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PREVENTION OF CUSTODIAL VIOLENCE IN INDIA AND THE ROLE OF THE SUPREME COURT

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Abstract:

Custodial violence is still a major problem in India, where it violates fundamental human rights and damages the criminal justice system's reputation. This study looks at the patterns and prevalence of deaths that occur while a person is in custody, assesses the current legal system, and looks at the effects these deaths have on both individuals and society as a whole. Taking a doctrinal approach, the study examines laws, court rulings, judicial interpretations, and national and international human rights standards to obtain a thorough understanding of the problem. In particular, it examines the BNS, BNSS, Supreme Court orders, and international human rights treaties' legislative provisions to determine how well they prevent torture and fatalities in detention. Understanding trends in deaths that occur while a person is in custody, evaluating the effectiveness of legal protections, and investigating their wider human rights implications are among the goals. The study also recommends changes to fix gaps in institutional systems, judicial oversight, and law enforcement. Overall, it emphasizes the pressing need for more robust legislation. In the end, efficient execution, and increased institutional responsibility, all the while acknowledging the Supreme Court's vital role in establishing guidelines and defending rights in detention settings.

Keywords: Supreme Court, Human Rights, Custodial Deaths, Custodial Violence

Introduction:

Custodial death is the term used to describe a person's passing while they are in the custody of law enforcement, such as the police or prison officials. In the Indian legal system, this problem has become a major obstacle and presents serious human rights issues. These fatalities frequently indicate systemic problems with the criminal justice system, such as abuse of power, a lack of openness, inadequate training of law enforcement, and a generalized feeling of impunity. A comprehensive examination of the underlying causes, the legal framework that governs them, and the societal ramifications of these deaths is necessary to address custodial deaths. Particularly when it comes to arrest and incarceration, the Indian Constitution offers a solid legal basis to protect people from capricious official acts. Article 21 guarantees the right to life and personal freedom, while Article 22 establishes protections such the right to legal representation, the right to know the reasons for an arrest, and the right to appear before a magistrate within twenty-four hours. Frequent cases of deaths in custody, however, emphasize the critical need for structural changes by glaringly exposing the disconnect between constitutional rights and their actual application. The Bhartiya Nyaya Sanhita 2023 (BNS) has a number of clauses that may be pertinent in situations of death in custody. Deaths caused by excessive force or torture by law enforcement personnel may be covered by Section 101 of the BNS of the IPC, which addresses murder. Similarly, when a death is caused by careless or irresponsible behaviour, Section 103 of the BNS, which deals with culpable homicide that does not amount to

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murder, may be applicable. However, it is more difficult to prosecute such situations and frequently results in insufficient punishment for those involved due to the absence of particular legislation that addresses custodial fatalities directly. Socioeconomic position has a big impact on what happens in jail, and marginalized people are more likely to be violently attacked or killed. Caste, religious, and ethnic discrimination exacerbates these vulnerabilities and reflects structural injustices within the criminal justice system.

International agreements that forbid torture and require official accountability, such as the ICCPR and the Convention Against Torture, are not always applied consistently in India. In a culture of impunity, law enforcement can act without worrying about the repercussions, while victims' families experience harassment, intimidation, and a lack of faith in the legal system.

Despite important rulings encouraging accountability from the Supreme Court, enforcement is lax. Organizations dedicated to human rights and civil society have played a crucial role in drawing attention to violations, promoting changes, and increasing public understanding. Comprehensive reforms are needed, including a **specific anti-torture law,** independent oversight bodies, and better **training for law enforcement** on human rights and ethical practices. Public awareness campaigns can empower citizens to report abuse and demand accountability. Custodial deaths remain a grave challenge to justice and human dignity in India. Bridging the gap between constitutional guarantees, international commitments, and on-ground realities requires stronger laws, effective enforcement, and active public engagement.

Objectives of the study:

1. To Analyse the Prevalence and Patterns of Custodial Deaths.
2. To Examine Legal Frameworks.
3. To Assess the Impact of Custodial Violence.
4. To Explore Human Rights Violations.
5. To Propose Recommendations for reforms.

Research Methodology:

This study examines the issue of custodial violence in India and the Supreme Court's involvement in preventing it using a doctrinal research technique. Doctrinal research is the process of analysing and interpreting statutes, court rulings, legal concepts, and other legal resources in order to comprehend the current legal system and how it is used in real-world situations. Constitutional provisions, legislation, case law, academic publications, and official reports are just a few of the main and secondary legal sources that are thoroughly reviewed as part of the research technique. Important Supreme Court rulings and pertinent legislative acts are examples of primary legal sources that offer the theoretical framework for examining the laws and beliefs controlling violence in Indian prisons.

Literature Review:

Systemic Problems: Despite constitutional safeguards, custodial torture persists due to legislative gaps, weak institutions, and poor enforcement of existing protections.

Authority Abuse: Warrantless arrest powers under Section 35 of BNSS 2023 are misused, particularly targeting marginalized communities through prolonged illegal detentions.

Impunity Culture: Section 218 of BNSS requiring government sanction to prosecute officials, combined with ineffective judicial inquiries, creates accountability gaps and delayed justice.

Rights Violations: Custodial violence breaches Article 21 (right to life), Articles 14, 21, 22 (due process), and international obligations under UDHR and ICCPR.

Weak Safeguards: Statutory protections like 24-hour magistrate production (Section 58), arrest

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documentation, and RTI Act 2005 transparency remain poorly implemented.1

Judicial Response: Landmark cases like D.K. Basu v. State of West Bengal (1997) established safeguards, but weak implementation limits their impact.

Institutional Gaps: Absence of specific anti-torture legislation, inadequate penalties, and limited NHRC oversight hinder reform and accountability.

Discrimination: Marginalized groups (Dalits, minorities, poor) face higher vulnerability due to structural discrimination and public distrust in law enforcement, discouraging reporting and justice.

Causes and factors contributing to custodial atrocities

1. Abuse of Authority and Power
   One of the main causes of custodial atrocities in India is law enforcement abuse of authority, which manifests itself in arbitrary arrests, disproportionate force, and a lack of accountability.
   Arbitrary Detentions and Arrests
   Although warrantless arrests are permitted under Section 35 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) in some circumstances, this authority is frequently abused, especially against underprivileged groups. Prolonged detentions without alerting detainees of charges or presenting them before a magistrate are the result of inadequate oversight and procedural safeguards, which violate fundamental rights and permit abuses in custody. A crucial legislative gap in addressing arbitrary arrests and custodial violence has resulted from the unenacted Prevention of Torture Bill, 2017, which sought to outlaw torture and give victims with remedy.

2. Insufficient responsibility and impunity
   One of the main causes of custodial atrocities in India is the absence of accountability and impunity in law enforcement. The different facets of accountability deficiencies and impunity are examined in this part, including insufficient oversight procedures, structural obstacles to accountability, and the non-prosecution of those responsible for acts of custodial violence. It also looks at the laws controlling law enforcement personnel' accountability and the difficulties in holding them responsible for power abuses.

Human Rights aspects:
1. The right to physical integrity and life

Human dignity is based on the right to life and physical integrity, which are safeguarded by the Indian Constitution, the UDHR, and the ICCPR. The rights to life, liberty, and security are upheld by Article 3 of the UDHR and Article 21 of the Constitution. This right is flagrantly violated by extrajudicial executions, disappearances, and torture in detention, which damages people physically and psychologically and undermines confidence in the rule of law and official institutions.

The right to due process and a fair trial

Justice and equality before the law is guaranteed by the right to a fair trial. Articles 14, 21, and 22 of the Indian Constitution provide protections against arbitrary detention, equality, and liberty. The Bharatiya Sakshya Adhiniyam, 2023 (BSA) guarantees that evidence, including confessions, must be trustworthy and voluntary, while the BNSS, 2023 specifies processes for investigation, arrest, remand, and witness examination.
Other precautions consist of:
The RTI Act of 2005 encourages accountability and openness.
The Legal Services Authorities Act of 1987

[1] https://www.legalservicesindia.com/article/1893/Custodial-Violence-in-India.html#google_vignette
https://www.livemint.com/Opinion/DR8kPY8VKUDyMlkR2OHUfM/Budgeting-for-the-police.html

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offers underprivileged populations free legal assistance.

The Juvenile Justice Act of 2015 guarantees minors in legal trouble their rights, equitable treatment, and rehabilitation.

Protection Against Unjustified Detention and Arrest

A fundamental human right that protects liberty and stops abuse by the state is the prohibition against arbitrary arrest and detention. This right is protected in India by international treaties, the BNSS, 2023, and the Constitution. According to Article 22, no one may be arrested or held without following the proper procedures, which include being told of the reasons for the arrest, speaking with an attorney, and appearing before a magistrate within twenty-four hours. Although Section 35 of the BNSS, 2023 permits arrests without a warrant in certain circumstances, abuse frequently takes place. For less serious violations, Section 41A requires a notice to appear rather than an arrest. Lawful arrest procedures are outlined in Sections 43 and 47. These procedures include assuring legal representation, writing a memorandum of arrest, and advising the subject of their rights. Section 187 regulates custody remand, which can last up to 60 days in cases that are magistrate-triable and 90 days in sessions cases if no charge sheet is submitted. Section 58 limits detention without a warrant to 24 hours.

The Juvenile Justice Act of 2015, which ensures that minors are treated fairly and are rehabilitated, the Legal Services Authorities Act of 1987, which offers free legal help to underprivileged groups, and the RTI Act of 2005, which encourages transparency in arrests, are further safeguards. India is a signatory to international treaties such as the ICCPR and CRC, which strengthen the duty to protect people against arbitrary arrest and maintain procedural justice.

Constitutional provisions and Fundamental Rights

The term "State" is defined in Article 12 and encompasses the government, legislatures, municipal governments, and government-controlled agencies.

Any law that infringes upon Fundamental Rights (FRs) is declared void by Article 13
Equality of Rights (Art. 14–18)

14. Equal rights under the law.

15. No discrimination; extra consideration for women, children, and underprivileged groups.

16. Equal employment possibilities in the public sector.

17-Untouchability is abolished.

18- Titles are abolished (except from academic and military ones).

Right to Freedom (Articles 19–22)

19. Freedom of expression, assembly, travel, housing, and occupation.

20. Defense against self-incrimination, double jeopardy, and ex post facto statutes.

21. Personal liberty and the right to life.

21A: Free schooling for children aged 6 to 14.

22. Preventive detention measures and protection from arbitrary arrest.

Article 23–24: Right Against Exploitation

23. Prohibition of forced labor and trafficking.

24-No youngster under the age of 14 may work in dangerous jobs.

Religious Freedom (Articles 25–28)

25. Religious and conscience freedom.

26. Oversee religious matters.

27-There is no tax on religious promotion.

28-State schools are not allowed to teach religion.

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Rights to Culture and Education (Art. 29–30)

29-Preserves language and cultural rights.

30. Educational institutions can be founded and operated by minorities.

Article 32–35: Right to Constitutional Remedies
32-The ability to petition the Supreme Court for writs to enforce FR.[2]

33–35: Adjust or suspend military personnel's rights or in times of emergency

Criminal justice and procedural protections
In order to uphold peace and order, provide justice, and defend the rights of those who are accused of crimes, India's legal system for criminal law and procedural safeguards is essential. This section examines the particular provisions of the criminal law and procedural protections statutes, emphasizing their importance and ramifications for the Indian legal system.

1. Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)

Investigation: Sections 173–196 of the BNSS provide the protocols for looking into both cognizable and non-cognizable offenses. While Section 174 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) addresses information in non-cognizable instances, Section 173 of the BNSS requires the registration of First Information Reports (FIRs) for cognizable offenses. Police personnel are empowered to investigate crimes under Sections 175 to 178, which also provide them the authority to search, detain, and question witnesses. Aspects of the inquiry, including searches, property seizures, and witness examinations, are outlined in Sections 179 to 196.

Custody and Arrest (Sections 35–61)

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) has provisions for the custody and arrest of those who are accused. In some situations, police officers are authorized by Section 41 to make an arrest without a warrant. The process for making an arrest, including how it is carried out, how notices are given, and how arrest memoranda are prepared, is covered in Sections 35 to 61. Section 57 limits the amount of time that someone can be held without a warrant and mandates that everyone who has been arrested appear before a magistrate within twenty-four hours.

Sections 480–498 of the BNSS Address Bail and Bonds

While Section 482 addresses bail in non-bailable offenses, Section 480 allows for the release of individuals accused of bailable offenses on bail. The High Court and Court of Sessions are authorized by Section 438 to issue anticipatory bail to those who are facing arrest. The process for granting bail, release requirements, and forfeiture of bail bonds are outlined in Sections 485 to 498.

Trial (Sections 148–366)

The BNSS's Sections 148–366 regulate how cases are tried in court. While Section 301 addresses the court's authority to have separate trials, Section 248 allows for the accused to stand trial together. The process for drafting charges, determining the offense, and holding trials is described in Sections 250 to 260. The trial of summons cases, warrant cases, and summary trials are covered in Sections 261 to 273.

Evidence (Sections 42–95)

The BNSS's Sections 42–95 regulate the admissibility and applicability of evidence in court. Section 42 establishes guidelines for assessing the evidence of expert opinions.

whereas oral and documentary evidence are covered in Sections 43 to 61. The processes for witness examination and cross-examination, document production, and evidence recording are covered in depth in Sections 63 to 95.

Judgements and Sentences (Sections 392-406)

[2] https://blog.ipleaders.in/all-you-need-to-know-about-section-3-of-the-indian-evidence-act-1872/
https://timesofindia.indiatimes.com/readersblog/shubham-kashyap/major-problems-of- prison-system-in-india-40079/

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The CrPC's Sections 392–406 address judgments and sentences. Courts are required by Section 392 to render decisions in public and state their conclusions. The different kinds of penalties that can be applied, including as fines, incarceration, and death sentences, are described in Sections 354 to 40.

CHALLENGES AND IMPEDIMENTS IN COMBATING CUSTODIAL ATROCITIES

Lack of Accountability and Impunity Because of India's lax accountability systems, custodial abuse frequently goes unpunished. In order to prosecute public personnel, Section 218 of the BNSS, 2023, requires prior government approval; nevertheless, this requirement is frequently abused, leading to delays and shielding perpetrators. In custodial deaths, Section 196 of the BNSS requires judicial investigations; however, these investigations are frequently inefficient and biased. The lack of a clear legislation that makes custodial violence a crime erodes enforcement even more by creating ambiguities in the definition of offenses, punishments, and protections, which feeds the impunity culture.

Inadequate Legal Framework

It is challenging to attain accountability and justice in India because to the inadequacy of the legal structure that prevents custodial atrocities. Existing legal ambiguities result in varied interpretations and feeble prosecution, while minimal sanctions are insufficient to effectively deter such abuses. Furthermore, inmates are exposed to rights breaches due to the absence of strong protections. Efforts to successfully address custodial violence are weakened by the narrow reach of many current rules, which frequently only apply to particular agencies or types of inmates.

