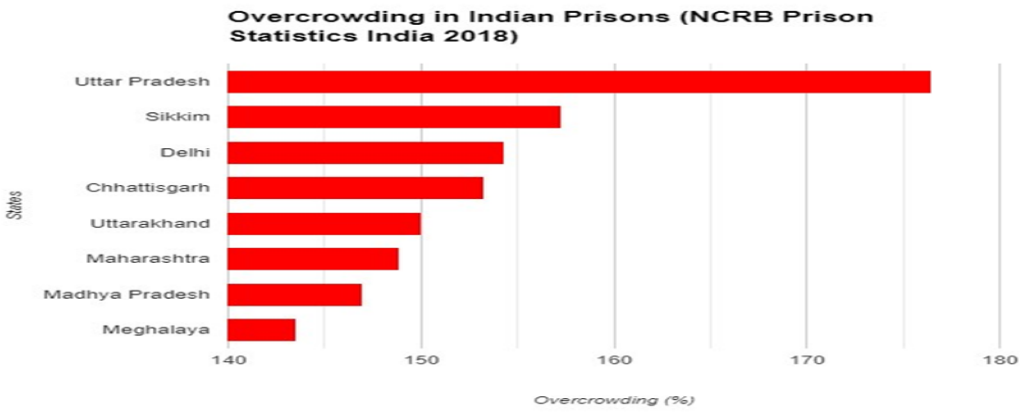


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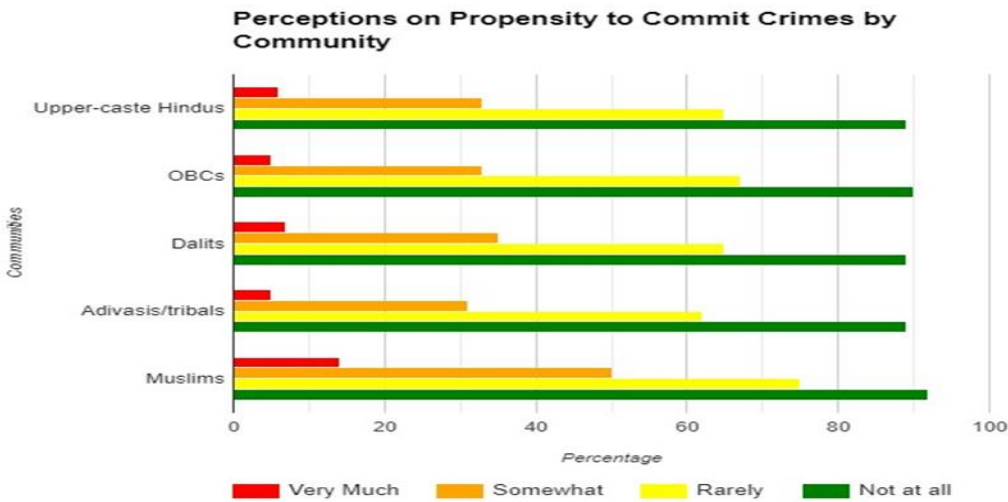


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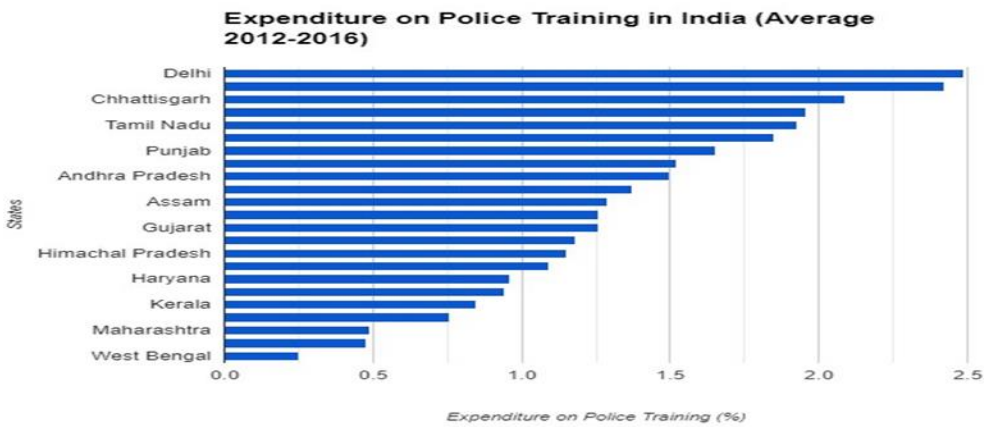




