

RIGHTS TO AN ACCUSED PERSON UNDER JUDICIAL AND POLICE CUSTODY: A COMPARATIVE ANALYSIS OF INDIAN LAWS WITH SPECIAL REFERENCE TO CUSTODIAL VIOLENCE

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Abstract

This research explores the rights afforded to accused individuals during Judicial and Police custody in different legal systems. It investigates the importance of upholding the fundamental rights of accused persons while in custody, considering national and international perspectives. Statistical data pertaining to arrests, detentions, and allegations of Human rights violations during custody will be analysed to provide a comprehensive understanding of the challenges and potential remedies. The research aims to shed light on the significance of protecting the rights of the accused, ensuring fair trials, and upholding the principles of justice and due process. Moreover, one of the fundamental entitlements granted to incarcerated individuals is the right to be treated in a manner that upholds their dignity and garners respect. This encompassing right encompasses protection from all forms of physical or psychological maltreatment or coercion, alongside the right to adequate medical care and attention. The state is responsible for ensuring that detainees are accommodated within hygienic and secure facilities and attending to their necessities such as sustenance, water, and clothing. Moreover, detainees can obtain legal counsel and receive a just trial. It is incumbent upon the state to guarantee that prisoners have access to legal assistance if they lack the means to afford a lawyer, as well as the ability to participate in their legal proceedings actively. Moreover, various suggestions have been provided to ensure the proper implementation of Indian Laws in safeguarding the rights of Arrested persons.

Key Words-*Police Custody, Custodial Torture, Legal Aid, Fair Trial, Prisoner's Rights*

I. Introduction:

The rights of an accused person under judicial and police custody are essential pillars of any democratic and just legal system. Safeguarding these rights ensures a fair trial and upholds the principles of human dignity and fundamental justice. The rights of an accused person are fundamental to the principles of justice and fairness in any democratic legal system. These rights serve as essential pillars that uphold the rule of law and protect individuals from potential abuses of power during the criminal justice process. Ensuring the rights of the accused are respected and upheld guarantees a fair trial and preserves the integrity and legitimacy of the entire legal system. This article explores the significance of safeguarding the rights of accused individuals under judicial and police custody, examining the underlying principles, legal frameworks, and the importance of striking a balance between law enforcement objectives and individual rights. Safeguarding the rights of an accused person under judicial and police custody is a cornerstone of a democratic and just legal system. These rights protect individuals from potential abuses of power and uphold the principles of fairness, justice, and human dignity.

The presumption of innocence, right to legal representation, protection against self-incrimination, and a fair and public trial are among the fundamental rights that underpin the concept of justice. By upholding these rights, societies ensure that all citizens' legal systems remain robust, transparent, and trusted. Upholding the rights of the accused is not only an obligation for governments and legal institutions but also a reflection of a society's commitment to justice and the rule of law. The Supreme Court widely elaborated on this right in its various Judgements also put an embargo that the Accused, neither in Police nor Judicial Custody, should not be beaten, starved or tortured in any way¹. Moreover, Krishna Iyer J. upheld the proposition regarding Accuse person having the right against self-incrimination and the right to silence² during Police Custody. Therefore, the right against self-incrimination is safeguarded both by international law and domestic legislation. Regrettably, in numerous third-world countries, India included, law enforcement authorities frequently violate this right. Upon apprehension, the police often treat even innocent individuals as criminals and employ various forms of torture to coerce confessions for alleged crimes, even though any involuntary confessions elicited by the police are deemed inadmissible in court.

II. Custodial Violence-

Custodial deaths³ in India pertain to the demise of individuals while under the custody of law enforcement agencies, including the police or other entities tasked with detaining and interrogating suspects or accused persons. These fatalities occur during periods of police custody, judicial custody, or any other form of detention and are typically associated with unnatural or suspicious circumstances. The issue of custodial deaths has persisted in India, giving rise to serious concerns over allegations of police brutality, human rights violations, and a lack of accountability within the criminal justice system. The causes of these deaths can vary, encompassing instances of torture, physical abuse, negligence, or the disproportionate use of force by law

¹ Yusuf Ali v. State of Maharashtra, A.I.R. 1968 S.C. 150

² Nandini Satpati v. P.L. Dhani, A.I.R. 1978 S.C. 1075

³ Satnam Singh Deol & Rayees Ahmad Ganai, Custodial Violence in Kashmir by the Indian Security Forces: A Spontaneous Consequence or a Deliberate Counter-Insurgency Policy?, 13 International Journal of Criminal Justice Sciences (2018)

enforcement officials. Despite the existence of legal provisions and guidelines aimed at safeguarding the rights of detainees and prisoners, custodial deaths continue to be reported across different regions of the country. The underreporting and insufficient investigation of numerous cases contribute to a lack of transparency and accountability within the system.

