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# Examining the Liability of Government Authorities in Custodial Torture and Extrajudicial Killings

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## ABSTRACT

*Custodial torture and extrajudicial killings represent severe violations of human rights, reflecting an abuse of power by government authorities. These practices not only undermine the rule of law but also erode public trust in the justice system. This article explores the legal framework governing the liability of government authorities involved in such heinous acts, examining both domestic and international legal principles. Through a comprehensive analysis of case law, statutory provisions, and human rights conventions, this paper aims to provide a nuanced understanding of the accountability mechanisms in place and the challenges in enforcing them.*

**Keywords:** Custodial Torture, Extrajudicial Killing, Liability, Rights, India.

## I. INTRODUCTION

Custodial torture and extrajudicial killings have been persistent issues in many jurisdictions, particularly in countries where the legal and enforcement systems are weak or where there is a significant power imbalance between the state and its citizens. The involvement of government authorities in these acts raises critical questions about accountability and justice. It is imperative for governments to uphold the rule of law and ensure that those responsible for such heinous acts are held accountable. Without proper accountability measures in place, there is a risk of a culture of impunity developing within law enforcement agencies. International human rights organizations must monitor and report on these violations to help bring perpetrators to justice and prevent future abuses from occurring. This article aims to critically analyze the liability of government officials in instances of custodial torture and extrajudicial killings, with a particular focus on the Indian legal framework, supplemented by comparative insights from international law.

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## II. CUSTODIAL TORTURE AND EXTRAJUDICIAL KILLINGS: DEFINITIONS AND LEGAL CONTEXT

### (A) Custodial Torture:

Custodial torture refers to the infliction of physical or mental pain by law enforcement officials on individuals in their lawful custody. It is often employed to extract confessions or information, and punish, or intimidate the victim. The practice of torture is inherently more distressing and harmful than privacy infringements and can escalate to extreme forms of physical suffering, posing a significant danger to victims.<sup>3</sup> Internationally, custodial torture is prohibited under various human rights instruments, including the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), which India has signed but not ratified.

The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment also declares that no person shall be subjected to torture or cruel, inhuman treatment or punishment. While Article 1 of the Convention defines the term ‘Torture’ as follows;

*“For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such 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.*

*2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.”<sup>4</sup>*

### (B) Extrajudicial Killings:

Extrajudicial killing is unlawful killing by state forces. It is an act of killing a person by law enforcement authorities, without due process of law or judicial proceedings. They are simply bypassing the due process of the legal judicial execution. It is carried out by the government or other state authorities like the armed forces, police force, or law enforcement agencies, as extra-

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<sup>3</sup> *Torture*. (2006, February 7). plato.stanford.edu. Retrieved August 13, 2024, from <https://plato.stanford.edu/entries/torture/>

<sup>4</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

legal fulfillment of their prescribed role. Such killings are violative of fundamental rights and human rights of individuals.

*Section 3(a) of the Torture Victim Protection Act, 1991* defines extrajudicial killing as follows;

“A deliberate killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples”.<sup>5</sup>

### III. LEGAL FRAMEWORK GOVERNING LIABILITY

#### A. Domestic Law:

##### 1. Constitutional Provisions

Article 21 of the Indian Constitution guarantees the right to life and personal liberty<sup>6</sup>, which includes the right to be free from torture and extrajudicial killings. Additionally, Article 22 provides safeguards against arbitrary arrest and detention, ensuring that detainees have the right to be informed of the grounds of arrest and to consult with a legal practitioner of their choice.<sup>7</sup> While Article 20 provides protection against conviction or enhanced punishment under *ex-post facto law* and protection against double jeopardy also provides the right not to be a witness against himself.<sup>8</sup>

##### 2. Statutory Provisions

**Bharatiya Nyaya Sanhita, 2023** contains provisions that criminalize acts of torture and custodial violence. **Section 120 of the BNS** punishes acts of causing hurt or grievous hurt to extort confessions. **Section 103 of BNS** deals with punishment for murder, which would also be applicable in cases of custodial deaths that do not fall under justifiable homicide.

**Section 68 of Bharatiya Nyaya Sanhita, 2023** provides punishment for sexual intercourse by persons in authority with women in custody (Custodial Rape).

**Section 22 of the Bhartiya Sakshya Adhiniyam, 2023** provides that, a confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal

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<sup>5</sup> Section 3(a) of the Torture Victim Protection Act, 1991

<sup>6</sup> Article 21 of Constitution of India.

<sup>7</sup> Article 22 of Constitution of India.

<sup>8</sup> Article 20 of Constitution of India.

nature in reference to the proceedings against him.

**Section 43 of the Bhartiya Nagrik Suraksha Sanhita, 2023** provides that, a women should be arrested by a women police officer only. And no woman shall be arrested after sunset and before sunrise, other than exceptional circumstances.

**Section 46 of the Bhartiya Nagrik Suraksha Sanhita, 2023** provides that, the person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

**Section 47 of the Bhartiya Nagrik Suraksha Sanhita, 2023** provides that, person arrested to be informed of grounds of arrest and of right to bail.

**Section 48 of the Bhartiya Nagrik Suraksha Sanhita, 2023** provides that, police should give the information regarding such arrest of such peson and place where the arrested person is being held to any of his friends; relatives or any person nominated by him.<sup>9</sup>

**Section 56 of the Bhartiya Nagrik Suraksha Sanhita, 2023** provides that, it shall be the duty of the person having the custody of an accused to take reasonable care of the health and safety of the accused.<sup>10</sup>

**Section 57 of Bhartiya Nagrik Suraksha Sanhita, 2023** provides that, a police officer making an arrest without warrant shall without unnecessary delay send the arrested person before the magistrate or officer in charge of the police station.

**Section 58 of Bhartiya Nagrik Suraksha Sanhita, 2023** provides that a person arrested is not to be detained for more than twenty-four hours.

### 3. Judicial Precedents

Indian courts have played a pivotal role in addressing custodial torture and extrajudicial killings. Landmark judgments such as “*D.K. Basu v. State of West Bengal*”<sup>11</sup> and “*Nilabati Behera v. State of Orissa*”<sup>12</sup> have established guidelines to prevent custodial torture and have held the state liable for compensation in cases of custodial deaths.

The Hon’ble Supreme Court in *Prakash Kadam & Etc. v. Ramprasad Vishwanath Gupta & Anr.*<sup>13</sup>, held that extrajudicial killings which are not done in an emergency are nothing but cold-blooded, brutal murder by persons who are supposed to uphold the law.

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<sup>9</sup> Inserted by The Code of Criminal Procedure (Amendment) Act, 2005.

<sup>10</sup> Inserted by The Code of Criminal Procedure (Amendment) Act, 2008.

<sup>11</sup> 1997 (1) SCC 416

<sup>12</sup> 1993 SCC (2) 746 JT

<sup>13</sup> AIR 2011 SUPREME COURT 1945

In *Raghubir Singh v. State of Haryana (1980)*<sup>14</sup>, The Hon'ble Supreme Court convicted the police officers involved and imposed stringent punishments. The Court emphasized that custodial violence and torture violate Article 21 of the Constitution.

In *Sathankulam Custodial Death Case (2020)*<sup>15</sup>, the Hon'ble Madras High Court took suo motu cognizance of the matter, leading to the arrest and prosecution of the police officers involved. The case was later handed over to the Central Bureau of Investigation (CBI).

In *People's Union for Civil Liberties (PUCL) v. State of Maharashtra (2014)*<sup>16</sup>, The Hon'ble Supreme Court laid down a set of guidelines to be followed in cases of police encounters, including the requirement of a magisterial inquiry, registration of a First Information Report (FIR), and an independent investigation by the Criminal Investigation Department (CID) or a different police station.

The judiciary in India has played an active role in addressing issues of custodial torture and extrajudicial killings by laying down guidelines, awarding compensation, and holding state authorities accountable. These cases underscore the importance of safeguarding fundamental rights and ensuring that law enforcement agencies operate within the bounds of the law. Despite these efforts, custodial torture and extrajudicial killings remain pressing issues, necessitating continued vigilance and reform.

#### **4. National Human Rights Commission (NHRC)**

The NHRC has been instrumental in monitoring cases of custodial torture and extrajudicial killings. It has issued guidelines and recommendations to prevent such incidents and has the power to investigate complaints against public servants. The NHRC also conducts regular visits to prisons and detention centers to ensure that detainees are not being subjected to torture or ill-treatment. Additionally, the NHRC has the authority to recommend compensation for victims of custodial torture and to prosecute perpetrators. Through its efforts, the NHRC plays a crucial role in upholding human rights and holding those responsible for custodial torture accountable for their actions.

### **B. International Law**

#### **1. United Nations Convention Against Torture (UNCAT)**

The United Nations Convention Against Torture (UNCAT) ensures the rights of children from being subjected to torture, cruel, inhuman, and degrading treatment or punishment. Acts of

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<sup>14</sup> 1990 3 SCC 70

<sup>15</sup> Selvarani vs The State Of Tamil Nadu, AIR ONLINE 2020 MAD 2218

<sup>16</sup> 2014 (10) SCC 635

sexual abuse and exploitation against children can be considered acts of torture under UNCAT if they involve severe pain or suffering inflicted by a public official or someone acting in an official capacity.<sup>17</sup> UNCAT obligates state parties to take effective measures to prevent acts of torture within their jurisdictions. Although India has not ratified UNCAT, the principles enshrined in it influence domestic jurisprudence and international advocacy.

## 2. International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights (ICCPR) is a key international treaty that upholds various civil and political rights. Two critical aspects of the ICCPR are its provisions on torture, cruel, inhuman, or degrading treatment or punishment, and the protection of the right to life. Article 7 of the ICCPR explicitly prohibits torture, as well as cruel, inhuman, or degrading treatment or punishment. The article states:

*"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."*

This article reflects a broad commitment to human dignity and the protection of individuals from any form of physical or psychological harm by the state or any entity. Similarly, Article 6 of the ICCPR deals with the right to life, which is recognized as the most fundamental human right. It states:

*"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."*

The Human Rights Committee, which oversees the implementation of the ICCPR, has issued General Comments to clarify the scope of these articles.

**General Comment No. 20<sup>18</sup>** (1992) elaborates on the scope of Article 7, emphasizing that the prohibition of torture and inhuman treatment is non-derogable, even during public emergencies.

**General Comment No. 36<sup>19</sup>** (2018) provides guidance on Article 6, affirming the broad and inclusive interpretation of the right to life, including positive obligations on states to prevent

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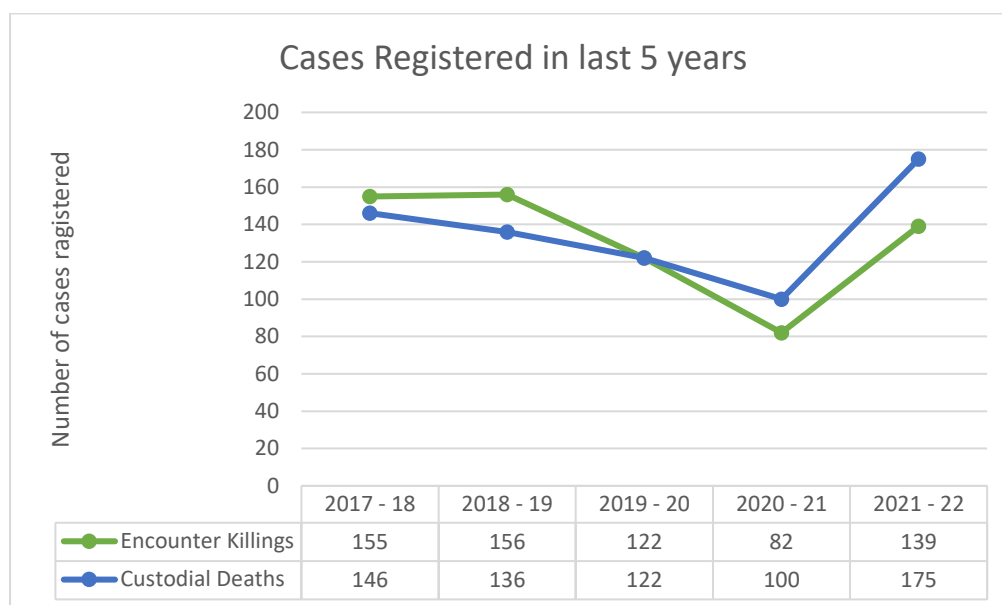
<sup>17</sup> Nayeem, Z., Haq, M. A., Zakaria, S. M., & Alam, S. S. (2012, August). *Exploring Strengths and Loopholes of National Laws and Policies on Child Protection for the Purpose of Harmonizing those with the United Nation's Convention Against Torture (UNCAT) and United Nation's Convention on the Rights of the Child (UNCRC)*. openaccess.city.ac.uk. Retrieved August 13, 2024, from <https://openaccess.city.ac.uk/id/eprint/25632/>

<sup>18</sup> *ICCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*. www.refworld.org. Retrieved August 15, 2024, from <https://www.refworld.org/legal/general/hrc/1992/en/11086>

<sup>19</sup> *General Comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life*. www.refworld.org. Retrieved August 15, 2024, from <https://www.refworld.org/legal/general/hrc/2019/en/123145>

life-threatening harm and address conditions that may threaten life (such as poverty, malnutrition, and inadequate healthcare).

#### IV. CRITICAL ANALYSIS OF THE REGISTERED CASES OF CUSTODIA DEATH AND ENCOUNTER KILLING IN INDIA



**Source:** News article published by NDTV titled “669 cases of deaths in police custody registered in last five years: MHA” on February 08, 2023, and Article published on Fact Checker titled “Encounter Killings: Fivefold Rise in Pending Cases, No Convictions in 6 Years.” on July 25, 2022.

Both encounter killings and custodial deaths have shown fluctuations over the past five years. The rate of registration of cases of encounter killings and custodial deaths is constantly increasing. A deeper and more comprehensive study is required to understand the main root cause of this higher rate. Furthermore, it is also needed to evaluate the role of state authorities in this heinous crime. It is crucial for India to address these issues promptly and effectively in order to uphold the rule of law and protect the rights of its citizens. By conducting a thorough investigation and implementing the necessary reforms, the government can work towards preventing further instances of encounter killings and custodial deaths. It is imperative that India take proactive measures to ensure accountability and transparency within its law enforcement agencies to prevent any further human rights violations.

#### V. LIABILITY OF GOVERNMENT AUTHORITIES

##### A. Individual Criminal Liability

##### 1. Direct Perpetrators:



Law enforcement officials who directly engage in acts of custodial torture or extrajudicial killings can be held criminally liable under domestic law. Provisions under the Bharatiya Nyaya Sanhita and other relevant statutes provide for the prosecution of these individuals. However, issues of impunity and lack of effective prosecution often arise, particularly when the perpetrators are high-ranking officials.

## **2. Superior Responsibility:**

The doctrine of superior responsibility holds that superiors can be held liable for the actions of their subordinates if they knew or should have known about the acts and failed to prevent or punish them. This doctrine, though more commonly applied in international criminal law, has relevance in domestic contexts where hierarchical structures in law enforcement agencies play a significant role in perpetuating abuses.

### **B. State Liability**

#### **1. Vicarious Liability:**

The principle of vicarious liability can be applied to hold the state responsible for wrongful acts committed by its employees in the course of their duties. Section 46(3) of the Code of Criminal Procedure empowers police to use force to the extent of causing the death of a person accused of an offense punishable with death or imprisonment for life if such a person resists arrest or intends to evade arrest. However, this provision in the Code of Criminal Procedure seems to contradict the principles outlined in the Constitution of India and various international instruments. Allowing police to use force that could result in the death of a suspect goes against the right to life protected by Article 21 of the Constitution of India. Furthermore, the use of force to the extent of causing death raises concerns about potential abuse and violations of human rights. Therefore, the doctrine of Vicarious Liability is crucial in ensuring that victims of custodial torture and extrajudicial killings have access to remedies, including compensation.

