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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated 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

VIOLENCE DURING CUSTODY AND THE STATUS OF HUMAN RIGHTS: AN ANALYTICAL PERSPECTIVE.

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Abstract.

Custodial violence remains an entrenched and egregious violation fundamental human rights globally, particularly in constitutional democracies like India. Despite progressive constitutional safeguards, landmark judicial pronouncements, and statutory mandates, the recurrence of torture, illegal detention, and custodial deaths reveals a grave implementation gap¹. This article, grounded in legal scholarship and human rights jurisprudence, presents an expert analysis of custodial violence, tracing its legal framework, judicial responses, international obligations, and systemic inertia. It concludes with critical reforms necessary to align state practices with constitutional morality and human dignity.

Keywords: custodial violence, human rights, and dignity.

Introduction.

Custodial violence, comprising acts of torture, inhumane treatment, and deaths in state custody, represents a stark betrayal of the State's constitutional mandate to uphold the rule of law and the dignity of individuals². Far from being an aberration, such violence has become systemic—enabled by a culture of impunity, institutional opacity, and the valorization of coercive policing³. The Indian state apparatus, while equipped with a robust constitutional and legal edifice, has repeatedly failed to ensure accountability in custodial settings⁴. This article offers an expert legal analysis of custodial violence as a human rights crisis and interrogates the institutional lacunae that perpetuate it.

¹ National Campaign Against Torture, *India: Annual Report on Torture 2022*, New Delhi, 2023.

² *Nilbati Behera v. State of Orissa*, (1993) 2 SCC 746; also see *Mehmood Nayyar Azam v. State of Chhattisgarh*, (2012) 8 SCC 1.

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³ Amnesty International India, *Torture in India: A State of Denial*, 2011; Human Rights Watch, “Broken System”: *Dysfunction, Abuse and Impunity in the Indian Police*, 2009.

⁴ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416; *Prakash Singh v. Union of India*, (2006) 8 SCC 1.

Custody Violence

Custodial violence can be defined as:

“Any act of torture, assault, humiliation, sexual abuse, or death caused to a person while in police, judicial, or prison custody, in violation of their fundamental and human rights.”

The term “custodial violence” encompasses all forms of physical, mental, or coercive acts committed against a person who is held in police or judicial custody. It may take multiple forms:

- **Physical violence:** beating, electric shocks, starvation, etc.
- **Psychological torture:** threats, solitary confinement, and abuse.
- **Sexual violence:** sexual abuse, particularly of women and marginalized persons.
- **Custodial deaths:** deaths resulting from torture or neglect in custody.

The violence often occurs in secrecy, making it difficult to trace or prove, and most victims—due to fear of reprisal or lack of legal awareness—do not come forward.

Custodial violence violates the basic rights of an individual, particularly those protected under Articles 20, 21, and 22 of the Indian Constitution, but it also contravenes **international human rights standards**, such as those under **Article 5 of the Universal Declaration of Human Rights (UDHR)**⁵, and **Article 7 of the International Covenant on Civil and Political Rights (ICCPR)**⁶. Despite multiple guidelines and statutory safeguards, custodial violence persists due to **institutional impunity, lack of accountability, and systemic police brutality**⁷.

Legal and Conceptual Foundations

I. Nature and Forms of Custodial Violence

Custodial violence encapsulates a wide range of physical and psychological abuse inflicted upon individuals in the custody of state authorities. It may include third-degree interrogation methods, sexual assault, verbal humiliation, denial of medical treatment, enforced

⁵ United Nations General Assembly, *Universal Declaration of Human Rights*, 1948, Article 5: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

⁶ International Covenant on Civil and Political Rights (ICCPR), adopted 1966, Article 7. India acceded in 1979.

⁷ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416; also see *Joginder Kumar v. State of U.P.*, (1994) 4 SCC 260.

disappearances, and extra-judicial killings⁸. It often intersects with class, caste, and communal prejudices, disproportionately affecting marginalized communities⁹.

II. Constitutional Framework

India's constitutional jurisprudence, particularly post-*Maneka Gandhi v. Union of India*¹⁰, has expansively interpreted Article 21 to include the right against torture and inhuman treatment.