The gravity of custodial deaths has garnered substantial attention from human rights organizations, activists, and the media, leading to calls for urgent reforms and enhanced oversight of law enforcement agencies. Such reforms commonly involve fortifying human rights protections, enhancing conditions in detention facilities, instituting independent oversight bodies to investigate custodial deaths, and ensuring prompt and unbiased investigations when such incidents occur. Effectively addressing the issue of custodial deaths in India is essential to uphold the principles of justice, protect human rights, and foster public trust in law enforcement agencies. The proper implementation of existing legal safeguards and a steadfast commitment to reforming the criminal justice system can significantly contribute to mitigating custodial deaths and establishing accountability for any unlawful conduct¹.

III. Research Gap-

- To identify the specific legal provisions that guarantee the rights of accused individuals during their detention and investigate their practical implementation in the Indian context
- To examine statistical data and case studies related to custodial deaths, torture, and violations of rights under police and judicial custody in India.
- To propose recommendations and potential reforms to enhance the protection of the rights of accused persons in Indian laws and improve the accountability of law enforcement agencies in cases of rights violations.
- To draw comparative insights from international legal frameworks and best practices concerning the rights of accused persons under custody and assess their relevance to the Indian context.

IV. Literature Review-

The Researcher² Custodial torture represents a pervasive Global phenomenon, inflicted upon individuals irrespective of their gender, age, or state of health. This grievous violation of human rights has emerged as a severe and alarming issue, particularly in Third World countries such as India. The frequency of brutal acts committed by law enforcement agencies, including the police, jail authorities, armed forces, and other entities tasked with enforcing the law, against suspects, accused individuals, and prisoners is ominously increasing day by day. It is distressing to note that scarcely a week goes by without the media reporting an incident of custodial torture or death. In legal parlance, apart from the appeal to address the issues concerning hardened and professional criminals, the withholding of basic human rights, such as freedom from torture, is occasionally justified on the grounds of national security. The contention is made that the government is duty-bound to combat terrorists, insurgents, and arsonists who jeopardise innocent lives and imperil national security through their violent and anti-national actions. Importantly, custodial torture is not restricted to inherently violent individuals, such as saboteurs, terrorists, and hardened criminals – a view some police officials may espouse. Even if the individuals subjected to torture are hardened criminals, it is not within the purview of the police to assume the role of the judiciary and mete out brutal punishments. The Constitution of India encompasses an impressive array of provisions that largely align with the principles outlined in the Universal Declaration of Human Rights and various international agreements on civil and political rights. India has demonstrated its commitment to human rights by ratifying thirteen of these international instruments. To further advance the cause of human rights and improve its standing, India should not limit its efforts to establishing a relatively ineffective National Human Rights Commission (NHRC) but should also prioritize the ratification of these essential international instruments.

The Researcher³ has explained that One of the fundamental entitlements of prisoners is the right to be accorded dignity and respect, which encompasses immunity from any form of physical or psychological abuse or torture. Additionally, prisoners possess the right to receive adequate medical care and attention. The state is responsible for guaranteeing that prisoners are housed in hygienic and secure facilities, and that their essential requirements, such as sustenance, water, and clothing, are duly provided for. India's criminal justice system has undergone substantial evolution in recent decades, with the judiciary assuming a pivotal role in upholding the accused's constitutional rights. One noteworthy aspect of the criminal justice system that necessitates thorough consideration is the concept of judicial custody.

The criminal justice system's fundamental objective is to hold offenders accountable for their actions and safeguard society from potentially dangerous elements. A critical component of this system is the notion of judicial custody, denoting the period during which an accused individual is detained under the authority and supervision of a judicial officer. In contrast, police custody denotes the period of detention under the jurisdiction of law enforcement personnel. Lastly, prisoners possess inherent and constitutionally protected rights, and it is incumbent upon the state to uphold and safeguard these rights during periods of judicial custody and at all other times. Prisoners' rights are intricately linked to the notion of judicial custody, as numerous of these rights come into effect during this period. Preserving these rights is imperative to ensure the integrity and equitability of the criminal justice system, while also upholding the dignity and humanity of every individual involved.

The Author⁴ stated that In democratic states, which are also welfare states, laws are enacted based on the people's will and are intended to benefit the state's populace. India, being a democratic state, adheres to this principle, wherein individuals possess certain human rights by their membership in the human race, regardless of age, gender, criminal status, or law-abiding nature. These fundamental human rights are protected by the constitution and other statutory provisions, and they have historical roots,

¹ Aditi Singh, Custodial Violence, 2 Legal Lock J. 6 (2023)

² R.S. Saini, Custodial Torture in Law and Practice with Reference to India, 36 Journal of the Indian Law Institute 166 (1994)

³ Manika Dwivedi, Preserving Personal Liberty: An Analysis of Judicial Custody in India under Article 21 of the Constitution and the Role of the Judiciary in Upholding, 5 (2023)

⁴ Dr. Jitender Singh Dhull, Rights of Arrested Person and the Judicial Decisions 23 M.D.U. Law Journal 25 (2019).

being applicable to arrested persons even in ancient times. