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# Custodial Deaths in India: A Legal and Human Rights Perspective

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## ABSTRACT

*Custodial death is the one of the worst long standing human rights violation in the world and India is one among them. These violations are extremely brutal, barbarous, inhumane and the gross violations of both fundamental rights and human rights. It is a serious threat to an orderly civilized society. Eventhough the United Nations, various international treatises and agreements, The Constitution of India, the Indian Judiciary and the National Human Rights Commission has made its efforts to prevent it to all its extent but is not achieved yet in India. There is a stringent need to protect the human rights of individuals, especially the right to life and the state is duty bound to curb the menace of these violations. These repeated incidents of torture highlighted the lack of anti-torture laws in India and called for action to prevent them. The custodial death arose during the British colonial period in India and is not new concept. The state's responsibility is to protect and safeguard the members of the society and to prevent the criminals from committing the crimes. This responsibility of protecting the life of an accused and the convicts lies with the respective state governments. It is very difficult to determine the responsibility of the police and prove their guilt because all the evidences are in the hands of the police. Custodial death can be called as social threat which increased alarmingly in the recent past years in India which violates the inalienable and universal basic human rights guaranteed to all the persons by being born as a human. The credibility of the law enforcement systems is doubtful. This paper focuses on custodial death and violence, its reasons, how the Indian legal framework, international treatises and conventions and on the human rights perspective.*

**Keywords:** custodial death, custodial torture, human rights violation

## I. INTRODUCTION

Death of a person who has been taken in the custody of police in connection with suspicion of criminal involvement of an offence without sufficient reason and evidence under the guise of interrogation, or who has been undertrial or has already been convicted of a crime involving the deaths in prisons, in hospitals or in private places, police or other vehicles. The real rationale for keeping a person in custody is to prevent him from absconding from

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investigation or trial, to prevent from further committing offences and future violations and from destroying all the material and crucial evidences. But this step of taking a person into custody does not provide an option of the law enforcement authorities to cause death of a person, or cause mental and physical atrocities to the accused or making him to provide evidences under compulsion. Even when a person has committed offences, his right to life with human dignity is not forfeited. Individuals accused of or convicted of crimes are entitled to a fair trial, safety, and security in police and judicial lock-ups and Juvenile Correctional Homes. The custodial violence and death can be called as the failure of the state to protect the persons who are under their custody. There have been many instances reported where the police and other law enforcement agencies used their third degree tortures to get confessions or statements and evidences as a result of which many lives have been harmed in the four walls of criminal investigating agencies leading to deaths. Many of such victims have also committed suicides for such harassments also many other goes unreported too. The victims of custodial deaths are mostly the poor, illiterate, underprivileged and marginalized sections of society who have no political or financial stability. This cruelty usually arose from the thought of causing misery, sufferings and hardships to the ones who are incapable of retaliation. The police should be allowed only to use proportionate use of force to prevent crimes and accidents and the recourse of using harsh third degree tortures must be prevented and cannot be justified by whatever means. This use of inexcessive force and torture cannot be justified as performance of duty by police officers at the time of availability of scientific investigation methods and it is clearly evident that the lack of implementation of legal measures to prevent and enable police officers undergoing special training in scientific mode of interrogation. The handling of the case and investigation is necessary for determining whether the accused has been tortured to death. It can be due to natural causes like illness or due to suicide, fighting and quarreling among prisoners but in many instances, it is police brutality and torture that is the reason behind their death. A few of police personnel are sadist minded persons that they enjoy the pain of other fellow human beings. As per NHRC data, there were 1840 judicial deaths across the country in 2020-21, 1584 in 2019-20, 1797 in 2018-19, 1636 in 2017-18 and 1616 in 2016-17. Police custody death cases recorded at 175 in 2021-2022, 100 in 2020-21, 112 in 2019-20, 136 in 2018-19, 146 in 2017-18 and 145 in 2016-17.<sup>2</sup> Custodial deaths can be classified mainly into three categories:

**Death in police custody:** The police must bring the suspect before a judicial officer within that jurisdiction within 24 hours after recording his arrest excluding the journey from the

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<sup>2</sup> National human rights commission, <https://nhrc.nic.in/sites/default/files/2023-2-09.pdf> (last visit Jun 7,2025)

police quarters to the court. Before recording of arrest, the suspect might have taken into police custody, it is the crucial time in which he might undergo threat, harassment, and torture during police interrogation. There is no proper record at what time the suspect had been taken into the police custody. Investigating officers can easily extend this time as per their own whims and fancies. Most of the police officers and subordinates believe that they are above the constitution. Former Chief Justice of India, N V Ramana said that “threat to human rights is highest in the police stations. Custodial torture and other police atrocities are problems that still prevail in our society. Despite constitutional declarations and guarantees, the lack of effective legal representation at the police stations is a huge detriment to arrested/detained persons.”<sup>3</sup>

**Death in judicial custody:** Judicial custody means the authorized police officer cannot investigate the suspect unless it is approved by the court, presented before the magistrate and kept in the jail under the order of the magistrate in order to assure the presence of him during the proceedings of the court. In both the police and judicial custody, the police personnels have an upperhandness on the accused.

**Death in custody of army (military officer or personnel) or paramilitary force:** Death of the suspect while in the custody of army (military officer or personnel) or paramilitary force.

Anti-torture bills were introduced in Indian Parliament several times but it got lapsed. The Prevention of Torture Bill, 2010<sup>4</sup> was introduced in the Lok Sabha on the 26th April, 2010 was passed by the Lok Sabha on the 6th May, 2010 and it was sent to the Rajya Sabha but eventually got lapsed. It aimed to provide punishment for torture inflicted by the public servants or any person inflicting torture. Subsequent bills such as The Prevention of Torture Bill, 2017<sup>5</sup> and 2022<sup>6</sup> were introduced in 2017 by Member of Parliament K.T.S.Tulsi in **Rajya Sabha** and on December 9, 2022, by Member of Parliament **E. T. Mohammed Basheer** as a **Private Member’s Bill** in Lok Sabha, but none of them enacted into law.

## II. REASONS FOR CUSTODIAL VIOLENCE IN INDIA

- Lack of Stringent Laws and their weak implementation: India lacks stringent legislation to effectively punish individuals responsible for custodial violence. NHRC

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<sup>3</sup>The indian express, <https://indianexpress.com/article/india/custodial-torture-still-prevails-nationwide-sensitisation-of-police-officers-needed-cji-7444413/> (last visit Jun 7, 2025)

<sup>4</sup> Prevention of Torture Bill, 2010, Bill No. 58 of 2010, Lok Sabha (India)

<sup>5</sup> Prevention of Torture Bill, 2010, Bill No. XXIX of 2017, Lok Sabha (India)

<sup>6</sup> Prevention of Torture Bill, 2022, Bill No. 206 of 2022, Lok Sabha (India)

have limited powers and their recommendations are often non-binding. The guidelines given by the judiciary are not followed and implemented properly.

- **Police torture and brutality:** The law enforcement agencies often use third degree tortures to get the confessions or statements during interrogation to get quick results. There is a cultural acceptance of using violence to extract information or confessions, with some individuals in positions of authority resorting to brutality as a means to achieve their objectives.
- **Political Interference and other factors:** Investigation can be influenced or suppressed by the politicians as they often intervene to prevent suspects from facing legal consequences for the acts of torture. Personal animosity, monetary incentives, social and caste bias faced by dalits, religious and sexual minorities are also factors which leads to custodial death.
- **Lack of Transparency and accountability:** The prison system in India is typically opaque, with limited transparency, providing opportunities for abuse to go unchecked. Mostly the officers are not prosecuted for the torture due to the weak internal disciplinary systems such as CCTV coverage may be limited or manipulated.
- **Poor Prison Conditions:** Indian prisons are characterized by poor conditions, including overcrowding, severe staff shortages, delayed and neglected medical care, unhygienic conditions and minimal security against violence within correctional facilities.
- **Inadequate training of officers:** Lack of training for officers such as scientific and humane and non-violent form of investigation techniques, stress management techniques and mental health awareness.
- **Fake encounters and fabricated cases:** Deaths caused by the custodial torture and violence can also be fabricated as encounters or suicides.
- **Absence of independent investigative bodies:** Investigations are conducted by the police personnel from the same departments and often cover up such tortures.
- **Lack of Implementation of International Standards:** While India signed the United Nations Convention against Torture in 1997, its implications are not consistently enforced within the country.
- **Time Constraints and Pressure Police:** Law enforcement officials often work under intense pressure from higher authorities , particularly in cases requiring quick

resolutions to complex crimes leading to the use of violence to obtain evidence and confessions during interrogation processes

- Less media coverage and unreported cases: There is less media coverage and public indifference as mostly the coverage of media is selective and often the victims from lower classes gets very poor attention from the media.
- Psychological issues among the detainees in custody: The detainees might have mental and psychological issues which was not given proper care leading to the suicides among them. Police personnel are often not well trained or equipped to deal with such cases.

### III. CONSTITUTIONAL PROVISIONS

Article 14<sup>7</sup> of the Constitution states that “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”. Article 20(3) of the constitution deals with the right against self-incrimination.<sup>8</sup> Article 21 of the constitution states that “No person shall be deprived of his life or personal liberty except according to the procedure established by law”.<sup>9</sup> Article 22 of the Indian Constitution<sup>10</sup> provides for certain safeguards regarding arrests and detentions to protect the rights and liberties of individuals who are arrested or detained by the authorities such as the right to be presented before magistrate, right to consult a legal practitioner, communications of the grounds for arrest and also address preventive detention. The custodial violence and death often violates these fundamental rights of citizens. In case of violation of fundamental rights any person can file a writ petition under Article 32<sup>11</sup> or 226<sup>12</sup> to the Supreme Court or to the High Court respectively.

Article 38(1)<sup>13</sup> states that “The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life”. Article 39A<sup>14</sup> deals with providing equal justice and free legal aid. These two provisions directly deals with custodial death eventhough not justiciable, the constitution of India upholds them but these are often violated.

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<sup>7</sup> Art.14, THE CONSTITUTION OF INDIA, 1950

<sup>8</sup> Art.20(3), THE CONSTITUTION OF INDIA, 1950

<sup>9</sup> Art.21, THE CONSTITUTION OF INDIA, 1950

<sup>10</sup> Art.22, THE CONSTITUTION OF INDIA, 1950

<sup>11</sup> Art.32, THE CONSTITUTION OF INDIA, 1950

<sup>12</sup> Art.226, THE CONSTITUTION OF INDIA, 1950

<sup>13</sup> Art.38(1), THE CONSTITUTION OF INDIA, 1950

<sup>14</sup> Art.39A, THE CONSTITUTION OF INDIA, 1950

#### IV. ROLE OF JUDICIARY

In India, there is no specific legislation which deal with the custodial deaths caused by public officers.

The Supreme Court in *Maneka Gandhi v. UOI*<sup>15</sup>, has expanded the scope of Article 21 by stating that procedure established by law should be “fair, just and reasonable.” Custodial death is the direct violation of Right to life guaranteed under Article 21 of the Constitution of India which is a fundamental right.

In *Nandini Sathpathy v. P L Dani*<sup>16</sup> the court asserted that the accused has the right to remain silent during police interrogations and the police authorities cannot compel to answer their questions and cannot be subject to torture or brutality

In the case of *Sunil Batra v. Delhi Administration*<sup>17</sup>, the Supreme Court held that convict cannot be deprived of Article 21 and he shall be entitled to right to life with human dignity, humane treatment and condemned all forms of torture and physical assaults caused by jail authorities and gave an opportunity for the court to censure torture.

In *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*,<sup>18</sup> the Indian Judiciary has assertively stated that “right against torture” - any kind of torture which leads to inhumane, degrading treatment or affecting human dignity can be treated as a violation of Article 21

In *Kishore Singh v State of Rajasthan*<sup>19</sup>, the court held that use of the third degree torture by police violates Article 21 of the Constitution and the police authorities must respect the accused rights.

In *Rudul Shah v. State of Bihar*<sup>20</sup>, the court awarded compensation of Rs.35,000 to the victim who was wrongfully detained in custody for 14 years after his acquittal by the Sessions Court.

In *Bhajan Kaur v. Delhi Administration through the Lt. Governor the Delhi High Court*<sup>21</sup>, The court held that purpose of Article 21 would be defeated if the state does not take adequate measures to control and curb the malafide intentions of those who threaten life and liberty of others. It is the duty of the state to enforce law and order in the society that the fruits of

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<sup>15</sup> *Maneka Gandhi v. UOI*, 1978 AIR 597

<sup>16</sup> *Nandini Sathpathy v. P L Dani*, AIR 1978 SC 1025

<sup>17</sup> *Sunil Batra vs Delhi Administration*, 1978 AIR 1675

<sup>18</sup> *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*, AIR 1981 SC 746

<sup>19</sup> *Kishore Singh v State of Rajasthan*, AIR 1981 SC 625

<sup>20</sup> *Rudul Shah v. State of Bihar*, AIR (1983) SC 1086

<sup>21</sup> *Bhajan Kaur v. Delhi Administration through the Lt. Governor the Delhi High Court*, Equivalent citations: 1996 IIIAD Delhi 333, 3 (1996) CLT 337, 1996 (38) DRJ 203, ILR 1996 Delhi 754

democracy is enjoyed by all the sections of society without any discrimination of their religion, caste, creed, colour, region and language.

A telegram sent by an under trial detainee was treated as a writ petition in the case of *Prem Shankar Shukla v. Delhi Administration*<sup>22</sup>, the Supreme Court referred to Article 5 of Universal Declaration of Human Rights and Article 10 of the International Covenant on Civil and Political Rights and held that Handcuffing of an undertrial prisoner is degrading and inhumane and in violation of Article 21, 14 and 19.

In *Smt. Saraswati Devi vs. State of Rajasthan & Ors*<sup>23</sup>, the deceased was allegedly beaten up by other prisoners and guards in jail leading to the death of the deceased. Accused persons were acquitted by the trial court as all witnesses turned hostile and the Court after considering the facts and circumstances of the case observed that it is a paramount duty of the state to protect the people as the state is not only the trustee of the people, but with regarding to the custody of a convicted prisoner, it is the custodian of an inmates of the jail and is liable to pay compensation.

The Supreme Court stated in *Prakash Kadam v. Ramprasad Vishwanath Gupta*<sup>24</sup>, that a policeman is an individual who must implement the law and more severe punishment should be imposed to a police officer than an ordinary person who commits a crime directly against his or her duties.

In the case of *Khatri And Others vs State of Bihar & Others*<sup>25</sup>, the Supreme Court ordered to investigate and punish Police officials accountable who blinded around thirty prisoners by piercing their eyes with needles and pouring corrosive into their eyes and held that the infringement of Art. 21 and granted compensation to the sufferers.

In the case of *D.K. Basu v. State of West Bengal*<sup>26</sup>, It was after a writ petition that was filed by a NGO under Article 32 of the Indian Constitution about the increasing death of the detainees in the police custody in West Bengal. The Supreme Court laid down 11 important guidelines to prevent custodial violence.