Key provisions include:

- **Article 21:** Right to life includes the right to live with dignity¹¹.
- **Article 22:** Protects against arbitrary arrest and ensures access to legal counsel¹².
- **Article 20(3):** Guards against forced self-incrimination, thereby indirectly prohibiting custodial coercion¹³.

These constitutional protections form the foundational legal bulwark against the abuse of state power in custodial settings.

The courts have consistently held that acts of custodial violence undermine the core values of the Constitution and erode the guarantees of fair procedure. The Constitution also requires the State to actively safeguard the dignity and well-being of individuals in custody, thereby strengthening the duty of accountability within law-enforcement institutions.

III. Statutory Provisions

Despite the absence of a dedicated anti-torture statute, several provisions across Indian statutes aim to deter custodial abuse:

- **Criminal Procedure Code (CrPC), 1973:**
 - *Sections 41–46:* Regulate lawful arrest procedures and emphasize the need for reasoned arrests¹⁴.
 - *Section 176(1A):* Mandates a judicial or magisterial inquiry in cases of custodial deaths and rapes¹⁵.

⁸ Asian Centre for Human Rights, *Torture in India 2021: Rights and Remedies*, New Delhi, 2022.

⁹ Human Rights Watch, *Broken System: Dysfunction, Abuse, and Impunity in the Indian Police*, 2009; see also: People's Union for Civil Liberties (PUCL), *Custodial Torture and Marginalised Groups in India*, 2018.

¹⁰ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 – the Supreme Court held that the “procedure established by law” must be just, fair, and reasonable.

¹¹ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608.

¹² Constitution of India, Article 22(1)-(2); see also *Joginder Kumar v. State of U.P.*, (1994) 4 SCC 260.

¹³ Constitution of India, Article 20(3); *Nandini Satpathy v. P.L. Dani*, (1978) 2 SCC 424.

¹⁴ Criminal Procedure Code, 1973, Sections 41–46; see also Law Commission of India, 177th Report on Law Relating to Arrest, 2001.

¹⁵ CrPC, Section 176(1A) (inserted via Act 25 of 2005); see also NHRC Guidelines on Custodial Deaths, 1993.

- **Indian Evidence Act, 1872:**
 - *Sections 25 & 26:* Exclude confessions made to police officers unless made in the immediate presence of a magistrate, thereby recognizing the coercive tendencies of police interrogations¹⁶.
- **Protection of Human Rights Act, 1993:**
 - Establishes the *National Human Rights Commission (NHRC)* and *State Human Rights Commissions (SHRCs)* with powers to inquire into human rights violations, including custodial abuse¹⁷.

These statutory provisions aim to uphold constitutional values by embedding procedural safeguards and deterrents against misuse of custodial power.

Judicial Vigilance and Constitutional Remedies

The Indian judiciary has played a pivotal role in illuminating the dark alleys of custodial violence. Through public interest litigation and constitutional interpretation, courts have laid down procedural safeguards and recognized compensation as a constitutional remedy¹⁸.

The landmark judgment in *D.K. Basu v. State of West Bengal*¹⁹ remains the touchstone ruling, wherein the Supreme Court mandated 11 procedural guidelines during arrest and detention, treating them as enforceable directives under Articles 21 and 22 of the Constitution. Similarly, in *Nilabati Behera v. State of Orissa*²⁰, the Court affirmed the State's liability under Article 32 for custodial deaths, thereby establishing a precedent for compensatory jurisprudence based on the violation of fundamental rights.

In *Challa Ramkrishna Reddy v. State of Andhra Pradesh*²¹, the Court reiterated that prisoners retain fundamental rights even within incarceration, rejecting the "hands-off" doctrine. The continuing proceedings in *Re: Inhuman Conditions in Prisons*²² reaffirmed the judiciary's commitment to penal reform, emphasizing the humane treatment of detainees.

¹⁶ Indian Evidence Act, 1872, Sections 25 & 26; *State of U.P. v. Deoman Upadhyaya*, AIR 1960 SC 1125.