#### **2. Constitutional Tort:**

Constitutional tort is a legal concept that allows individuals to sue government officials or agencies for violating their constitutional rights. Essentially, it provides a remedy when state actors infringe upon fundamental liberties. Indian courts have developed the concept of constitutional tort, which allows for the award of compensation to victims of state actions that violate fundamental rights. The Indian legal system has also recognized the concept of constitutional torts, with cases like “*Nilabati Behera vs. State of Orrisa*<sup>20</sup>” playing a crucial role

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<sup>20</sup> *Supra* 10

in its development. In this case, the Hon'ble Supreme Court of India held that the state is accountable for the violation of fundamental rights. The state could not escape its responsibility by claiming that its officers acted in their personal capacity. The court stated that the state is responsible for the welfare of individuals in its custody, and any failure to protect their lives is a violation of the constitutional right to life. A key holding in the case was the recognition of the right to compensation for violation of fundamental rights. The court ruled that when an individual's right to life is violated resulting in death, the next of kin has a right to compensation from the state. The court held that when the state violates the constitutional right to life of a citizen, it has an obligation to provide compensation.

### **C. Challenges in Enforcing Liability**

1. **Impunity and Lack of Accountability:** One of the significant challenges in holding government authorities accountable is the culture of impunity that often surrounds such cases. Investigations into custodial torture and extrajudicial killings are frequently hindered by lack of independence, political interference, and corruption.
2. **Delay in Justice:** Currently 4,43,72,946 cases are pending at different levels in India courts.<sup>21</sup> This pendency of cases leads to the problem of delay in dispensation of justice. The judicial system's delays exacerbate the problem of impunity. Protracted legal proceedings, coupled with the lack of timely and effective investigations, often result in justice being delayed or denied.
3. **Witness Protection:** In cases involving powerful state actors, witnesses may be reluctant to come forward due to fear of retribution. The absence of robust witness protection mechanisms further weakens the prospects of successful prosecution.

## **VI. CASE STUDIES**

### **A. The Encounter Killings in India**

A detailed analysis of several high-profile encounter killings demonstrates the state's role in these extrajudicial actions. The lack of accountability and the state-sanctioned nature of these killings raise serious concerns about the erosion of the rule of law.

Examples,

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<sup>21</sup> *njdg.ecourts.gov.in*. (n.d.-b). Government of India. Retrieved August 13, 2024, from <https://njdg.ecourts.gov.in/njdgnew/index.php>

#### 1. Batla House Encounter (2008)<sup>22</sup>

- Location: Delhi
- Details: The Batla House encounter occurred in the Batla House area of Delhi, where the Delhi Police Special Cell conducted a raid on an apartment, leading to the death of two suspected terrorists and a police officer. The suspects were allegedly linked to the Indian Mujahideen, involved in the 2008 Delhi bombings. The encounter sparked controversy and was questioned by several activists, political figures, and civil society groups who claimed it was a fake encounter.

#### 2. Manipur Encounter Cases<sup>23</sup>

- Location: Manipur
- Details: Manipur, a state in Northeast India, has seen numerous cases of encounter killings, particularly during the conflict between the state forces and insurgent groups. In 2013, a Public Interest Litigation (PIL) was filed in the Supreme Court of India, highlighting 1,528 cases of alleged fake encounters in the state. The Supreme Court ordered a probe into these cases, leading to the registration of FIRs against several security personnel.

#### 3. Disha Rape Case Encounter (2019)<sup>24</sup>

- Location: Hyderabad, Telangana
- Details: Four men accused of raping and murdering a young veterinarian, referred to as "Disha" in media reports, were killed in an encounter by the Telangana Police. The police claimed the accused tried to escape during the crime scene reconstruction. The encounter received mixed reactions, with some praising the swift justice and others questioning the legality.