In *T.V. Vaitheeswaran v State of Tamil Nadu*<sup>27</sup>, the Supreme Court of India stated that the rights given to its citizens under part III of the Indian Constitution, which includes 'Articles 14, 19 and 21' are granted to the prisoners as well. Also, the Constitution of India provides that

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<sup>22</sup> *Prem Shankar Shukla v. Delhi Administration*, 1980 AIR 1535

<sup>23</sup> *Smt. Saraswati Devi vs. State of Rajasthan & Ors*, 2009 Cri LJ (NOC) 1068 (Raj)

<sup>24</sup> *Prakash Kadam v. Ramprasad Vishwanath Gupta*, AIR 2011 SC 1945

<sup>25</sup> *Khatri And Others vs State of Bihar & Others*, AIR 1981 SC 928 : (1981) 1 SCC 627

<sup>26</sup> *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610

<sup>27</sup> *T.V. Vaitheeswaran v State of Tamil Nadu*, AIR 1983 SC 361



no person who is arrested will be detained in the custody without, being informed as early as possible of the grounds for his/her arrest and, nor will he be detained of the right to consult and to be defended by a lawyer of his choice

In *Smt.Nilabati Behera vs. State of Orissa*<sup>28</sup>, the accused was taken in police custody was found dead next day of his arrest on the railway track .He was not released from custody and his death was unnatural, caused by multiple injuries sustained by him during police custody. The court held that the police officers are duty bound to guard the life of an individual who is under custody. The Court directed the respondent State of Orissa to pay a sum of Rs.1, 50,000 to the petitioner and further a sum of Rs. 10,000 as a cost to the Supreme Court Legal Aid Committee.

In *Bhim Singh vs. State of Jammu and Kashmir*<sup>29</sup>, an MLA was arrested and illegally detained by the police. The Court after due examination of all the facts ordered for payment of Rs. 50,000 as compensation.

In *Joginder Kumar v. State of U.P and others*<sup>30</sup>, the court held that the rights under Articles 21 and 22(1) of the Constitution of India must be recognized and protected and issued some guidelines to ensure the protection of these rights such as when the detained person is taken to the police station, the police officer must inform the detainee about his rights, an entry should be kept in the logbook containing information on who was notified of the suspect's arrest, Article 21 and Section 22(1) should be recognized and implemented.

In *Ajay Kumar Yadav v. The State of Uttar Pradesh & Ors* <sup>31</sup>, The Hon'ble Supreme Court cancelled bail of a police official who was an accused of causing custodial death. The Bench held "It is a fact that in ordinary circumstances, we ought not to invoke our jurisdiction under Article 136 of the Constitution of India to invalidate an order granting bail to an accused. But this criteria, while dealing with the question of granting bail would not apply in a case of custodial death, where police officials are accused. Such alleged offences are of grave and serious nature and hence can be denied of the bail.

In *State of U.P. vs. Ram Sagar Yadav*<sup>32</sup>, a person who complained against a policeman for bribery, was put to death by that policeman, his two companions and his superior officer. The Supreme Court emphasized the need that there should be amendment in law of evidence relating to burden of proof in cases of custodial death and rape so that the police authorities

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<sup>28</sup> *Smt.Nilabati Behera vs. State of Orissa*, AIR 1993 SC 1960

<sup>29</sup> *Bhim Singh vs. State of Jammu and Kashmir*, AIR 1986 SC 494

<sup>30</sup> *Joginder Kumar v. State of U.P and others*, AIR 1994 SC 1349

<sup>31</sup> *Ajay Kumar Yadav v. The State of Uttar Pradesh & Ors*, 2024 LiveLaw (SC) 266 (India)

<sup>32</sup> *State of U.P. vs. Ram Sagar Yadav* ,AIR 1985 SC 416

cannot escape from the conviction due to the failure to bring evidence.

In *Sheela Barse v. State of Maharashtra*,<sup>33</sup> the court held that a person taken into police custody must be presented before the Magistrate within 24 hours of his/her arrest and the medical examination of the arrestee must be done every 48 hours and copies should be sent to Magistrate and the accused has the right to meet his lawyer.

In *Indrajeet Singh v. State of UP*<sup>34</sup>, the Supreme Court held that punishment which has an element of torture is unconstitutional.

