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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

CUSTODIAL VIOLENCE BY POLICE IN INDIA **CURRENT PROBLEMS AND ISSUES**

AUTHORED BY - B. SANTOSH KUMAR & DR. SM. AZIZUNISAA BEGUM

1. Introduction

1.1. Definition and Meaning of Custodial Violence

Under police or judicial custody, the term custodial violence describes physical or psychological and sexual conduct of abuse towards detainees. Human rights violations experienced under police or judicial watch encompass torture together with illegal detention and extrajudicial killings and custodial deaths.¹ Physical assault remains within this definition but mental coercion and intimidation alongside neglect which result in severe injury and death are also included. India has signed the United Nations Convention Against Torture (UNCAT) but has not adopted it through ratification even though this document defines torture as intentional acts which cause severe pain or suffering to extract confessions or impose punishment on individuals.²

The laws of India address the issue of custodial violence utilizing both constitutional protections and statutory government regulations. Under Article 21 of the Indian Constitution the right to personal liberty and life exists together with Code of Criminal Procedure (CPC) 1860 offering punishments through the Indian Penal Code (The IPC) for public servant violence. Legal safeguards exist but custodial violence cases remain reported which indicates criminal justice system-wide problems exist.³

1.2. Historical Perspective and Evolution of Custodial Violence in India

During the colonial era the British authorities established a police system that prioritized their colonial rule rather than protecting the citizens which established the foundation for future instances of custodial violence in India. The British-imposed repressive policing system at colonial times continues to impact how modern law enforcement structures function after India

¹ V.N. Sukhla, *Constitution of India* 827-854 (Eastern Book Company, Lucknow, 10th ed., 2000, reprinted 2007).

² Komal K. Kapoor and Sarthak Kapila, "Custodial Torture: A Gross Violation of Human Rights" 125 *Journal of Legal Studies Research* 125 (2016).

³ Y S Bansal, Murali G and Dalbir Singh, "Custodial Deaths-An Overview of the Prevailing Healthcare Scenario," 32 *JIASM* 315.

achieved independence.⁴

The Police Act of 1861 emerged to enhance colonial governmental authority over police departments after the 1857 Revolt occurred. The enactment of this act created foundational elements of authoritarian policing along with military-style enforcement while anti-public service orientations prevailed. The Indian government established democratic principles through its constitution yet the law enforcement structure stayed true to historic models after gaining independence. The practice of third-degree interrogation and extrajudicial deaths and coerced confessions from police detainees stem from colonial policing methods that continue to harm Indian citizens today.⁵

During the post-independence era multiple important cases alongside legal actions were conducted to limit the occurrence of custodial violence. The D.K. Basu v. The Supreme Court established fundamental guidelines to protect arrested individuals's rights through its ruling in the State of West Bengal (1997) case. Such attempts at prevention do not stop custodial violence from occurring while showing systemic problems that require immediate changes.⁶

1.3. Relevance of the Topic in the Current Socio-Legal Framework

The Indian justice system faces a major problem due to custodial violence because authorities repeatedly report cases of deaths in custody and physical abuse of detainees and police brutality. The National Human Rights Commission (NHRC) reports a significant number of annual custodial deaths together with torture incidents but most cases remain without punishment since proper investigation mechanisms lack effectiveness.

Several major incidents have increased public awareness about this problem. The nation responded with anger when Jayaraj and Bennix died while in police custody in Tamil Nadu during 2020 because their detention revealed both the extreme abuse police can inflict on prisoners and underscored the essential need for police system modernization. The use of excessive force together with illegal detentions continues to emerge throughout different areas of the country as reported statistics show such incidents primarily affect marginalized communities.

⁴ S.K. Ghosh, Torture and Rape in Police Custody: An Analysis, 15(1993).

⁵ R.K.Ray, "Custodial Crime : Causes and Remedeies", CBI Bulletin (1996).

⁶ Puppul Srivastava, "Custodial Crime in India : A Grave violation of Human Rights" 225 Cri.LJ (2005).

Judicial institutions as well as human rights organizations hold a crucial function in managing situations involving violence within police detention facilities. Judicial interventions for constitutional rights protection happen frequently but courts have inconsistently enforced their issued directions. Law enforcement agencies consistently fail to comply with human rights recommendations that come from NHRC plus State Human Rights Commissions (SHRCs) in their human rights monitoring role.

The United Nations Convention Against Torture (UNCAT) ratification failure by India receives criticism from human rights bodies because India lacks a specific anti-torture law thus creating weak legal protection against custodial abuse. The analysis of custodial violence requires immediate attention to reveal weaknesses in police operations along with existing accountability measures and required institutional changes.

1.4. Objectives of the Research

The fundamental goal of this investigation entails examining India's present laws about custodial violence alongside assessing the implementation weaknesses. The study aims to:

- The research explores all legal components that control custodial violence incidents in India.
- The essay evaluates crucial judicial verdicts together with their success in handling custodial violence cases.
- Track down the policy-level issues that turn into police brutality along with custodial abuse cases.
- Compare India's approach to custodial violence with international best practices.
- Recommend essential legal changes together with policy reforms that will boost responsibility and stop mistreatment of prisoners under custody.

The research aims to enhance the ongoing discussion about human rights and police accountability within India by fulfilling these specified objectives.

1.5. Research Scope

The research investigation analyzes three key areas.

- Research analysts investigate the frequency of police brutality in Indian prisons using factual evidence.

- An evaluation of major Supreme Court and High Court judgments related to custodial torture exists within the study.
- An assessment of how NHRC and SHRCs together with civil society organizations operate to fight against custodial abuse occurs.

The research analyzes existing police accountability systems together with their capability to deliver results. This research examines past and present international agreements regarding custodial violence together with international frameworks that show progress in custodial violence policies.

Most findings in this research stem from Indian law but supplement it with selected international practices for comparative insights. The investigation of custodial violence will concentrate on police and judicial detention cases while omitting concerns about military and paramilitary detention facilities.

2. Legal Framework on Custodial Violence in India

2.1. Constitutional Provisions on Custodial Violence

The Indian Constitution consists of comprehensive protocols to defend personal rights that also include measures against police torture in detention. Part III Fundamental Rights together with Directive Principles of State Policy (DPSP) contain specific protective provisions which shield citizens against State actions that are arbitrary along with police misconduct. Stopping custodial violence requires compliance with Articles 21, 22, and 20(3) and Article 39A.⁷

2.1.1. Article 21: Right to Life and Personal Liberty

Article 21 states: The Law of the land must authorize any procedure to arrest or limit personal freedom or take life from a person. Custodial violence protection stands as one of the most critical safety measures provided under this provision.⁸ The Supreme Court of India has expanded Article 21 to encompass prisoner rights which include both personal dignity protection as well as anti-torture measures and reasonable treatment for inmates. In *D.K. Basu v. Through State of West Bengal* (1997) the Supreme Court declared custodial violence along with torture to violate Article 21 while establishing specific guidelines for arrests coupled with

⁷ V.N. Sukhla, *Constitution of India* 827-854 (Eastern Book Company, Lucknow, 10th ed., 2000, reprinted 2007).

⁸ A. Dadhich, "Critical Analytical of the Relationship between Police and Human Rights" 4 *Indian JL & Legal Rsch.* 1 (2022).

detentions to stop law enforcement authority abuse of power.⁹

Furthermore, in *Sunil Batra v. Delhi Administration* (1978) established prisoners possess fundamental rights according to the Supreme Court leading to the conclusion that all forms of ill-treatment in custody together with solitary confinement and physical abuse violate constitutional standards.¹⁰

2.1.2. Article 22: Protection Against Arbitrary Arrest and Detention

Article 22 provides specific safeguards against arbitrary arrest and detention, particularly under preventive detention laws. The key protections under this provision include:

- No person shall be detained in custody without being informed of the grounds of arrest.
- The arrested person has the right to consult a legal practitioner of their choice.
- Every person arrested must be produced before a magistrate within 24 hours of arrest, failing which the detention is illegal.¹¹

These safeguards are critical in preventing arbitrary detention, forced confessions, and custodial torture. However, despite these constitutional guarantees, reports indicate widespread violations, including illegal detentions and failure to inform detainees of their rights. The Supreme Court, in *Joginder Kumar v. State of UP* (1994), reinforced that compliance with Section 50 and 57 of the CrPC (which align with Article 22) is mandatory for law enforcement agencies.¹²

2.1.3. Article 20(3): Protection Against Self-Incrimination

Article 20(3) states: "No person accused of any offence shall be compelled to be a witness against himself." This provision directly protects individuals from forced confessions or statements extracted through coercion, including torture in police custody. It aligns with Section 161(2) of the CrPC, which states that no person is bound to answer questions that would expose them to criminal charges.¹³

⁹ Maitreyee Dubey, "DK Basu vs State of West Bengal" 2 *Jus Corpus* LJ 30 (2021).

¹⁰ H.R. Nath, "Right to Life and Personal Liberty under the Constitution of India: A Strive for Justice" 1 *Dibrugarh University Law Journal* (2013).

¹¹ Maya Bharath, "Custodial Deaths and Torture: A Human Rights Abuse" 2 *Indian JL & Legal Resch.* 1 (2021).

¹² Gupta, Raj Kuar, "HUMAN RIGHTS AND CUSTODIAL CRIMES" 2010 *Human Rights Year Book* 116 (2010).

