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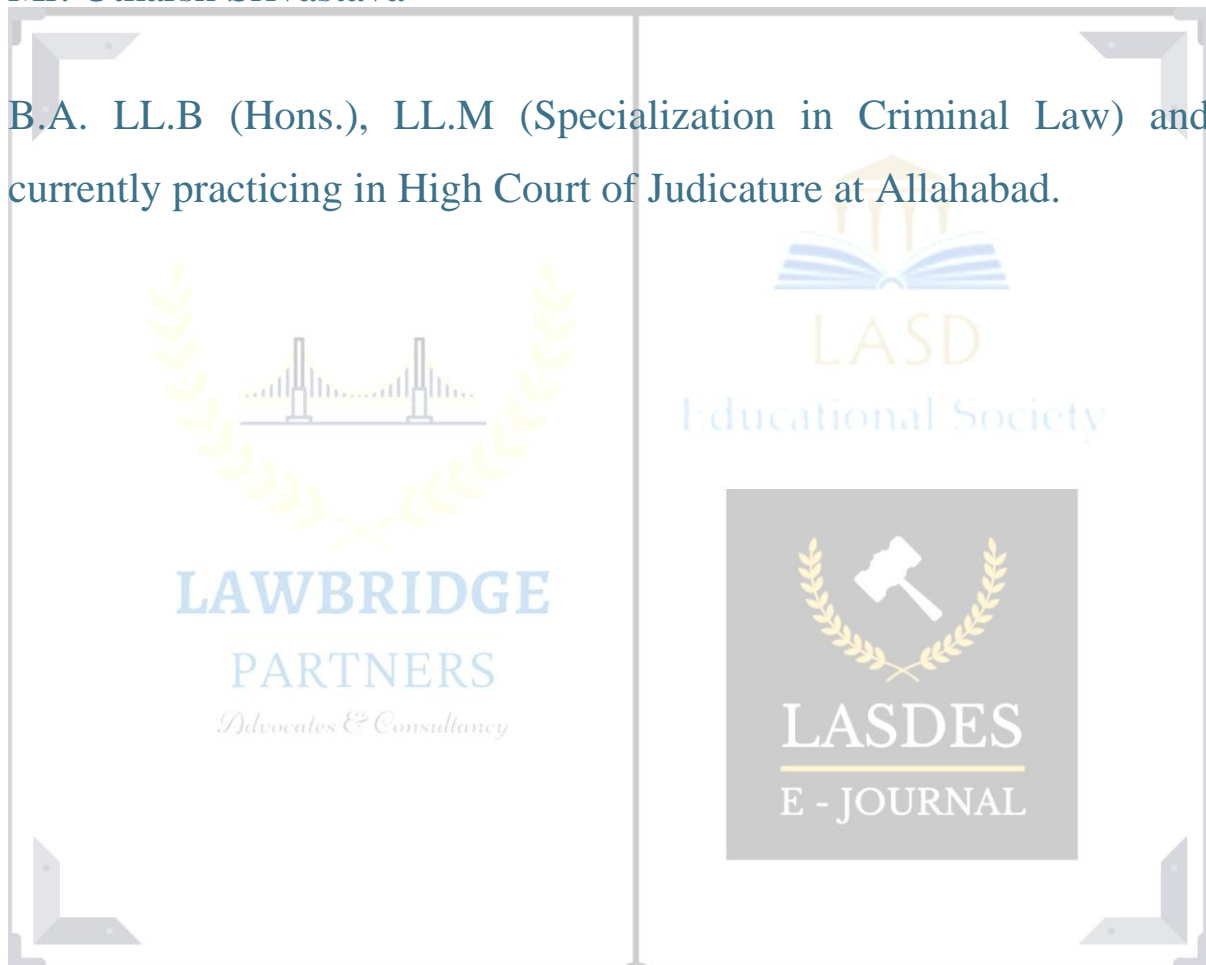
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**CUSTODIAL DEATHS IN MODERN INDIA: A  
CONTEMPORARY PERSPECTIVE – KIRTI GUPTA**

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# CHAPTER-I

## INTRODUCTION

### 1. Background

Custodial deaths, defined as fatalities occurring in police or judicial custody, are a grave violation of human rights. These deaths often result from physical abuse, psychological torture, denial of medical care, or neglect by authorities. Custodial violence is not a new phenomenon in India; its roots can be traced to the colonial era, where police brutality was institutionalized as a means of suppressing dissent. Despite constitutional safeguards and legal provisions in post-independence India, the persistence of custodial deaths highlights systemic failures in the country's justice and law enforcement systems.

### 2. Significance of the Research

In a democratic society, the sanctity of human life is paramount, making custodial deaths not just a legal issue but a moral and societal concern. The occurrence of such deaths undermines public trust in law enforcement and the judiciary,

eroding the foundations of democracy. Addressing custodial violence is crucial for upholding the rule of law, ensuring accountability, and protecting marginalized communities disproportionately affected by systemic abuse.

### **3. Objectives of the Study**

This research aims to analyze the causes and trends of custodial deaths in modern India, assess the effectiveness of existing legal frameworks, and explore contemporary challenges. It seeks to propose policy recommendations that align with international human rights standards and foster accountability and transparency within law enforcement agencies.

### **4. Methodology**

The study adopts a mixed-method approach, drawing on qualitative and quantitative data. Sources include National Crime Records Bureau (NCRB) reports, landmark judicial judgments, case studies like the Jayaraj-Bennix incident, and international human rights treaties. By integrating data

analysis with narrative accounts, the research provides a comprehensive understanding of the issue.





## CHAPTER – II

### CONCEPTUAL FRAMEWORK

#### 1. Definition and Forms of Custodial Deaths

Custodial deaths refer to fatalities that occur during police or judicial custody. These deaths often stem from various forms of abuse and neglect:

**Physical Abuse:** Torture or excessive force by law enforcement officials leading to severe injuries or death.

**Denial of Medical Aid:** Neglecting timely medical assistance to individuals in custody, resulting in preventable fatalities.

**Psychological Torture:** Emotional and mental harassment causing extreme stress, which may lead to suicide or other fatal consequences.

**Deaths from Neglect:** Poor conditions in detention facilities, such as lack of hygiene, overcrowding, and inadequate nutrition, contributing to deaths.

#### 2. Legal and Constitutional Provisions

India has a robust legal framework to address custodial violence, yet enforcement remains a challenge:

- **Constitutional Safeguards:**

**Article 21:** Guarantees the right to life and personal liberty, ensuring no individual can be deprived of life except by due process of law.

**Article 22:** Protects against arbitrary arrest and ensures the right to legal representation and information about the arrest grounds.

- **Indian Penal Code (IPC):**

**Section 302:** Punishment for murder.

**Section 330/331:** Penalizes voluntary harm caused to extract confessions or information.

**Section 376C:** Addresses sexual violence in custody.

- **Criminal Procedure Code (Cr.P.C.):**

**Section 176:** Mandates judicial or magistrate inquiry in cases of custodial deaths.

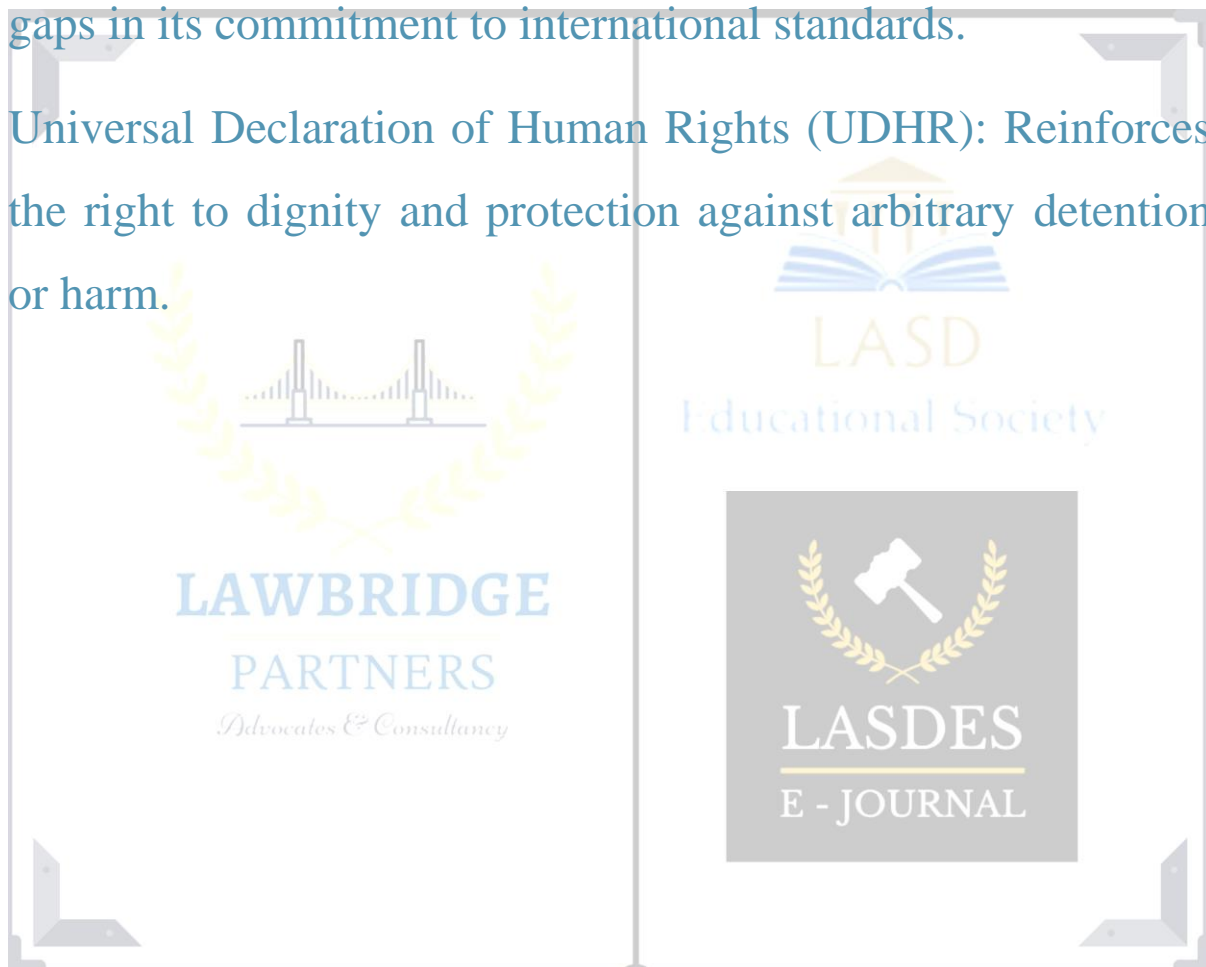
### 3. International Conventions and Treaties

India is a signatory to several international human rights treaties, which mandate the prevention of custodial violence:

International Covenant on Civil and Political Rights (ICCPR): Ensures the right to life and prohibits torture or inhuman treatment.

UN Convention Against Torture (CAT): Though India has signed the CAT, it is yet to ratify the convention, reflecting gaps in its commitment to international standards.

Universal Declaration of Human Rights (UDHR): Reinforces the right to dignity and protection against arbitrary detention or harm.



## CHAPTER – III

### Causes and Factors Contributing

#### 1. Systemic Factors

- **Lack of Police Accountability:**

The absence of robust oversight mechanisms allows law enforcement officials to act with impunity.

Weak internal disciplinary actions and poor external monitoring exacerbate the problem.

- **Ineffective Oversight Mechanisms:**

Bodies like the National Human Rights Commission (NHRC) have limited powers to enforce accountability.

Failure to conduct independent and impartial investigations into custodial deaths often leads to cover-ups.

- **Corruption and Misuse of Power:**

The coercive power of the police is frequently misused to extract confessions or intimidate detainees.

A culture of corruption within law enforcement shields offenders from prosecution.

## 2. Socio-economic and Political Dimensions

- **Marginalization of Vulnerable Groups:**

Individuals from economically weaker sections, marginalized castes (e.g., Dalits), and minority communities are disproportionately targeted.

Discrimination and bias within the police system aggravate violence against these groups.

- **Politicization of Police Forces:**

The police are often used as tools for political vendettas, leading to illegal detentions and custodial violence.

Political interference undermines the autonomy and impartiality of law enforcement.

- **Cultural Acceptance of Torture:**

There exists a societal and institutional normalization of custodial violence as a legitimate means to extract information or punish accused individuals.

## 3. Institutional Gaps

- **Poor Training and Sensitization:**

Law enforcement personnel lack adequate training in human rights and conflict resolution.

The absence of sensitization programs perpetuates a culture of brutality and disregard for human dignity.

- **Overburdened Judicial System:**

Delays in trials and prolonged detentions increase the likelihood of custodial abuse and neglect.

The absence of timely legal remedies discourages victims and their families from seeking justice.

- **Deficiencies in Infrastructure:**

Overcrowded prisons, lack of basic amenities, and insufficient medical facilities contribute to fatalities in custody.

Limited access to CCTV cameras or body-worn devices hinders accountability in custodial settings.

## CHAPTER – IV

### Trends and Data Analysis

#### 1. Statistical Overview

- **Custodial Death Statistics (NCRB Data):**

The National Crime Records Bureau (NCRB) reports an alarming number of custodial deaths annually.

For example, in 2020, 76 custodial deaths were officially recorded, but many incidents go unreported.

A significant number of these deaths result from torture, injuries during custody, or denial of medical aid.

- **State-wise Trends:**

States like Uttar Pradesh, Maharashtra, Tamil Nadu, and Gujarat often report higher numbers of custodial deaths.

Regional disparities highlight varying levels of accountability and governance across states.

- **Demographic Analysis:**

Marginalized groups, including Dalits, Muslims, and individuals from economically weaker sections, are disproportionately affected.

A gendered analysis shows that while custodial violence predominantly affects men, women are vulnerable to sexual harassment and assault in custody.

## 2. Case Studies and Key Incidents

- **The Jayaraj-Bennix Case (2020):**

The custodial deaths of a father and son in Tamil Nadu due to police brutality sparked nationwide outrage.

It exposed systemic issues like unchecked torture, lack of oversight, and delayed accountability mechanisms.

- **Other Notable Cases:**

Cases such as the alleged custodial torture of Dalit youth Rohith Vemula highlight the intersection of caste discrimination and institutional violence.

Incidents of custodial deaths following minor offenses indicate the disproportionate use of force by law enforcement.

## 3. Emerging Patterns



- **Nature of Offenses Leading to Custody:**

Many individuals in custody are accused of minor crimes, highlighting the misuse of detention as a punitive measure.

Arbitrary detentions and arrests under political or communal pressures are recurring themes.

- **Underreporting and Lack of Transparency:**

NCRB data often does not capture unreported custodial deaths or those disguised as suicides or natural causes.

Weak documentation systems within police departments exacerbate the lack of reliable data.

- **Trends in Judicial Oversight:**

Despite the Supreme Court's guidelines in *D.K. Basu v. State of West Bengal* (1997), compliance remains inconsistent across states.

#### **4. Societal Impact of Custodial Deaths**

- **Community Distrust:**

High-profile cases of custodial deaths erode public trust in law enforcement and judicial systems.

- **Impact on Victims' Families:**

Families of victims often face harassment, stigma, and prolonged legal battles, compounding their suffering.

## 5. Data Interpretation and Challenges

- **Challenges in Collecting Reliable Data:**

Lack of independent auditing of custodial death records limits the credibility of official statistics.

Resistance from police departments in providing transparent data is a significant barrier.

- **Call for Comprehensive Data Monitoring:**

Improved use of technology, such as digitized records and independent audits, is essential to ensure accurate reporting and accountability.



## CHAPTER – V

### Legal Framework and Judicial Responses

#### 1. Domestic Legal Measures

##### A. Constitutional Provisions

- **Article 20:** It grants protection against arbitrary and excessive punishment to an accused person, whether a citizen or foreigner or legal person like a company or a corporation. It contains three provisions in that direction:

**No *ex-post-facto* law:** It provides that a person should be prosecuted as per those laws that were in force when he committed the offense.

- **No double jeopardy:** It provides that a person shall not be prosecuted and punished for the same offense more than once.

- **No self-incrimination:** It provides that a person accused of an offense shall not be compelled to be a witness against himself.

In **Selvi vs. State of Karnataka**, it was observed that the state could not perform narco-analysis, polygraph, and brain-mapping tests on any individual without their consent.

**Article 21:** It provides the citizens of India with the right to life and personal liberty. Following are certain rights available for prisoners:

- Right to Bail
- Right against Solitary Confinement
- Right against Inhuman Treatment
- Right against Illegal Detention
- Right to a Speedy and Fair Trial
- Right to meet Friends and Consult a Lawyer

**Article 22:** It guarantees protection against arrest and detention in certain cases and provides that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest.

- The Right to be presented before a magistrate within 24 hours of arrest.
- The Right not to be ill treated or tortured during arrest or in custody.

**Role of State Government:**

Police and public order are State subjects as per the Seventh Schedule of the Constitution of India.

It is primarily the responsibility of the state government concerned to ensure the protection of human rights.

### **Role of Central Government:**

The Central Government issues advisories from time to time and also has enacted the Protection of Human Rights Act (PHR), 1993.

It stipulates establishment of the NHRC and State Human Rights Commissions to look into alleged human rights violations by public servants.

### **Legal Provisions:**

#### **Criminal Procedure Code (CrPC):**

- **Section 41:** Arrests and detentions for interrogation have reasonable grounds and documented procedures and arrests are made transparent to family, friends, and the public, and there is protection through legal representation.

- **Section 49:** It provides that the police are not permitted to use more restraint than is necessary to prevent the escape of the person.
- **Section 176:** It requires the Magistrate to hold an inquiry into the cause of death whenever a person dies in custody of the police.

There are some provisions like Section 53, 54, 57, and 167 which are aimed at providing procedural safeguards to a person arrested by the police.

#### Indian Penal Code:

- **Section 302:** A police officer murdering an accused in custody shall be punished for the offense of murder.
- **Section 304:** A police officer can be punished for custodial death under ‘culpable homicide not amounting to murder’.

The provisions of ‘causing death by negligence’ under Section 304 can also be attracted if the case falls within its ambit.

- **Section 306:** Once the victim has committed suicide and if it is proved that the police officer has abetted the

commission of such suicide, then the police officer will be held liable for punishment under section 306.

- **Section 330 & 331:** If a police officer voluntarily causes hurt or grievous hurt to extort confession, then such police officer shall be punished under section 330 of IPC for voluntarily causing hurt or under Section 331 of IPC for voluntarily causing grievous hurt.
- **Section 342:** A police officer can also be punished for wrongful confinement.

### **Protection under Indian Evidence Act, 1872:**

Section 25 of the Act provides that a confession made to the police cannot be admitted in Court.

Section 26 of the Act provides that a confession made to the police by the person cannot be proved against such person unless it is made before the Magistrate.

### **Indian Police Act, 1861:**

Sections 7 & 29 of the Police Act, 1861 provide for dismissal, penalty or suspension of police officers who are negligent in the discharge of their duties or unfit to perform the same.

### **D. Role of the National Human Rights Commission (NHRC)**



Established under the Protection of Human Rights Act, 1993, the NHRC plays a vital role in monitoring and addressing custodial violence.

Powers of the NHRC include investigating custodial deaths, issuing guidelines for human rights protection, and recommending compensation for victims' families.

## 2. Landmark Judicial Judgments

- **In the case of D.K Basu vs. State of West Bengal (1997)**, a letter to the chief justice of India was submitted by the executive chairman of Legal Aid Services, who is also registered as a non-political organization worker. The letter was in reference to the deaths which takes place in judicial custody and police lock-ups. It was stated for a serious investigation into the matter and the introduction of a new concept that is “custodial jurisprudence”. The letter further mentioned about the negligent functioning of the concerned police authorities and that is one of the major reasons why several custodial deaths goes unpunished. The letter was taken as a “writ petition” looking into the importance of the raised issue. Long back there was no suitable channel which



could be followed in the cases of custodial deaths. After the writ petition a notice was also given to the respondents.

The Supreme Court after a proper investigation came up with certain guidelines for the investigation of case by the police officers. They are as follows;

(a) According to the provisions of the code, after the arrest of a person by the police officer, it becomes their duty to handle and then investigate the case in a fair and correct manner.

(b) A memo must be prepared by a police officer and all procedures should be followed without fail. If a person needs to be arrested, there exists the rights of the accused to have either of his family members or friends during arrest. The police personnel without fail must give the time and place of the arrest of accused.

(c) The notification about the arrest of the accused must be given to either the family or friend within 8-12 hours of arrest.

(d) The diary should be maintained by the officers who disclose the date and time at which the accused was arrested and other required information of family and friends.

**In the case of Sunil Batra v. Delhi Administration, (1978)** it was observed by the Indian judicial system that inhuman torture and treatment is against the Article 21 of the constitution of India which includes the right to live with human dignity. The rights provided under article 21 is not only limited to being a fundamental right but it is also extended being a human rights as well.

- **In another case of A.D.M Jabalpur v. Shiv Kant Shukla, (1976)** it was observed by Justice H.R Khanna observed that a person can never be denied his fundamental right to life and personal liberty. The term life was provided with another meaning which was not only limited to mere existence.
- **In the case of Khatri v. State of Bihar, (1980)** the supreme court held that in situation wherein 30 prisoners were blinded by pouring acid by a police officer is something which cannot be condemned. The officer must be punished for violating the provisions of Art. 21 of Indian Constitution.
- **In the case of R.P Kapur v. State of Punjab, (1960),** the SC held that if the officer is investigating a case, then he should do his duty without resorting to brutal and

heinous methods. A fair and systematic method must be adopted for the whole functioning.

- **In the leading case of Munshi Singh Gautam v. State of Madhya Pradesh, (2004)** The honourable SC of India threw light amid the increasing cases of judicial violence.

A lot of concern was shown towards this issue. It was stated that the rapid increase, the nation as well as its citizens are put under a dangerous threat and their lives are in danger when they are handed to the police in criminal cases. This not only poses a threat to their lives but violated and denies their lives but violated and denies their basic fundamental rights too.

- **In Prakash Singh v. Union of India, (2006)** the Hon'ble Supreme Court of India stated that a fair investigation must be ensured by the state and suitable steps should be taken by the government in order to bring the reforms in the nation for a smooth functioning of the society. There must be a system where the rules and regulations should be abided by properly by the citizens.

### **3. International Obligations**

#### **A. United Nations Convention Against Torture (CAT)**

India signed the CAT in 1997 but has not yet ratified it, citing issues with domestic implementation. Ratification would require stronger laws against custodial torture and accountability mechanisms.

## **B. Universal Declaration of Human Rights (UDHR)**

Article 5 prohibits torture and cruel or degrading treatment, aligning with India's constitutional provisions.

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

Ensures the right to life and protection from torture, to which India is a signatory.

## **4. Evaluation of Effectiveness**

### **A. Successes**

Landmark judgments have improved procedural safeguards and heightened awareness of custodial rights.

NHRC guidelines and judicial interventions have reduced instances of unchecked custodial violence in some states.

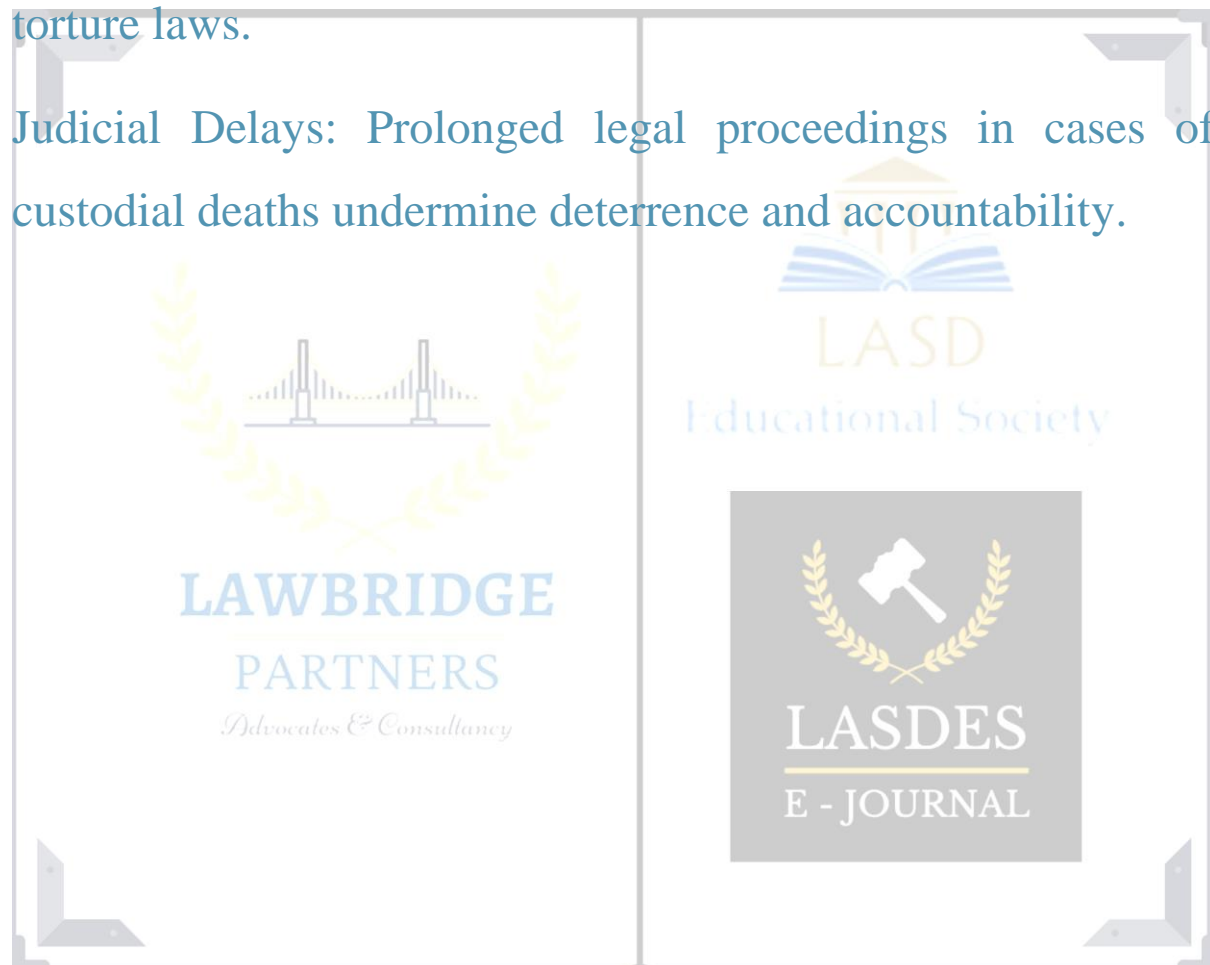
### **B. Challenges**

**Lack of Enforcement:** Many judicial directives, such as those in D.K. Basu, remain poorly implemented at the ground level.

**Weak Oversight:** NHRC lacks the authority to enforce its recommendations, often relying on state governments for action.

**Limited Ratification of International Laws:** India's delay in ratifying the CAT reflects hesitance to adopt stringent anti-torture laws.

**Judicial Delays:** Prolonged legal proceedings in cases of custodial deaths undermine deterrence and accountability.



## CHAPTER – VI

### Contemporary Challenges

#### 1. Accountability Deficit

##### **Impunity for Law Enforcement Agencies:**

Police officers and custodial staff often evade prosecution due to political influence and institutional protection.

Internal mechanisms for investigating custodial deaths, such as departmental inquiries, lack impartiality and transparency.

##### **Lack of Independent Oversight:**

Agencies like the National Human Rights Commission (NHRC) have limited enforcement powers, relying on recommendations rather than mandates.

State Human Rights Commissions are often understaffed and lack resources to effectively monitor incidents.

#### 2. Transparency and Reporting Issues

##### **Underreporting of Incidents:**

Many custodial deaths are not officially recorded or are falsely reported as suicides or natural deaths.

Fear of retaliation prevents families and witnesses from coming forward to report abuses.

### **Inadequate Documentation:**

Police records often fail to provide accurate and complete details of arrests, interrogations, and deaths in custody.

Lack of a centralized and digitized database hampers transparency and accountability.

### **3. Socio-economic and Cultural Biases**

#### **Targeting of Marginalized Groups:**

Individuals from marginalized communities (e.g., Dalits, Adivasis, and Muslims) are disproportionately targeted for arbitrary arrests and custodial violence.

Socio-economic inequalities leave these groups vulnerable to systemic abuse and denial of justice.

#### **Normalization of Violence:**

Custodial torture is often perceived as a legitimate tool for extracting confessions, reflecting deep-seated cultural acceptance of police brutality.

Media and public apathy toward custodial deaths diminish the pressure for reforms.



## 4. Technological and Administrative Gaps

### Limited Use of Surveillance Technology:

While courts have mandated the installation of CCTV cameras in police stations and prisons, many facilities lack adequate coverage.

Poor maintenance of existing cameras and the absence of real-time monitoring reduce the effectiveness of this safeguard.

### Inadequate Forensic and Medical Facilities:

Delays in conducting post-mortems and forensic examinations contribute to the loss of crucial evidence in custodial death cases.

Medical professionals often face pressure to alter findings, compromising the integrity of investigations.

## 5. Judicial and Investigative Delays

### Prolonged Legal Processes:

The slow pace of investigations and trials in custodial death cases undermines justice for victims and their families.



Lack of specialized courts or fast-track mechanisms for handling such cases leads to further delays.

### **Overburdened Police Forces:**

High workloads and poor working conditions among law enforcement personnel contribute to stress and unprofessional behavior, including acts of violence.

## **6. Political Interference and Structural Issues**

### **Politicization of Police:**

Law enforcement agencies are often misused for political gains, leading to arbitrary arrests and custodial abuse.

Police officers implicated in custodial deaths frequently receive protection from political patrons, obstructing accountability.

### **Insufficient Reforms:**

Recommendations from landmark cases like *Prakash Singh v. Union of India* (2006) on police reforms, including depoliticization and better training, remain largely unimplemented.

## CHAPTER – VII

### Recommendations and Policy Solutions

#### 1. Strengthening Oversight Mechanisms

##### **Empowering Human Rights Commissions:**

Grant the National Human Rights Commission (NHRC) and State Human Rights Commissions greater powers to enforce their recommendations.

Ensure timely and independent investigations into custodial deaths through dedicated human rights officers.

##### **Mandatory Reporting and Monitoring:**

Enforce strict compliance with the requirement to report all custodial deaths to independent authorities, such as the NHRC, within 24 hours.

Establish a centralized, publicly accessible database of custodial deaths for transparency and accountability.

## **Regular Audits:**

Conduct regular third-party audits of police stations, prisons, and detention centers to monitor conditions and compliance with human rights standards.

## **2. Judicial and Police Reforms**

### **Fast-tracking Custodial Death Cases:**

Establish specialized fast-track courts to handle cases of custodial deaths and torture.

Ensure timely resolution of cases to provide justice to victims and act as a deterrent.