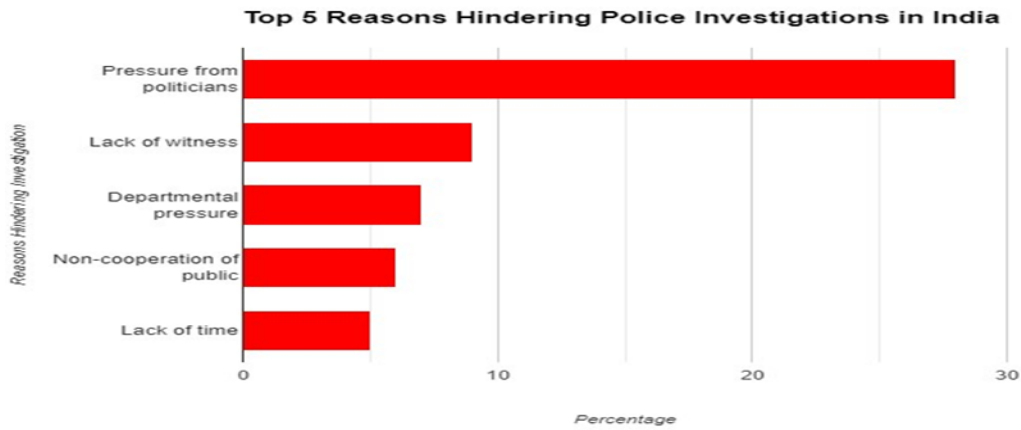
**Annexure 6**



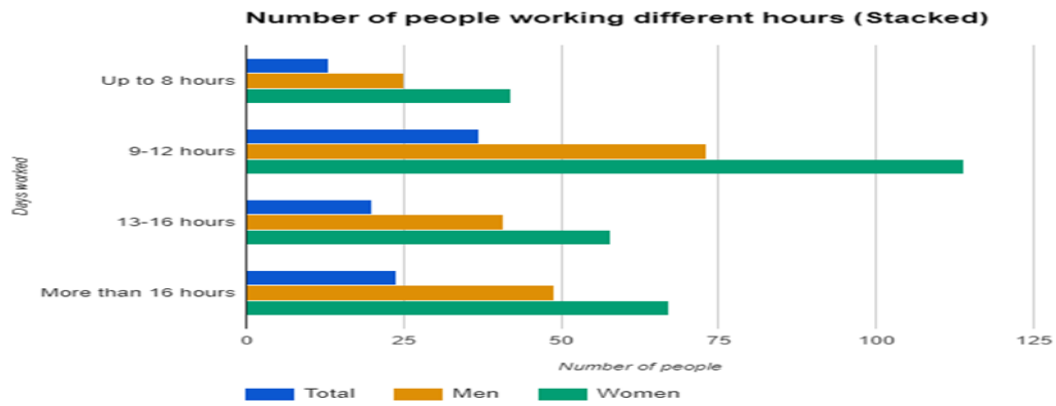
**Annexure 7**



## Annexure 8

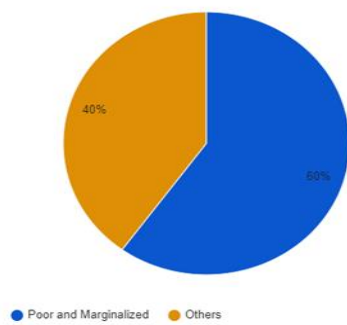


## Annexure 9

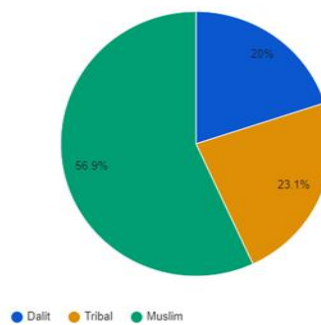


## Annexure 10

**Distribution of Poor and Marginalized**



**Subdivisions within Poor and Marginalized**



## Annexure 11

### **Interview with Non – Governmental Organizations dealing with Custodial Violence on Existing Legal Framework:**

#### **Answers from People’s Watch – Mr. Asir:**

**1. How would you assess the effectiveness of existing laws in addressing custodial violence in Tamil Nadu?**

The current laws related to custodial violence are adequate and sufficient to control such incidents.