¹³ Kitai-Sangero, Rinat. "Respecting the privilege against self-incrimination: a call for providing Miranda warnings in non-custodial interrogations." *NML Rev.* 42 (2012): 203.

In *Nandini Satpathy v. P.L. Dani* (1978), the Supreme Court held that an accused has the right to remain silent and cannot be forced to confess, reinforcing Article 20(3) as a safeguard against custodial torture and third-degree interrogation methods.¹⁴

2.1.4. Article 39A: Right to Free Legal Aid

Under the Directive Principles of State Policy (DPSP), Article 39A mandates the state to ensure equal justice and free legal aid for individuals, particularly for the underprivileged. It emphasizes that access to legal representation is crucial to protecting the rights of individuals in custody.¹⁵

In *Hussainara Khatoon v. State of Bihar* (1980), the Supreme Court ruled that free legal aid is an essential component of fair procedure under Article 21. The absence of legal aid often leads to prolonged illegal detention, forced confessions, and increased vulnerability to custodial violence.¹⁶

2.2. Statutory Provisions on Custodial Violence

India has a well-defined statutory framework to prevent and penalize custodial violence. Various provisions under the **Indian Penal Code (IPC), 1860**, **Code of Criminal Procedure (CrPC), 1973**, **Indian Evidence Act, 1872**, and **Protection of Human Rights Act, 1993** provide legal safeguards and remedies against police brutality and custodial abuse.¹⁷

2.2.1. Indian Penal Code, 1860 (IPC)

Several provisions of the **IPC** deal explicitly with violence inflicted upon individuals in custody. These include:

- **Section 330 and 331:** These sections criminalize acts of voluntarily causing hurt (**Section 330**) or grievous hurt (**Section 331**) to extort a confession. Law enforcement officials who torture or physically assault detainees to extract confessions can be prosecuted under these provisions.¹⁸

¹⁴ Shanmuga Sundaram and P.R.L. Raja Venkatesan, "Protection against Self-Incrimination-Principles and Practice-A Comparative Analysis" 13 Indian JL & Just. 280 (2022).

¹⁵ Raja Bagga and Pavani Nagaraja. "Legal Aid: The First Line of Defence at Police Stations." Journal of the National Human Rights Commission India Volume-17 Silver Jubilee Edition 2018 (2018): 249.

¹⁶ Meenakshi Jain, "Judicial Protection of Human Rights in India," in *Revival: Human Rights in Philosophy and Practice* 197-211 (Routledge, 2017).

¹⁷ Roshini, R. S., "Custodial Violence: A Crucial Need of Anti-Torture Law" 3 Indian JL & Legal Rsch. 1 (2021).

¹⁸ Lalbeee, S., "Custodial Death in India," 2 Indian JL & Legal Rsch. 5 (2023): 1.

- **Section 376(2)(a):** This provision addresses custodial rape, making it a **severe offense if committed by a police officer or public servant**. Given the vulnerability of women in custody, this section is crucial in ensuring protection against sexual abuse.¹⁹
- **Section 302:** If a person dies in police custody due to torture or excessive force, the responsible officers can be charged with **murder** under Section 302. This ensures that **custodial deaths resulting from police brutality are treated as homicides**, subject to rigorous legal scrutiny.²⁰
- **Section 166A:** This section criminalizes **public servants who knowingly disobey laws related to arrest, detention, or investigation**. It serves as a deterrent against police misconduct and abuse of power.²¹

2.2.2. Code of Criminal Procedure, 1973 (CrPC)

The CrPC provides procedural safeguards against illegal arrests, excessive force, and custodial deaths. Key provisions include:

- **Section 41:** Governs **arrest without a warrant** and prescribes guidelines to prevent arbitrary detention. It mandates that arrests must be made only when necessary and in compliance with legal procedures.²²
- **Section 46:** Defines the **mode of arrest** and stipulates that while making an arrest, police must use only reasonable force. Excessive or brutal force leading to injury or death can result in legal consequences.²³
- **Section 49:** Prohibits **unnecessary restraint** on an arrested person, ensuring that individuals in custody are not subjected to unwarranted physical harm or coercion.²⁴
- **Section 176(1A):** Mandates a **judicial inquiry in cases of custodial death**. This provision strengthens accountability by requiring an independent investigation into custodial deaths, rather than relying solely on internal police inquiries.²⁵

¹⁹ Roshini, R.S., "Custodial Violence: A Crucial Need of Anti-Torture Law" 3 Indian JL & Rsch. 1 (2021).

²⁰ Sinha, Priya, "Custodial Deaths in India" 3 Jus Corpus LJ 953 (2022).

²¹ David M. Doyle and Joe McGrath, "Attributing criminal responsibility for workplace fatalities and deaths in Homicide, Gender and Responsibility 148-170 (Routledge, 2016).