### **Independent Investigative Bodies:**

Create independent bodies to investigate allegations of custodial deaths and police misconduct, free from political and departmental influence.

Equip these bodies with adequate resources and legal authority to prosecute offenders.

### **Improved Police Training and Sensitization:**

Integrate human rights education and sensitization programs into police training curricula.

Focus on non-coercive methods of interrogation and conflict resolution.

### **Accountability for Senior Officers:**

Hold senior officers accountable for custodial deaths under their jurisdiction, promoting a culture of responsibility within law enforcement.

### **3. Enhancing Transparency and Technology Use**

#### **CCTV Installation and Monitoring:**

Ensure the installation and operational maintenance of CCTV cameras in all police stations, lock-ups, and prison areas.

Enable real-time monitoring and secure storage of footage to prevent tampering.

#### **Digital Record-Keeping:**

Digitize records of arrests, interrogations, and medical examinations to improve transparency and accessibility.

Mandate the use of body-worn cameras by police officers during arrests and interrogations.

### **Medical Safeguards:**

Require independent medical examinations of detainees at the time of arrest and at regular intervals during custody.

Establish forensic panels independent of police influence for post-mortem examinations in custodial death cases.

### **4. Community and Public Engagement**

#### **Civil Society Participation:**

Encourage non-governmental organizations (NGOs) and civil society groups to monitor custodial practices and advocate for victims' rights.

Collaborate with local communities to build trust in law enforcement and promote accountability.

#### **Public Awareness Campaigns:**

Launch campaigns to educate citizens about their constitutional rights, legal safeguards, and remedies against custodial violence.

Promote awareness of human rights among vulnerable groups who are often targeted.

## 5. Legislative and Policy Initiatives

**Ratification of the UN Convention Against Torture (CAT):**

Expedite the ratification of the CAT and enact domestic anti-torture legislation to align with international standards.

**Strengthening Legal Provisions:**

Introduce stricter penalties for police officers found guilty of custodial violence or negligence.

Amend existing laws to provide more robust safeguards against arbitrary arrests and detentions.

**Compensation and Rehabilitation:**

Establish a mandatory compensation scheme for families of custodial death victims.

Provide psychological and legal support to victims' families to navigate the justice system.

## 6. Adopting International Best Practices

### Learning from Progressive Models:

Study countries like Norway, which emphasize rehabilitative over punitive approaches to law enforcement.

Adopt community policing models that prioritize trust-building and minimize coercion.

### Independent Oversight Mechanisms:

Implement an ombudsman system similar to those in countries like the UK and New Zealand, allowing for independent investigation into police misconduct.

## CHAPTER – VIII

### Conclusion

Custodial deaths represent a grave violation of human rights and a stark failure of the justice system in a democratic nation like India. Despite the existence of legal frameworks, constitutional safeguards, and judicial guidelines, the persistence of these incidents highlights systemic gaps, cultural normalization of custodial violence, and a lack of accountability within law enforcement agencies.

#### Summary of Findings

**Causes and Trends:** Custodial deaths are often rooted in systemic failures, including police impunity, socio-economic biases, and ineffective oversight mechanisms. Data from the National Crime Records Bureau (NCRB) reveals alarming trends, particularly in states with poor police accountability and marginalized populations.

**Challenges:** Issues such as underreporting, inadequate technology, and judicial delays exacerbate the problem.



Moreover, political interference and insufficient implementation of reforms further obstruct justice.

**Judicial Responses:** While landmark judgments like *D.K. Basu v. State of West Bengal* and *Nilabati Behera v. State of Orissa* have laid down critical safeguards, their inconsistent implementation diminishes their impact.

### Call to Action

To prevent custodial deaths and uphold the dignity and rights of individuals, a multifaceted approach is essential:

1. **Strengthen Legal and Institutional Frameworks:** Empower oversight bodies like the NHRC, enforce judicial guidelines, and introduce stringent anti-torture laws.
2. **Foster Transparency:** Mandatory installation of CCTV cameras, digital record-keeping, and independent investigations are necessary to enhance accountability.
3. **Implement Reforms:** Police and judicial reforms, coupled with fast-tracking of custodial death cases, can deter such incidents and restore public trust.

4. Promote Human Rights Awareness: Engage civil society, educate communities, and advocate for international best practices to reduce violence in custody.

### Future Scope for Research

**Further interdisciplinary studies are needed to examine:**

The role of socio-political factors in perpetuating custodial violence.

Effective policing models that prioritize accountability and rehabilitation.

The impact of technological interventions in preventing human rights violations.



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