**2. How would you describe the implementation of existing laws related to custodial violence in practice?**

Although the laws themselves are adequate, their effectiveness is often undermined by inadequate enforcement. Laws become ineffective when those in power do not adhere to them, and oversight mechanisms are often weak. The success of any law depends on its diligent application by competent authorities.

**3. What are the common challenges or gaps in the legal framework that contribute to custodial violence incidents?**

The process for filing complaints is fraught with significant obstacles. Despite legal mandates, individuals often face formidable challenges in lodging their grievances, and police officers may only accept complaints under certain conditions, often requiring personal influence.

**3. Specifically, how does the pressure to quickly solve cases impact the likelihood of resorting to violent means in dealing with suspects?**

The police force is often overburdened and lacks specialization, which calls for urgent reform.

**5. In your experience, how does the lack of awareness among the public about their rights contribute to the vulnerability of individuals to custodial violence in Tamil Nadu?**

There is a significant lack of awareness. We work to convince victims and build their confidence to proceed with legal actions.

**6. How does the perceived camaraderie or solidarity within the police department impact the willingness of victims or their families to pursue independent investigations or file FIRs in cases involving custodial violence?**

Police officers often attempt to settle cases through compensation and show solidarity in protecting their colleagues, making it difficult for victims to pursue complaints.

**7. Whether there is difficulty in collecting evidence when the case relates to custodial violence?**

Yes, collecting evidence is challenging as victims are often threatened.

**3.7.2. Answers from Social Awareness Society for Youths (SASY) - Dr. V.A. Ramesh Nathan:**

**1. How would you assess the effectiveness of existing laws in addressing custodial violence in Tamil Nadu?**

Indian laws like the Constitution and IPC exist, but they are insufficient. There are SC guidelines regarding custodial violence, illegal detention, and torture, but no specific law addresses custodial violence.

**2. How would you describe the implementation of existing laws related to custodial violence in practice?**

Laws are not being properly implemented.

**3. What are the common challenges or gaps in the legal framework that contribute to custodial violence incidents?**

Challenges include entrenched caste prejudices, structural and procedural blockages in the criminal justice system, low judge-population and police-population ratios, delayed investigations, deficient prosecution systems, dysfunctional prisons, and poverty and illiteracy.

**4. Specifically, how does the pressure to quickly solve cases impact the likelihood of resorting to violent means in dealing with suspects?**

There is work pressure and political pressure on police officials. Duty hours are not restricted to 8 hours, necessitating police reform.

**5. In your experience, how does the lack of awareness among the public about their rights contribute to the vulnerability of individuals to custodial violence in Tamil Nadu?**

People fear the police and do not complain unless supported by media or organizations. SC and ST individuals are more likely to file cases against caste-based atrocities due to the SC ST Act, but they rarely file against police officers due to fear and lack of a safe mechanism.

**6. Do you believe the lack of proper training for law enforcement officers in Tamil Nadu contributes to incidents of custodial violence?**

Police have some human rights awareness and training but lack proper perception and adequate training on gender sensitivity.

**7. How does the perceived camaraderie or solidarity within the police department impact the willingness of victims or their families to pursue independent investigations or file FIRs in cases involving custodial violence?**

Police protect each other, and the ruling party often protects them too. This perception discourages victims from filing complaints, as they fear retaliation and lack confidence in the system.

**8. Whether there is difficulty in collecting evidence when the case relates to custodial violence?**

Yes, it is challenging. Establishing encounters as genuine encounters is difficult due to planned actions by the police. Collecting evidence is problematic because police officers are responsible for the investigation, creating a conflict of interest.

## **Annexure 12**

### **Interview with Non – Governmental Organizations dealing with Custodial Violence on Victim Compensation Mechanism:**

#### **4.6.1. Answers from People’s Watch – Mr. Asir:**

- 1. How aware do you think victims or their families are regarding their rights to seek compensation for custodial violence?**

A lack of knowledge prevents the majority of people from pursuing compensation claims. Only when NGOs get involved and the case gains public attention is compensation typically awarded. As a result, 98% of cases go uncompensated.

**2. How is the quantum of compensation determined for victims of custodial violence?**

Victim's Compensation under Section 357 CrPC and the SC ST Act are the only laws that talk about compensation. The government might provide compensation on a case-by-case basis.

**3. In your experience, how timely is the disbursement of compensation to victims of custodial violence?**

The SC ST Act specifies a time limit for granting compensation, but this is not followed. In some cases, compensation is delayed for years.

**4. Have victims expressed concerns about potential intimidation or retaliation from law enforcement authorities when attempting to seek compensation?**

People don't often ask for compensation because they fear retaliation. Employing lawyers for compensation also reduces the net amount received as legal fees are high.

**4.6.2. Answers from Social Awareness Society for Youths (SASY) - Dr. V.A. Ramesh Nathan:**

**1. How aware do you think victims or their families are regarding their rights to seek compensation for custodial violence?**

Generally, people are unaware that they can seek compensation for encounter or custodial deaths. Only with NGO intervention do they usually claim compensation.

**2. How is the quantum of compensation determined for victims of custodial violence?**

There is no fixed quantum of compensation.

**3. In your experience, how timely is the disbursement of compensation to victims of custodial violence?**

If the government announces compensation, it is given immediately. Otherwise, it takes years.

**4. Have victims expressed concerns about potential intimidation or retaliation from law enforcement authorities when attempting to seek compensation?**

Yes, there is fear among people even to file complaints against police officers.

### **Annexure 13**

**From: Additional Superintendent of Police, Headquarters, Planning/ Public Information Officer, Police Telecommunication Branch, Chennai -04.**

1. Whether a State Level Oversight Body for monitoring CCTV cameras in police station for prevention of custodial violence has been established in the State of Tamil Nadu?

Yes, State Level Oversight Committee had been formed in Tamil Nadu.

a) If yes, please provide the formation date of the State Level Oversight Body.

State Level Oversight Committee (for monitoring CCTVs in the Police Stations) formed in the State of Tamil Nadu as per the G.O. (Ms.) No. 65 Home (Police XIIX) Department on 09.02.2021.

b) Additionally, provide the names, positions, and affiliations of the current members of the State Level Oversight Body.

State Level Oversight Committee comprising of following members:

- The Secretary/Additional Secretary, Home Department
- Secretary/Additional Secretary, Finance Department
- The Director General/Inspector General of Police; and
- The Chairperson/member of the State Women's Commission.

2. Whether a District Level Oversight Body for monitoring CCTV cameras in police station for prevention of custodial violence for every district has been established in the State of Tamil Nadu?

Yes, District Level Oversight Committee has been formed in Tamil Nadu.

3. Has a separate budget been allocated for the installation of CCTV cameras in police stations to prevent custodial violence for the fiscal year 2023-2024?

a. If yes, please specify the total allocated budget for the installation of CCTV cameras in police stations for the mentioned fiscal year.

The Government vide Home (Police – XII) Department G.O. (D) No. 404 dated 11.04.2023 have accorded in principle approval to the proposal to install / upgrade the CCTV system with storage capacity of 1 year to 18 months in 1567 Police Stations of 38.35 Crores in two phases based on the orders of the Supreme Court of India dated 02.12.2020 in SLP (CrI.) No. 3543 of 2020. No funds are allocated so far. The copy of G.O is enclosed herewith.

#### **Annexure 14**

1. Whether a District Level Oversight Body or monitoring CCTV cameras in police station for prevention of custodial violence has been established in the district?