²² Raj, Pracheen. "Custodial Death Critical Analysis." Ilkogretim Online 20.1 (2021).

²³ Vaishnavi Gupta, "Custodial Death and Torture: A Blatant Violation of Human Rights" 4 Indian JL & Legal Rsch. 1 (2022),

²⁴ Vaishnavi Gupta, "Custodial Death and Torture: A Blat Violation of Human Rights" 4 Indian JL & Legal Rsch. 1 (2022).

²⁵ Sinha, Priya, "Custodial Deaths in India" 3 Jus Corpus LJ 953 (2022).

2.2.3. Indian Evidence Act, 1872

The **Indian Evidence Act** contains key provisions preventing the use of forced confessions obtained in police custody:

- **Section 25:** States that **confessions made to a police officer are inadmissible in court**, preventing the use of torture to obtain false confessions.²⁶
- **Section 26:** Extends this protection by declaring that **confessions made in police custody are inadmissible unless recorded before a magistrate**, ensuring judicial oversight. These provisions safeguard accused persons from being forced into self-incrimination.²⁷

2.2.4. Protection of Human Rights Act, 1993

This Act established the **National Human Rights Commission (NHRC)** and **State Human Rights Commissions (SHRCs)** to oversee and address human rights violations, including custodial violence. Their roles include:

- **Investigating complaints of custodial deaths and torture.**
- **Recommending compensation for victims of police brutality.**
- **Suggesting reforms in policing and detention procedures.**
- **Monitoring compliance with international human rights standards.**

Despite their significant role, **NHRC and SHRCs face limitations**, including a lack of binding authority on law enforcement agencies and delays in investigations.²⁸

3. Judicial Precedents on Custodial Violence

Custodial violence received crucial attention from the Indian judiciary because of its landmark rulings over the years. The courts have repeatedly defended detainee and prison rights because they emphasize absolute compliance with constitutional protections along with legal requirements. These judicial decisions have done significant work to develop essential legal principles regarding custodial violence in India.²⁹

²⁶ P., Divya Dharshini. "An Analytical Study on Custodial Death and Legislative Violation." *Issue 1 Indian JL & Legal Rsch.* 4 (2022): 1.

²⁷ Vaishnavi Gupta, "Custodial Death and Torture: A Blatant Violation of Human Rights" 4 India JL & Legal Rsch. 1 (2022).

²⁸ Maya Bharath, "Custodial Deaths and Torture: A Human Rights Abuse" 2 Indian JL & Legal Rsch. 1 (2021).

²⁹ Kela, Vidhi, "Custodial Torture and Subsequent Death" 3 Law Essential J. 11 (2022).

3.1.Guidelines for Arrest and Custody: D.K. Basu v. State of West Bengal (1997)

As one of the critical cases dealing with both prisoner rights protection and custodial violence this legal ruling implemented crucial arrest and detention procedural requirements.

- 1. Facts:** Human rights activist and letter writer D.K. Basu sought Supreme Court attention with his communication about abuses throughout Indian detention facilities. Suicidal cognizance by the Court led to turning the submitted letter into a formal petition.
- 2. Judgment:** The Supreme Court issued essential requirements for preventing custodial torture and deaths through their established guidelines:
 - Every police officer performing an arrest must display their complete identity information along with a name tag.
 - All people detained receive proper notification of the basis for their arrest together with their right to access legal counsel.
 - The case diary requires an official entry about the arrest which includes detention date and time together with the location.
 - A magistrate must receive the arrested person before the expiration of 24 hours since their detention.
 - Following detention the arrested person must be allowed to notify someone close to them.
 - Regular medical examination is obligatory every forty-eight hours as doctors who work for the government perform this task.

Statutory support of these guidelines became official when they appeared in section 41B to 41D and section 54 of the CrPC. Through this case the court established that Article 21 protects from custodial violence while demonstrating the need for following arrest procedure guidelines to stop official abuse.³⁰

3.2.Death Penalty for Fake Encounter: Prakash Kadam v. Ramprasad Vishwanath Gupta (2011)

- 1. Facts:** The legal proceedings focused on how police officers performed unlawful executions also known as fake encounters before executing suspected criminals without following proper judicial processes.

³⁰ D'Souza, Alden. "Judicial Approach and Reformation in the Law regarding Custodial Violence in India." Part 1 *India J. Integrated Rsch. L.* 2 (2022): 1.

2. Judgment: Supreme Court decisions state that when police execute fake encounters they should receive murder charges under Section 302 of the IPC which in specific cases may lead to death penalty execution. The Court emphasized:

- Fake encounters represent the unlawful acts of death through brutal actions by those who serve as law maintainers.
- Criminal justice systems demand absolute preservation from law enforcement whose authority does not extend to taking unapproved justice measures.