In *Ahalya Pradhan vs. State of Orissa and Ors*<sup>35</sup>, a writ a petition was filed under 226 of the Constitution of India and under Rule 239-B of Orissa Police Manual. FIR was lodged alleging death of the husband of petitioner had occurred in police station in suspicious circumstances. However inquiry submitted in this case shows that death of the deceased was suicidal and incident occurred inside Police Hazat. In an inquiry report negligence of police official to provide proper watch was found. Court held State Govt. is vicariously liable to compensate petitioner. Considering the age of the deceased and facts and circumstances of the case Court directed the respondent to pay Rs.3 lakhs to the petitioner.

In *Court on its own Motion vs. State & Anr.*<sup>36</sup>, the case was filed under Article 226 of the Constitution of India where the deceased died in Jail custody due to assault of Jail inmates. Court held that state has sacrosanct duty to see that people who are in their custody do not meet unnatural death. It can't make a distinction that deceased was a life convict. As deceased was aged 34 years and had hoped to live his span of life. Offer of compensation of Rs.1 lakhs by the State government cannot be regarded as adequate in the instant case. The Hon'ble Court held that under circumstances of the case wife of deceased was directed to be compensated with an amount of Rs. 3 lakhs.

In *Smt. Chandrapati Debbarma vs. State of Tripura and Ors*<sup>37</sup>, the case was filed under Article 21 where the son of petitioner was killed by personnel of TSR died during custody without having been released from custody due to multiple injuries found on his person particularly, rupture of spleen was admitted. Therefore, burden is clearly on respondents to explain how victim sustained injuries which caused his death. Plea by respondents that deceased died due to injuries caused while making attempt to escape from custody by jumping down not established. Witnesses examined by opposite parties were not present at spot at the time of

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<sup>33</sup> *Sheela Barse v. State of Maharashtra* 1983 (SC) 378

<sup>34</sup> *Indrajeet Singh v. State of UP* 2014(8) ALC 912

<sup>35</sup> *Ahalya Pradhan vs. State of Orissa and Ors*, 2009 Cri LJ (NOC) 540 (Ori.)

<sup>36</sup> *Court on its own Motion vs. State & Anr*, 2012 Cri LJ (NOC) 15(Del.).

<sup>37</sup> *Smt. Chandrapati Debbarma vs. State of Tripura and Ors* 2010 Cri L J 979 (Gau.)

occurrence. Medical evidence showed that injury on spleen could be caused if deceased was hit on spleen by boot. It could be said that he was died due to custodial violence and mother entitled to compensation of Rs.4 lakhs.

The Supreme Court in *Gauri Shankar Sharma vs. State of U.P.*<sup>38</sup>, two policemen were sentenced for severely beating a suspect for extracting a confessional statement, and on non-payment of bribe, resulting in custodial death. The court observed that "deaths in Police custody must be seriously viewed for otherwise we will help take a stride in the direction of police raj."

In *People's Union Democratic Rights vs. Police Commissioner*<sup>39</sup>, one of the laborers was taken to the police station for doing some work and on demanding for wages he was severely beaten leading to the death. It was held that if a person in police custody was beaten to death, then compensation is paid to the family of the deceased and this amount be recovered out of the salaries of guilty officers after giving them opportunity to show cause.

In *SAHELI vs. Delhi Commissioner of Police*<sup>40</sup>, a writ petition was filed by the Women's and Civil Rights Organization on behalf of two women. Here, a 9 year old child had died after beating and assault by police officers. The Supreme Court directed the State Government to pay Rs.75, 000 as compensation to the mother of the victim.

In *Ajab Singh vs. State of U P*<sup>41</sup>, a writ petition was filed under Article 32 of the Constitution of India filed by the parents of the deceased, who died in judicial custody on 1996. The prayer was to conduct investigation by CBI on custodial death and that the respondents, the State of U.P and the police and jail authorities of Meerut must be directed to pay them compensation for his death. The Court after seeing the facts and circumstances of the case held that the State of U.P is responsible for the death of the accused and directed to pay compensation.