<b>Name of the District</b>	<b>Answers</b>
Thoothukudi	Yes
Mylapore	No
Theyagaraya Nagar	No Information
Triplicane	Yes
Madurai	Yes
Kolathur	No Information
Koyembedu	No, CCTV is monitored by Chennai City Police Commissioner
Anna Nagar	Yes
Kilpauk	No Information
Flower Bazaar	Yes
St. Thomas Mount	Yes

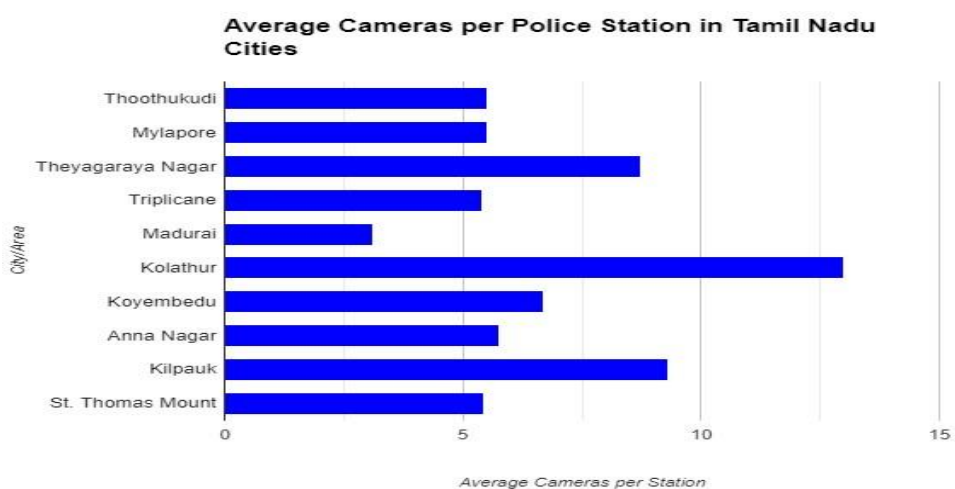
**1. Whether CCTV cameras are installed in every police station or monitoring CCTV cameras in police station for prevention of custodial violence?**

Thoothukudi	Yes
Mylapore	Yes
Theyagaraya Nagar	Yes
Triplicane	Yes
Madurai	Yes
Kolathur	Yes
Koyembedu	Yes
Anna Nagar	Yes
Kilpauk	Yes
Flower Bazaar	Yes
St. Thomas Mount	Yes

**2. The total number of CCTV cameras installed across all police stations.**



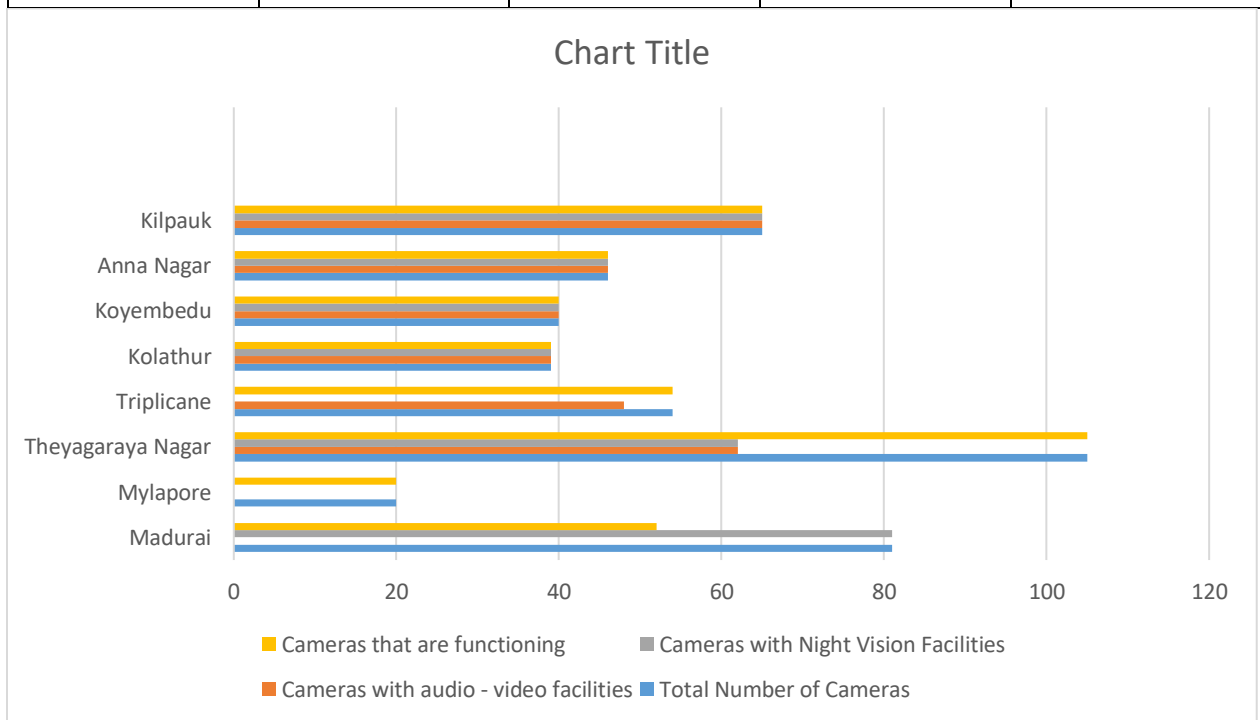
Thoothukudi	306 Cameras / 56 Police station
Mylapore	5 - 8 Cameras in each police station.
Theyagaraya Nagar	105 Cameras / 12 Police Station
Triplicane	54 Cameras / 10 Police Station
Madurai	81 Cameras / 26 Police Station
Kolathur	39 Cameras / 3 Police Station
Koyembedu	40 Cameras / 6 Police Station
Anna Nagar	46 Cameras / 8 Police Station
Kilpauk	65 Cameras / 7 Police Station
Flower Bazaar District	No Information Provided.
St. Thomas Mount	60 Cameras / 11 Police Station



**3. Data Relating to Total Number of Cameras, Cameras with Audio – Video Facilities, Cameras with Night Vision Facilities and Cameras that are functioning.**

	<b>Total Number of Cameras</b>	<b>Cameras with audio - video facilities</b>	<b>Cameras with Night Vision Facilities</b>	<b>Cameras that are functioning</b>
Thoothukudi	306	186	276	290
Madurai	81	0	81	52
Mylapore	20	0	0	20

Theyagaraya Nagar	105	62	62	105
Triplicane	54	48	0	54
Kolathur	39	39	39	39
Koyembedu	40	40	40	40
Anna Nagar	46	46	46	46
Kilpauk	65	65	65	65
St. Thomas Mount	60	6	60	60



**4. The storage capacity of the installed CCTV cameras.**

Thoothukudi	d. The storage capacity of the installed CCTV cameras.
Mylapore	d. The storage capacity of the installed CCTV cameras.
Theyagaraya Nagar	d. The storage capacity of the installed CCTV cameras.
Triplicane	d. The storage capacity of the installed CCTV cameras.

Madurai	d. The storage capacity of the installed CCTV cameras.
Kolathur	d. The storage capacity of the installed CCTV cameras.
Koyembedu	d. The storage capacity of the installed CCTV cameras.
Anna Nagar	d. The storage capacity of the installed CCTV cameras.
Kilpauk	d. The storage capacity of the installed CCTV cameras.
Flower Bazaar District	d. The storage capacity of the installed CCTV cameras.
St. Thomas Mount	d. The storage capacity of the installed CCTV cameras.

**5. Whether posters have been displayed in every police station indicating that the institution is under CCTV monitoring and that the footage will be accessible for 18 months?**

<b>Places</b>	<b>The storage capacity of the installed CCTV cameras</b>
Thoothukudi	28 Police Station has poster stating that the police station is under CCTV Surveillance.
Mylapore	No Police Station has poster.
Theyagaraya Nagar	All Police Station have poster stating that the police station is under CCTV Surveillance.
Triplicane	No Police Station has poster.
Madurai	No Police Station has poster.
Kolathur	No Police Station has poster.
Koyembedu	All Police Station have poster stating that the police station is under CCTV Surveillance.
Anna Nagar	All Police Station have poster stating that the police station is under CCTV Surveillance.

Kilpauk	All Police Station have poster stating that the police station is under CCTV Surveillance.
Flower Bazaar District	No Information.
St. Thomas Mount	No Police Station has poster.