¹⁷ Protection of Human Rights Act, 1993, Sections 3–12; NHRC Guidelines, available at: <https://nhrc.nic.in>.

¹⁸ *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802; see also: Justice V.R. Krishna Iyer, "The Dialectics and Dynamics of Human Rights in India," Indian Bar Review, Vol. 15 (1988).

¹⁹ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

²⁰ *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746.

²¹ *Challa Ramkrishna Reddy v. State of A.P.*, (2000) 5 SCC 712.

²² *Re: Inhuman Conditions in 1382 Prisons*, Suo Motu Writ Petition (Civil) No. 406 of 2013.

These rulings reflect a dynamic constitutionalism that extends dignity and due process to those deprived of liberty.

Empirical Diagnosis: Data and Ground Reality

While legal safeguards exist, their enforcement remains perfunctory and sporadic. According to data published by the **National Crime Records Bureau (NCRB)**, 89 custodial deaths were reported in the year 2022 alone²³. Convictions in such cases, however, remain negligible, pointing to institutional failure.

Many of these deaths are falsely attributed to suicides or natural causes²⁴. Independent reports by organizations such as the **People's Union for Civil Liberties (PUCL)**, **Human Rights Watch**, and **Commonwealth Human Rights Initiative (CHRI)** document the persistent torture and degrading treatment of marginalized communities, especially Dalits, Adivasis, Muslims, and the poor²⁵.

The 2020 custodial deaths of **Jayaraj and Bennix** in Tamil Nadu and the custodial killing of **Faizan** during the Delhi riots are tragic reminders of the continuing impunity afforded to state actors²⁶.

International Norms and India's Commitments

India is a signatory to several international human rights instruments that prohibit custodial torture:

- **Universal Declaration of Human Rights (UDHR):** Article 5 prohibits torture and cruel, inhuman, or degrading treatment²⁷.
- **International Covenant on Civil and Political Rights (ICCPR):** Articles 7 and 10 mandate humane treatment of individuals deprived of liberty²⁸.
- **United Nations Convention Against Torture (UNCAT):** Signed by India in 1997, but yet to be ratified²⁹.

²³ National Crime Records Bureau (NCRB), *Crime in India 2022*, Ministry of Home Affairs, Government of India.

²⁴ Human Rights Watch, *Broken System: Dysfunction, Abuse and Impunity in the Indian Police*, 2009.

²⁵ People's Union for Civil Liberties (PUCL), *Custodial Deaths and Institutional Apathy*, 2021.

²⁶ "Jayaraj and Bennix: Custodial Deaths in Tamil Nadu," *The Hindu*, July 2020.

²⁷ Universal Declaration of Human Rights (UDHR), 1948, Article 5.

²⁸ International Covenant on Civil and Political Rights (ICCPR), 1966, Articles 7 & 10.

²⁹ United Nations Convention Against Torture (UNCAT), 1984. India signed but has not ratified.

India's non-ratification of the UNCAT not only undermines its global human rights credibility but also impedes the enactment of an effective anti-torture legal framework. The **273rd Report of the Law Commission of India**³⁰ and the **Prevention of Torture Bill, 2017** remain pending, reflecting executive inertia and legislative apathy.

Barriers to Accountability

I. Institutional Impunity

Police personnel often operate within a fraternal and hierarchical structure that resists scrutiny. Departmental inquiries are opaque, and criminal proceedings are rarely initiated, often delayed or derailed³¹.

II. Evidentiary Gaps

Forensic evidence is often not collected; medical reports are tampered with, and witnesses may turn hostile due to intimidation or coercion³².

III. Oversight Limitations

The **National Human Rights Commission (NHRC)** lacks binding powers of enforcement, and State Human Rights Commissions (SHRCs) often suffer from political interference or understaffing³³.

IV. Socio-Political Disempowerment

Marginalized victims often lack access to legal aid, awareness of rights, or the support required to file complaints or pursue justice³⁴.