The court used this case to emphasize police responsibility of actions and show how independent investigations should examine encounter killing incidents.³¹

3.3.Right to Compensation for Custodial Death: Nilabati Behera v. State of Orissa (1993)

1. Facts: The police arrested Suman Behera who later died near railway tracks displaying multiple wounds on his body. Nilabati Behera submitted a petition to seek justice when her son became a victim of police custodial death.

2. Judgment: The Supreme Court held that:

- Under vicarious liability the state bears full legal responsibility for wrongdoings committed by its police officers.
- The fundamental right described in Article 21 suffers violation when people die while in police custody.
- The Court established an essential precedent for monetary compensation by granting 1.5 lakh rupees as compensation to the victim's family during custodial violence cases.

According to the established judgment victims of custodial violence together with their family members qualify for compensation and offender penalties. Compensatory jurisprudence in human rights violations received its initial framework through this particular case.³²

3.4.Right to Free Legal Aid: Khatri v. State of Bihar (1981)

1. Facts: The Bhagalpur blinding motivated this case because police officers used acid to blind their undertrial prisoner detainees.

³¹ M. Lithika Shivani and Karhi Thiagarajan, "Police Brutality: A Culture of Systematic Violence" 2 Indian JL & Legal Rsch. 1 (2021).

³² Aman Kumar Sharma and Saroj Bohra, "The constitutional rights to compensation for violation of fundamental rights: An analysis of recent developments in India" 25 Asas-Pacific Journal on Human Rights and the Law 153-172 (2024).

2. Judgment: The Supreme Court strongly condemned the inhumane treatment although it supported:

- Everyone arrested by the State must receive free legal representation according to Article 39A of the Indian Constitution.
- Article 21 grants free legal aid as a fundamental right which the denial of representation disrupts in a manner that qualifies as a constitutional violation.

The court-maintained access to justice for needy prisoners through its ruling so they can avoid suffering in detention due to financial limitations.

3.5.Duty of Magistrates to Check Illegal Detention: Joginder Kumar v. State of UP (1994)

1. **Facts:** During the case proceedings judges identified unlawful detention practices and improper arrest procedures. The litigant accused judicial officers of neglecting their responsibility to stop unlawful arrest and detention procedures.

2. **Judgment:** The Supreme Court ruled that:

- Laws defined by Article 22(2) and Section 57 of the CrPC require magistrates to check that every arrested person gets produced within 24 hours before them.
- Judicial officers need to perform active checks to determine if any arrested person faced torture or unlawful detention.
- Magistrates who do not comply with their judicial responsibilities commit a judicial misconduct.

This milestone case demonstrated that magistrates play an essential part in establishing crime facility security through police accountability measures.³³

4. Challenges in Addressing Custodial Violence with Present Difficulties

Custodial violence continues to be a severe human rights violation within India's borders despite the constitutional protections and established laws established by the judiciary. Urban police violence alongside institutional delays as well as systemic failures make it challenging to eliminate custodial crimes. The research investigates the main obstacles and difficulties that India experiences regarding custodial violence prevention.³⁴

³³ Rafiqul, Muhammad and S.M. Solaiman, "Torture under police remand in Bangladesh: aculture of impunity for grom violations of human rights" 4 Asis-Pacific Journal on Human Rights and Law 1 (2003).

³⁴ Shrenitha Anantula, "Custodian Rape: A Dehumanizing Violence against Society" 5 Indian JL & Legal Rsch. 1 (2023).

4.1. Police Brutality and Torture

The most challenging aspect of combating custodial violence arises from Police use of third-degree methods throughout India. The laws under Indian Penal Code (IPC), Code of Criminal Procedure (CrPC) and Supreme Court definitions failed to stop the occurrence of torture in police facilities.³⁵

A. Despite legal prohibitions the police continue to employ third-degree methods for their operations

Crime victims in police detention face frequent abuse through various methods including physical attacks and electro-shock treatment as well as forced waterboarding and food deprivation and sleep deprivation.

The inhumane methods serve **three functions for police officials**: coercion of confessions and intimidation of detainees and the punishment of suspected criminals. The application of the cited factors leads to the ongoing use of these practices. Confessions need solving rapidly by investigative officers who use torture as a result. Many police stations lack effective monitoring processes thus allowing torture cases to escape documentation. The absence of a specific anti-torture law in India makes legal enforcement of police brutality weak and ineffective.³⁶

B. Lack of Proper Training and Sensitization³⁷

Many law enforcement personnel lack proper training in humane interrogation techniques. Modern forensic methods are not used by police officers who continue resorting to outdated violent methods for information extraction.

- Law enforcement academies provide incomplete human rights education for their students.
- Police officials who consider their suspects to be criminals during pretrial periods tend to commit abuses within detention facilities.
- The absence of alternative evidence-collection methods prevents police officers from using different methods apart from extracting forced confessions from subjects.