**6. How many times have CCTV footages been utilized as evidence in cases relating to custodial violence?**

Thoothukudi	1 Police Station - Sathankulam PS - CCTV footage is taken as evidence.
Mylapore	No information Provided.
Theyagaraya Nagar	No data.
Triplicane	No Cases.
Madurai	1 Police Station - C5 Karimedu L&O - CCTV Footage was taken as evidence.
Kolathur	No Cases.
Koyembedu	No Cases.
Anna Nagar	No Cases.
Kilpauk	No Cases.
Flower Bazaar District	No Information Provided.
St. Thomas Mount	No Cases.

**Annexure 15**

**Interview with Non – Governmental Organizations dealing with Custodial Violence on CCTV Installation in Police Station:**

**5.5.1. Answers from People’s Watch – Mr. Asir:**

**1. Is the State Level Oversight Body and District Level Oversight Body which has to organize CCTV cameras functioning effectively?**

Yes, there are oversight bodies, but there is a lack of awareness about their roles. For example, many Collectors are unaware that they are members of the District Level Oversight Body.

**1. How widespread is the installation of CCTV cameras in police stations in the areas you work in?**

CCTV cameras are installed in almost all police stations.

**3. Do you believe that the presence of CCTV cameras has acted as a deterrent to custodial violence?**

Yes, it will deter the instance of custodial violence. If the oversight body functions well the custodial violence can be prevented.

**Answers from Social Awareness Society for Youths (SASY) - Dr. V.A. Ramesh Nathan:**

**1. Do you believe that the presence of CCTV cameras has acted as a deterrent to custodial violence?**

CCTV cameras should be installed as they are a means to prevent torture inside police stations.

**2. How widespread is the installation of CCTV cameras in police stations in the areas you work in?**

CCTV cameras are installed in police stations following a government circular.

**APPENDIX**

**CERTIFICATE ON PLAGIARISM CHECK**

<b>1.</b>	<b>NAME OF THE CANDIDATE</b>	<b>Lumina L</b>
<b>2.</b>	<b>TITLE OF THE DISSERTATION</b>	<b>CUSTODIAL VIOLENCE: A STUDY ON EXISTING LEGAL FRAMEWORKS, VICTIM COMPENSATION MECHANISM, AND USE OF TECHNOLOGY IN ITS PREVENTION</b>
<b>3.</b>	<b>NAME OF THE SUPERVISOR</b>	<b>DR. NANDITA NARAYAN</b>
<b>4.</b>	<b>SIMILAR CONTENT (%) IDENTIFIED</b>	<b>3%</b>
<b>5.</b>	<b>ACCEPTABLE MAXIMUM LIMIT</b>	<b>10%</b>
<b>6.</b>	<b>SOFTWARE USED</b>	<b>GRAMMARLY</b>
<b>7.</b>	<b>DATE OF VERIFICATION</b>	<b>20.06.2024.</b>

# Dissertation 2 (6)-1-44

by Lumina

## General metrics

98,606

characters

14,695

words

1083

sentences

58 min 46 sec

reading  
time

1 hr 53 min

speaking  
time

## Score



88

## Writing Issues

521

Issues left

184

Critical

337

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## Plagiarism



3  
%

34

sources

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# Dissertation 2 (6)-45-73

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## General metrics

69,716

characters

10,661

words

592

sentences

42 min 38 sec

reading  
time

1 hr 22 min

speaking  
time

## Score



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## Writing Issues

393

Issues left

105

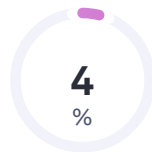
Critical

288

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4  
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37

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# Dissertation 2 (6)-74-93

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45,874

characters

7,193

words

393

sentences

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reading  
time

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speaking  
time

## Score



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## Writing Issues

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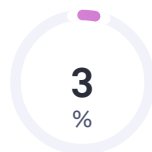
Critical

216

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3

%

19

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# Dissertation 2 (6)-94-133

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## General metrics

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characters

**11,048**

words

**768**

sentences

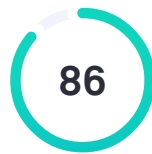
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## Score



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## Writing Issues

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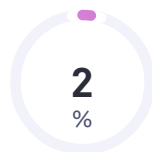
Critical

**284**

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