## V. PENAL LAWS IN INDIA

Laws penalizing the offence of custodial death in India As the number of deaths of caregivers has increased in recent years, there is a need for strict new laws to deal with deaths of caregivers. However, there are some laws in the Constitution that punish the crime of death in custody.

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<sup>38</sup>*Gauri Shankar Sharma vs. State of U.P.*, AIR1990SC709

<sup>39</sup>*People's Union Democratic Rights vs. Police Commissioner* (1989) 4 SCC 730

<sup>40</sup>*SAHELI vs. Delhi Commissioner of Police* AIR 1990 SC 513.

<sup>41</sup>*Ajab Singh vs. State of U P* (2000) 3SCC 521, 524.

- Section 7 of the Indian Police Act<sup>42</sup>: Section 7 of the Indian Police Act allows a senior police officer to remove or dismiss a police officer if he neglects his duty.
- Section 29 of the Indian Police Act<sup>43</sup>: Section 29 contains provisions to punish police officers who neglect their duties. Penalties include imprisonment for up to three months with or without hard labor, with a maximum term of three months.

Section 46 of Bharatiya Nagarika Suraksha Sanhita <sup>44</sup>states that using the force for detaining an accused cannot be not more than it is necessary for preventing them from escaping.

Section 120(1) of Bharatiya Nyaya Sanhita <sup>45</sup>states that causing harm with the intent to extract confession, information or property restoration under duress is punishable by upto 7 years of imprisonment and a fine.

Section 22 of Bharatiya Sakshya Adhiniyam <sup>46</sup>states that a confession in a criminal proceeding is deemed irrelevant if it is found to the court that it was obtained by inducement, threat, coercion or promise by the person in authority, leading the accused that it would gain him any advantage or for avoiding any harm to the proceedings

## **VI. INTERNATIONAL AGENCIES AND ORGANIZATIONS VIEWS ON CUSTODIAL VIOLENCE AND DEATH**

According to Article 5 of the Universal Declaration of Human Rights (UDHR) which was adopted in December 10 by U N General Assembly, 1984 states that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. International Covenant on Civil and Political Rights” (ICCPR) is another international Law that India not only signifies but also ratified this law on the 10th of April 1979. Article 7 “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”. Article 10 deals with humane treatment of detainees.

The United Nations Convention against Torture (UNCAT), was adopted by the UN General Assembly on 10<sup>th</sup> December, 1984 is aimed to avoid acts of torture and other actions forbidden under this convention. The UN General assembly had adopted an optional protocol in 2002 which provides for a regular inspections of places of detention.

Article 1 of the convention deals with the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such

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<sup>42</sup> The Police Act, No. 5 of 1861, § 7, India Code (1861).

<sup>43</sup> The Police Act, No. 5 of 1861, § 29, India Code (1861).

<sup>44</sup> Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 46

<sup>45</sup> Bharatiya Nyaya Sanhita, 2023, § 120(1)

<sup>46</sup> Bharatiya Nyaya Sanhita, 2023, § 22

purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. Article 2 states that torture cannot be justified under any circumstances, including war or public emergency. India had signed the convention but had not ratified it.

## VII. RECOMMENDATIONS AND SUGGESTIONS

- The establishment of State Security Commission as suggested in *Prakash Singh v. Union of India*<sup>47</sup> for monitoring the functioning of state police authorities for reducing rate of custodial deaths in India and it is high time for India to implement it.
- There is a need for changing the mindset of the society and should make citizens understand that an accused does not deserve to be tortured mentally and physically while in custody in order to prove guilty .
- The compensation to the dependents in case of custodial deaths should be under the responsibility of the State. The State Government can recover the amount of compensation from the offenders such as police officers who committed the crimes. The Government can for this purpose setup a separate Board/Tribunal at the state level or district level for implementing the same.
- The victim compensation is provided by the state exchequer, this responsibility should fall on the shoulder of the person accountable for. The vicarious liability of the state extends to the no means of the delinquent officer. The responsible police personnel's property should be seized at the time of registration of FIR. This responsibility of seizure of property should be handed over to District Collector.
- The Government should make a fixed percentage quota in Government jobs and in Government owned educational institutes for the dependents of the victims to uplift and improve their life conditions.
- The considerable amount of monthly pension to be made available by the central or state Government to the dependents or the nearest relatives of the victim who has suffered the custodial violence or death.

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<sup>47</sup> *Prakash Singh v. Union of India*, (2006) 8 SCC 1

- Section 114-B of the Indian Evidence Act, 1872<sup>48</sup> as recommended by the Law Commission in its 113th report, should be inserted to introduce a rebuttable presumption that injuries sustained by a person in police custody were caused by the police officer. The law commission in its 113<sup>th</sup> report had suggested for the introduction of Section 114-B in the Indian Evidence Act, 1872 that a rebuttable presumption that all the injuries sustained and caused to a person in police custody were caused by them. It was not implemented in the Indian Evidence Act, 1872 or in the newly enacted Bharatiya Sakshya Adhiniyam, 2023.
- The police should be trained in using new scientific and psychological techniques instead of using torture and violence as a form of proving guilty or receiving statements or evidence to prove guilt.
- The police authorities must be given mental health support systems, proper guidance and awareness classes against inhumane and degrading treatment to accused and stress management policies. The long working hours, inadequate and poor remuneration, inhumane treatment by the superiors, providing no career progression can also lead to misuse of power.
- Section 101 of the Bharatiya Nyaya Sanhita <sup>49</sup>should be amended by adding the provision that custodial death caused by law enforcement agencies to be treated as murder.
- The proper and well equipped medical facilities should be available and provided in jails to all the accused so that in case of any emergency proper and timely medical help could be provided to the persons who is in the jail custody. The medical professional should report if any kind of violence is found in the body of the accused while in custody.
- A counsel for the accused should be allowed to be present during interrogation or make available online video calling techniques to check and monitor if any kind of the custodial violence has been caused by the investigating officer at the time of investigation.
- Even though custodial violence is a violation of fundamental rights. There is a lack of special or specific legislation in India to protect the rights of prisoners against torture. UNCAD has been signed by India in 1997, India had not ratified it in order to implement domestic laws or policies, thus lacking provisions against torture. Even after 27 years of signing the convention treaty, India failed to ratify it. By ratifying it, it would open doors

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<sup>48</sup> Indian Evidence Act, No. 1 of 1872, § 114-B, India Code (1872).

<sup>49</sup> Bharatiya Nyaya Sanhita, No. 45 of 2023, § 101

for the passing of new Anti-torture bill and individuals and state would try to address their grievances.

- There is a need for strict adherence to the guidelines given by the Indian Judiciary through various landmark judgements to prevent the emerging trends of custodial deaths. In *Joginder Kumar v. state of UP*, the guidelines by the Supreme Court that the prudence and authenticity of a complaint should be made through thorough investigation and to prevent unlawful arrest and keeping in custody, but had not been practically implemented in India. It is the responsibility of the State Government to regular check and holds accountable for failing to adhere with the 11 guidelines laid down in the case of *D K Basu v. State of West Bengal* to prevent custodial violence and to provide compensation.
- Setting up of CCTV Cameras inside the lockups to prevent and detect any custodial violence and it should be monitored by responsible and impartial officer. In case of *Paramvir Singh v. Baljit Singh & ors*<sup>50</sup>. The court held that every police stations in states and Union territories of India should ensure that CCTV cameras are installed in each and every corner of the police stations and no part of it should be left uncovered and the CCTV cameras should be equipped with the night vision as well as contain audio and video footages. The strict implementation of this guideline is necessary to prevent the custodial torture.
- The secret places of detention of the accused should be prohibited and the place should be recorded officially.

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<sup>50</sup> *Paramvir Singh v. Baljit Singh & ors*, (2020) 3 SCC (Cri) 150