#### 4. Vikas Dubey Encounter (2020)<sup>25</sup>

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<sup>22</sup> *Batla House encounter case*. (n.d.). wikipedia.org. Retrieved August 10, 2024, from [https://en.wikipedia.org/wiki/Batla\\_House\\_encounter\\_case](https://en.wikipedia.org/wiki/Batla_House_encounter_case)

<sup>23</sup> Top Court Dismisses Manipur Police's Plea In Fake Encounter Cases (A. Vaidyanathan, Interviewer). (2018, November 12). *www.ndtv.com*. Retrieved August 13, 2024, from <https://www.ndtv.com/india-news/manipur-fake-encounter-case-supreme-court-dismisses-plea-for-recusal-of-2-judges-1945893>

<sup>24</sup> Jahnvi. (2022, May 21). Disha case encounter: Nine things Hyderabad cops allegedly lied about. *www.thenewsminute.com*. Retrieved August 13, 2024, from <https://www.thenewsminute.com/telangana/disha-case-encounter-nine-things-hyderabad-cops-allegedly-lied-about-164209>

<sup>25</sup> Ranjan, A. (2023, March 27). Vikas Dubey, Hyderabad rape-murder: A look at stunning encounters in recent years. *www.indiatoday.in*. Retrieved August 13, 2024, from <https://www.indiatoday.in/india/story/vikas-dubey-hyderabad-rape-murder-a-look-at-stunning-encounters-in-recent-years-2352046-2023-03-27>

- Location: Uttar Pradesh
- Details: Vikas Dubey, a notorious gangster from Uttar Pradesh, was killed in an encounter while being transported by the Uttar Pradesh Police after his arrest. The police claimed that Dubey attempted to escape after the vehicle in which he was being transported overturned. The encounter drew significant media attention and skepticism, with many questioning the authenticity of the police's version of events, suspecting it to be a staged encounter.

## B. Torture in Police Custody

Examining instances of custodial torture highlights systemic issues within law enforcement agencies. The case illustrates how torture is often used as a tool for coercion and the challenges in seeking accountability.

Examples,

### 1. Rajan Case (1976)<sup>26</sup>

- Location: Kerala
- Details: Rajan, a 21-year-old engineering student, was arrested during the Emergency period in India for alleged involvement in Naxalite activities. He was taken into police custody and reportedly tortured to death by the Kerala Police. His body was never recovered. The case gained significant attention and became symbolic of the abuse of power by law enforcement during the Emergency. It led to a prolonged legal battle by Rajan's father, who sought justice for his son's death.

### 2. Gudia Case (2009)<sup>27</sup>

- Location: Uttarakhand
- Details: Gudia, a 14-year-old girl, was arrested on charges of theft. She was allegedly tortured and raped in custody by the police. Her death in custody led to widespread protests and highlighted the vulnerability of women and minors to custodial abuse.

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<sup>26</sup> *Rajan case.* (n.d.). wikipedia.org. Retrieved August 13, 2024, from [https://en.wikipedia.org/wiki/Rajan\\_case#:~:text=The%20Rajan%20case%20refers%20to,the%20incident%20to%20the%20public](https://en.wikipedia.org/wiki/Rajan_case#:~:text=The%20Rajan%20case%20refers%20to,the%20incident%20to%20the%20public).

<sup>27</sup> Sharma, A. (2022, December 16). Gudiya Rape Case Shook Himachal Pradesh But Justice Eludes Family Even After Five Years. *www.outlookindia.com*. Retrieved August 13, 2024, from <https://www.outlookindia.com/national/gudiya-rape-case-shook-himachal-pradesh-but-justice-eludes-family-even-after-five-years-news-245245>

### 3.Soni Sori Case (2011)<sup>28</sup>

- Location: Chhattisgarh
- Details: Soni Sori, a tribal school teacher, was arrested on charges of acting as a conduit for Maoists. While in custody, she was allegedly tortured by the police, including sexual assault and insertion of stones into her private parts. Her case garnered international attention, highlighting the issue of custodial torture and abuse of women in custody.

## VII. COMPARATIVE ANALYSIS: INTERNATIONAL JURISPRUDENCE

### A. The Role of the European Court of Human Rights (ECHR)

The European Court of Human Rights (ECHR) plays a crucial role in addressing and mitigating issues related to custodial torture and extrajudicial killings within the member states of the Council of Europe. The ECHR interprets and enforces the European Convention on Human Rights (the Convention), particularly focusing on Articles 2 and 3, which are directly relevant to these issues. Article 2 of the European Convention on Human Rights guarantees the right to life. It is a fundamental provision, stating that:

*"Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."*

Article 3 of the European Convention on Human Rights prohibits torture and inhuman or degrading treatment or punishment, stating:

*"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."*

The ECHR serves as a critical judicial body in Europe for upholding human rights, particularly in cases of custodial torture and extrajudicial killings. Through its interpretations of Articles 2 and 3, the Court has established comprehensive standards and obligations for member states, ensuring the protection of individuals against severe human rights abuses. The ECHR has set significant precedents in holding states accountable for violations of the right to life and protection against torture. Cases such as "Ireland v. United Kingdom" and "Kudła v. Poland" provide valuable insights into how international human rights law can be used to enforce state liability.

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<sup>28</sup> *Soni Sori*. (n.d.). wikipedia.org. Retrieved August 13, 2024, from [https://en.wikipedia.org/wiki/Soni\\_Sori#:~:text=She%20was%20arrested%20by%20the,assaulted%20by%20Chhattisgarh%20state%20police](https://en.wikipedia.org/wiki/Soni_Sori#:~:text=She%20was%20arrested%20by%20the,assaulted%20by%20Chhattisgarh%20state%20police).

## B. The Inter-American Court of Human Rights

The Inter-American Court of Human Rights (IACtHR) plays a pivotal role in addressing custodial torture and extrajudicial killings within the context of the Americas. The Court, established by the Organization of American States (OAS), interprets and enforces the American Convention on Human Rights (ACHR) and other regional human rights instruments. It has developed a significant body of case law and jurisprudence to address these severe human rights violations.

Article 4 of the ACHR guarantees the right to life, stating that

*"Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."*

Article 5 of the ACHR protects individuals from torture and inhuman or degrading treatment, stating,

*"Every person has the right to have his physical, mental, and moral integrity respected."*

The Court has been instrumental in dismantling impunity for state actors involved in custodial torture and extrajudicial killings, reinforcing the principles of justice and the rule of law across the region. The Inter-American Court has similarly held states accountable for extrajudicial killings and custodial torture. Cases like "Velásquez Rodríguez v. Honduras" have been instrumental in shaping the doctrine of state responsibility in human rights violations.

## VIII. RECOMMENDATIONS

The majority of countries in the world have made a formal commitment to eradicating custodial torture and extrajudicial killings but its actual implementation is important. UNCAT currently has 83 signatories and 171 parties who are committed to punishing and compensating acts of custodial torture and extrajudicial killings within their jurisdiction. Despite these prohibitions, various reports confirm that custodial torture and extrajudicial killings remain a reality in all parts of the world. Here are some recommendations that should be implemented in our country to prevent such cases:

- a) **Strengthening Legal Frameworks:** India must ratify the UNCAT and enact comprehensive anti-torture legislation to strengthen its legal framework against custodial torture. Additionally, clearer guidelines and stringent accountability mechanisms should be established to prevent extrajudicial killings.
- b) **Enhancing Independent Oversight:** The establishment of independent oversight bodies with the authority to investigate and prosecute cases of custodial torture and

extrajudicial killings is essential. The NHRC's role should be expanded, and its recommendations made binding.

- c) **Judicial Reforms:** Speedy trials and the establishment of special courts to deal with cases of custodial violence and extrajudicial killings could significantly improve the justice delivery system. Ensuring the independence of the judiciary is crucial in this regard.
- d) **Witness Protection Programs:** Implementing robust witness protection programs will encourage witnesses to come forward, thereby improving the chances of successful prosecution in cases involving state actors.

## **IX. CONCLUSION**

This detailed legal research article covers the critical aspects of the liability of government authorities in custodial torture and extrajudicial killings, offering a comprehensive analysis for understanding and addressing these grave human rights violations. The liability of government authorities in cases of custodial torture and extrajudicial killings is a critical issue that impacts the rule of law and human rights. While the legal frameworks exist, their enforcement remains a challenge due to issues of impunity, lack of accountability, and systemic corruption. Through a combination of legal reforms, independent oversight, and international cooperation, it is possible to strengthen the mechanisms for holding government authorities accountable, thereby ensuring justice for victims and upholding the principles of human rights.

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