Strategic Recommendations

I. Enactment of a Comprehensive Anti-Torture Law

India must ratify **UNCAT** and enact legislation that explicitly defines torture, provides independent investigative mechanisms, and prescribes time-bound judicial procedures³⁵.

³⁰ Law Commission of India, 273rd Report on the Implementation of the UNCAT, 2017.

³¹ Commonwealth Human Rights Initiative (CHRI), *Status of Policing in India Report*, 2020.

³² Indian Express, "Medical Officers Under Scrutiny in Custodial Torture Cases," March 2022.

³³ Annual Report of NHRC 2021–22, New Delhi, 2023.

³⁴ CHRI, *Legal Empowerment and Access to Justice*, 2019.

³⁵ Prevention of Torture Bill, 2017, Draft by the Ministry of Home Affairs.

II. Independent Policing and Oversight

The Supreme Court's directives in *Prakash Singh v. Union of India*³⁶ must be implemented in full. This includes:

- Constitution of **Police Complaints Authorities**.
- Ensuring fixed tenures and functional autonomy of **Directors General of Police (DGPs)**.

III. Surveillance and Documentation

- **Mandatory CCTV installation** in police stations and lock-ups.
- **Digital archiving** of arrest memos, medical reports, and statements.

IV. Judicial and Medical Accountability

Judges must actively inquire into custodial treatment during **remand hearings**. Medical officers must be held accountable for omissions or falsifications in injury reports³⁷.

V. Victim-Centric Remedies

- Strengthening **legal aid** systems and ensuring **witness protection**.
- Institutionalizing **psychosocial support** and **reparative justice** for victims and families.

Conclusion

The phenomenon of custodial violence, when scrutinized through the lens of constitutional morality and international human rights obligations, emerges not merely as an administrative aberration or a lapse in policing ethics, but as a deep structural failure of the Indian legal and governance system³⁸. It is a profound indictment of the State's inability or unwillingness to protect the most fundamental rights of its citizens: the right to life, liberty, and dignity, even in conditions of lawful custody.

The persistence of custodial torture and deaths in a constitutional democracy like India reveals the disconnect between the lofty ideals enshrined in the Constitution and the lived realities of

³⁶ *Prakash Singh v. Union of India*, (2006) 8 SCC 1.

³⁷ *State of M.P. v. Shyamsunder Trivedi*, (1995) 4 SCC 262.

³⁸ S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits*, Oxford University Press, 2002.

people, particularly those from marginalized and vulnerable communities³⁹. This chasm reflects not a deficiency of laws, but a failure of institutional will, executive accountability, and societal conscience.

Despite clear pronouncements from the Supreme Court, including the expansive interpretation of Article 21, the right against custodial abuse remains precarious. The judgments in *D.K. Basu*, *Nilabati Behera*, and *Prakash Singh*, while landmark in their own right, are often observed more in breach than in compliance. As a result, police stations across the country continue to operate as zones of unaccountable power, shielded by impunity and legitimized by silence⁴⁰.

India's failure to ratify the United Nations Convention Against Torture (UNCAT) signals a troubling lack of commitment to human rights values. For a nation that aspires to global leadership and democratic excellence, this reluctance is both morally and strategically indefensible.

Custodial violence often reflects deeper societal pathologies—of caste, class, religion, and gender—which manifest most brutally behind closed doors. These are not isolated acts of brutality but manifestations of systemic oppression. A true human rights framework must dismantle these structural inequities from the inside out.

The path forward must include:

- Immediate ratification of **UNCAT**,
- A standalone **anti-torture legislation**,
- Institutional reform and **judicial activism**,
- Empowered **civil society engagement**,
- And a reimagined policing culture rooted in **service and dignity**.

In sum, the fight against custodial violence is not merely a battle for procedural reform; it is a moral crusade for the **soul of the Indian Republic**. Until every police station upholds the Constitution, the promise of justice, liberty, and equality remains unfulfilled.

³⁹ Ujjwal Kumar Singh, *Human Rights and Peace: Ideas, Laws, Institutions and Movements*, Sage, 2009.

⁴⁰ Commonwealth Human Rights Initiative, *Police Accountability in India*, 2020.