Custodial torture stays active because inappropriate training and insufficient disciplinary protocols are not implemented.

³⁵ Maya Bharath, "Custodial Deaths and Torture: A Human Rights Abuse" 2 Indian JL & Legal Rsch. 1 (2021).

³⁶ Nehra, Nehra "Custodial Violence and Police Brutality: A Critical Overview and Ways to Reach Reform" 2 Jus Corpus LJ 653 (2023).

³⁷ Pallavi Solanki, "Custodial Torture and United States: An Overview" 6 Int'l JL Mgmt. & Human, 654 (2023).

4.2. Gender-Based Custodial Violence

Women under police detention experience heightened risks because they become targets of sexual abuse as well as cases of rape inside police custody and encounter harassment from male personnel. The criminal protection provisions in Section 376(2)(a) IPC should protect women from custodial rape yet gender-based custodial violence continues to endanger them.

A. Cases of Custodial Rape and Harassment

- Multiple cases show that female detainees have suffered sexual attacks during their period of detention.
- Female police officers' scarcity in various police stations creates a greater probability of sexual abuses against individuals under arrest.
- The detention of women exposes them to regular verbal mistreatment by police personnel working there.

B. Vulnerability of Women in Police Custody

- The practice of denying detained women both legal representation and medical services exists frequently.
- The public shame victims of custodial rape experience prevent many from disclosing their sexual abuse to law enforcement.
- The absence of evidence together with institutional concealment allows accused police personnel who engage in custodial rape to remain free.
- Women in police detention require both enhanced gender-focused legal protections and better enforcement of their rights for adequate protection.

We need a more robust and gender-sensitive legal framework, along with stricter enforcement of safeguards, to ensure the safety and dignity of women in custody.³⁸

4.3. Judicial and Investigative Inefficiencies

A. Delays in Prosecution and Trials

Royal judicial proceedings about cases of custodial violence experience delayed justice mainly because of prolonged judicial processes. The prosecution of cases experiences extended court waiting periods which cause both evidence validity and witness testimonies to fade into obscurity. Lower courts systems stall various cases which keeps survivors trapped in endless trapped in endless cycles of despair and frailty impotence inadequacy. Police officers take

³⁸ Pallavi Solanki, "Custodial Torture and United States: An Overview" 6 Int'l JL Mgmt. & Human. 654 (2023).

advantage of technical legal mechanisms and procedural extensions to avoid facing consequences thus extending the feeling of unfairness.³⁹

B. Lack of Effective Judicial Oversight

Many magistrates fail to perform a check of possible abuse marks on detained individuals who appear in court hearings. Judges usually depend exclusively on police statements when making decisions instead of conducting their own investigations thus exposing detainees to unfair treatment. The institutional investigation committees and judicial commissions establish to investigate misbehavior generally fail to issue proper sanctions against law enforcement officials involved. The absence of fast-track judicial proceedings combined with insufficient judicial supervision allows custodial violence to grow without being constrained and offenders do not face justice so the mistreatment cycle continues.⁴⁰

2. Comparative Perspective: Lessons from Other Countries

Across the world nations face custodial violence as an urgent problem while implementing different prevention strategies to regulate police brutality and protect detainees' rights. The review of Indian policing initiatives against foreign law enforcement models provides critical knowledge about successful solutions that would decrease prison abuse and defend detainees' human rights. Such analysis establishes direction for establishing a fair justice system based on transparency.⁴¹

A. United States: Civil Rights Act and Police Accountability Mechanisms

The United States has implemented the Civil Rights Act of 1964 as well as other laws to fight police brutality while maintaining law enforcement responsibility. Under the provisions of the Violent Crime Control and Law Enforcement Act of 1994 the Department of Justice has authority to conduct police department investigations pertaining to systemic misconduct. Federal authorities have the authority to impose consent decrees as means of compelling police departments to adopt required reforms. Authentic video footage captured by law enforcement body cameras has become widespread throughout various states while new federal legislation

³⁹ Addam M. Gershowitz and Laura R. Kilinger, "The state (never) rests: How excessive prosecutorial caseloads harm criminal defendants," 105 Northwestern University Law Review 261 (2011).

⁴⁰ Roger A. Mitchell Jr., Roger A. Mitchell, et al., *Death in Custody: How America Ignores the Truth and What We Can Do About it* (JHU Press, 2023).

⁴¹ Croci, Gonzalo. "Effectiveness and corruption in the criminal justice system of Latin America: An overview." *International Journal of Comparative and Applied Criminal Justice* (2023): 1-25.

such as the George Floyd Justice in Policing Act works to improve police accountability through a combination of chokehold bans and federal misconduct tracking databases.⁴²

Lessons for India

India should emulate these actions by building independent mechanisms to monitor police conduct as well as establishing rules for forced body camera usage within police stations to enhance protection against abuse while increasing open visibility in operations.