Judicial pronouncement

Amar Singh v. State of Rajasthan the Supreme Court of India tackled the problems of police misconduct and custodial violence in this historic decision. Amar Singh, the petitioner, claimed that while in Rajasthani police custody, he endured assault and torture. In its ruling, the Court underlined the fundamental rights protected by the Constitution as well as the state's obligation to shield citizens from capricious police tactics. Important precedents pertaining to the ban on torture and the responsibility of state authorities in averting violence in detention were established by this case.

D.K. Basu v. State of West Bengal the seminal case of D.K. Basu v. State of West Bengal established rules to guard against violence in detention and guarantee the defense of fundamental rights. In order to protect the rights of detainees, the petitioner, D.K. Basu, called for judicial action and cited cases of torture and deaths in West Bengali prisons. In its landmark ruling, the Supreme Court imposed what are known as the "D.K. Basu guidelines," which required a number of protections, including the necessary recording of arrests, notifying the detainee's family, and performing medical examinations.

In India, this case established a standard for judicial activity in defending human rights and stopping abuses in detention.

Dilawar v. Delhi State The case of Dilawar v. State of Delhi raised awareness of the problem of fatalities and violence in detention within the framework of the criminal justice system. During his time in Delhi police custody, petitioner Dilawar died as a result of custodial torture. In its ruling, the Supreme Court stressed the need of responsibility and openness in custodial death cases, ordering strict actions to stop such occurrences in the future. This case demonstrated the value of court supervision and the state's duty to uphold the rights and dignity of those who are detained. 3

[3] Avinash Kumar v. State of Madhya Pradesh (2016) 8 SCC 629 42
Bhagalpur Blinding Case (Bhagalpur Riot Victims v. State of Bihar) AIR 1984 SC 911 43
D.K. Basu v. State of West Bengal (1997) 1 SCC 416 44
Dilawar v. State of Delhi (2007) 12 SCC 641

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Conclusion:

Custodial violence in India is deeply rooted in systemic flaws in justice administration and human rights protection. Despite constitutional safeguards, statutory measures, and international conventions, gaps in accountability, oversight, and enforcement perpetuate a cycle of impunity. Excessive force, torture, and abuse by law enforcement not only harm individuals but also erode public trust and undermine the rule of law. Weak investigation, prosecution, and redressal mechanisms, along with societal biases and political interference, worsen the issue. Addressing this requires a comprehensive approach: enacting strict laws criminalizing custodial abuse, ensuring independent investigations, strengthening institutions, and raising public awareness to uphold justice, equality, and dignity.

Suggestion:

Legal, institutional, and societal aspects must all be included in any recommendations for resolving custodial violence in India. The following suggestions are offered:

1. Reforms in the Law: Adopt specific laws that define and make custodial violence a crime, with precise definitions, severe punishments, and protections for the legal process. Close legal loopholes and guarantee prompt, unbiased investigations and prosecutions of incidents involving custodial violence.
2. Improved Monitoring Systems: Boost the ability and impartiality of monitoring organizations like the State Human Rights Commissions (SHRCs) and the National Human Rights Commission (NHRC) to efficiently track, look into, and address cases of violence against inmates. Make sure that police stations and jail centres are regularly inspected.
3. Accountability Measures: Hold those responsible for acts of custodial violence accountable in order to foster accountability within law enforcement organizations. Without delay or impunity, prosecute and punish offenders, including through criminal prosecutions and disciplinary measures.
4. Training and Sensitization: Offer thorough training courses on human rights principles, moral behaviour, and noncoercive interrogation methods to law enforcement officers, judges, and monitoring organizations. Sensitize officers to the impact of custodial violence on individuals and communities, emphasizing the importance of respecting human dignity and rights.
5. Community Engagement: To establish trust, encourage openness, and resolve underlying issues, encourage communication and cooperation between local communities and law enforcement organizations. Support community police programs that put an emphasis on problem-solving, involvement, and conflict resolution rather than coercion and violence.

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