B. United Kingdom: Independent Police Complaints Commission (IPCC)

The Independent Office for Police Conduct (IOPC) which used to be known as the Independent Police Complaints Commission (IPCC) ensures police accountability throughout the United Kingdom. The IOPC maintains essential responsibility in investigating all incidents of police misconduct involving brutality claims as well as deaths in detention facilities and breaches of human rights. The IOPC distinguishes itself through its detached relationship with police organizations because this structure provides investigations with impartial and transparent processes. The police officers will face court prosecution alongside termination of their employment after proving misconduct allegations. The police procedures within UK exist to guarantee legal protections for people who undergo detention. According to the Police and Criminal Evidence Act of 1984 (PACE) all detained or arrested persons must receive their rights information immediately along with required audio or video recording of police interrogations that decreases abuse risks.⁴³

Lessons for India

Failure to implement these measures in India would yield dramatic positive changes. An independent police complaints authority positioned outside of law enforcement will perform unbiased investigations about allegations of custodial violence. Video recording interrogation procedures and detention processes becomes essential for the police system because it improves transparency as well as creates stronger accountability standards.

⁴² Justin M. Feldman and Mary T. Bassett, "Monitoring deaths in police custody: public health can and must do better" 111 American Journal of Public Health 69 (2021).

⁴³ Yesufu, Shaka, "Deaths of blacks in police custody: a black British perspective of over 50 years of police racial injustices in the United Kingdom" 4 Eureka: Social and Humanities 33-45 (2021).

C. Germany: Strict Liability for Custodial Deaths

The German legal system where custodial deaths occur relies on strict liability which requires police officers to bear direct responsibility when they harm detainees during their period of detention. The death of a person in police detention automatically initiates both criminal action against officers alongside civil legal proceedings against them. Clear responsibility for misconduct exists under this system because the law protects detainee rights above all else. Judicial supervision in Germany remains extensive since judges continuously inspect the detainee holding environment. The legal system examines all instances of unlawful detention quickly and uses stated confessions derived from duress or coercion as evidence that cannot be used in court proceedings.⁴⁴

Lessons for India

This method provides important knowledge that India should implement. Indian authorities would gain advantages from following the strict liability model of responsibility that holds police officers accountable for deaths while in their custody. The implementation of mandatory judicial inquiries following every custodial death stands as a solution to establish investigations with independent transparency and accountability.

3. Reforms and Recommendations

Custodial violence remains a **serious human rights issue** in India, despite constitutional guarantees and legal safeguards. To effectively **combat this menace**, a **multi-pronged approach** is required, encompassing **legal, institutional, technological, and social reforms**. The following recommendations aim to **strengthen accountability mechanisms, prevent human rights violations, and ensure justice for victims**.

3.1.Improving Accountability Mechanisms

The National Human Rights Commission (NHRC) and State Human Rights Commissions (SHRCs) play a pivotal role in overseeing cases of custodial violence and ensuring accountability. However, their effectiveness is hampered by limited powers and a lack of enforcement for their recommendations, which are often ignored. To strengthen their role, reforms are necessary. Granting these commissions binding powers to enforce their

⁴⁴ Paul J. Hirshfield, "Exceptionally lethal: American police killings in a comparative" 6 Annual Review of Criminology 471-498 (2023).

recommendations would elevate their authority and impact. Additionally, increasing their budgets and investigative capabilities would enable them to conduct on-the-spot inquiries into cases of custodial violence, providing a more immediate and thorough response. It's also crucial to enhance their complaint redressal systems, making it easier for victims to report abuses confidentially and without fear of retaliation from law enforcement.⁴⁵

The issue of custodial deaths is another area in dire need of reform. At present, investigations into custodial deaths are handled by the police themselves, which creates a significant conflict of interest and often leads to cover-ups. To ensure fair and unbiased investigations, there is a need to establish independent bodies composed of judges, retired police officers, and civil society representatives. These bodies would be responsible for probing cases of custodial violence, providing an impartial investigation free from police influence. Additionally, all custodial deaths should be subject to mandatory judicial inquiries, as stipulated in Section 176(1A) of the Criminal Procedure Code (CrPC), ensuring that they are conducted independently of law enforcement. Autopsies should also be carried out by independent forensic teams to prevent any manipulation of medical evidence. An independent investigative mechanism like this would help restore public trust in the justice system, demonstrating a commitment to transparency and accountability.⁴⁶

3.2. Technological and Structural Reforms

In the case of *Paramvir Singh Saini v. Baljit Singh* (2020), the Supreme Court emphasized the importance of installing CCTV surveillance in all police stations and interrogation rooms. However, the implementation of this directive has faced significant challenges, primarily due to a lack of funds and resistance from law enforcement authorities. To address these issues, there is an urgent need to ensure that all police stations are equipped with functional CCTV systems, and that these cameras are continuously monitored by independent oversight committees. Additionally, strict penalties should be imposed for tampering with footage to prevent the destruction of crucial evidence. Making CCTV footage accessible to human rights commissions, courts, and independent monitoring bodies would further enhance accountability

⁴⁵ Sharon Shalev and Philippa Tomczak, "Improving prisoner death investigations and promoting change in prisons: A findings and recommendations reports" (University of Nottingham, 2023).

⁴⁶ Philippa Tomczak, "Reconceptualizing multisectoral prison regulation: Voluntary organisations and bereaved families as regulators" 26 *Theoretical Criminology* 494-515 (2022).

and transparency.⁴⁷

Alongside this, there is a pressing need to digitize arrest and detention records, as the current lack of transparency allows for the manipulation of facts and hinders efforts to trace cases of illegal detention. A system should be introduced that not only digitizes arrest and detention records but also makes them easily accessible to courts and human rights organizations. Furthermore, a real-time tracking system should be developed for detainees, enabling families and legal representatives to track the status and location of those who have been arrested. To ensure that records remain accurate and tamper-proof, regular audits by independent authorities are essential. These reforms will help to prevent illegal detentions, increase transparency in police operations, and ensure a more accountable and fair system of justice.⁴⁸

3.3.Training and Sensitization of Police

One of the key factors contributing to custodial violence is the lack of awareness among police officers about human rights laws and ethical policing practices. To address this, it's crucial to implement regular human rights training both during police academy courses and through in-service programs. These trainings should be conducted in collaboration with human rights organizations to ensure that officers are equipped with the knowledge of ethical interrogation methods and their responsibilities towards detainees. Additionally, introducing psychological evaluations to assess the emotional fitness of officers could help ensure that only those who are mentally stable and capable of handling sensitive custodial situations are entrusted with such responsibilities.⁴⁹

Another critical aspect is the strict monitoring of compliance with arrest procedures, which, despite existing legal safeguards, are often violated, leading to illegal detentions and instances of third-degree torture. To remedy this, the Supreme Court's D.K. Basu guidelines on arrest and detention should be made legally binding, with clear penalties for non-compliance. Regular audits by magistrates could be conducted to ensure that arrest protocols are strictly followed, and to hold officers accountable for violations. In addition, public awareness campaigns are

⁴⁷ Heather Schoenfeld and Michael C. Campbell, "Early 21st Century Penal Reform: A comparative Analysis of Four States' Responses to the Problems of Mass Incarceration" 45 Law & Policy 482-506 (2023).

⁴⁸ Glendra Stubbs and Elizabeth Rice. "First nations voices in Child protection decision making: changing the frame" 18 First Peoples Child & Family Review 5-27 (2023).

⁴⁹ O'sGuinn, Bradley J., "Police training and accountability: a remedy or an impediment for reducing unarmed police shooting?" 70 Crime & Delinquency 313-338 (2024).

necessary to educate citizens about their rights during arrests, so they are empowered to challenge any illegal actions by the police. Together, these reforms—better training, psychological evaluation, and strict monitoring—can play a vital role in curbing unlawful detentions and custodial violence, ensuring that the system upholds justice and human dignity.⁵⁰

4. Conclusion

Custodial violence remains a **grave violation of human rights** in India, despite the presence of **constitutional safeguards, statutory provisions, and judicial guidelines**. The analysis highlights that police brutality, lack of accountability, underreporting of cases, and gender-based custodial violence persist due to **institutional inefficiencies, legal loopholes, and inadequate enforcement mechanisms**. Judicial precedents have laid down significant protections, yet **delayed justice and impunity for offenders** continue to undermine these efforts.

There is an urgent need for **comprehensive police reforms, independent investigative mechanisms, technological interventions like CCTV surveillance, and strict implementation of legal provisions** to prevent custodial violence. Strengthening the role of **NHRC, SHRCs, and civil society organizations** will further enhance **oversight and victim support mechanisms**.

Moving forward, the role of **lawmakers, judiciary, police authorities, human rights commissions, and the public** is crucial in ensuring **transparent and ethical policing**. Effective implementation of **Supreme Court-mandated police reforms**, coupled with **awareness campaigns and legal aid initiatives**, will be instrumental in **eradicating custodial torture and ensuring justice for victims**.

A **human rights-centric approach** to policing, inspired by global best practices, can help India build a **more just and accountable criminal justice system**, where **custody does not equate to cruelty**.

⁵⁰ Sehrawat, Tanya, “Human Rights & Biatant Custodial Deaths: When will it Stop?” 2 Jus Corpus LJ 873 (2021).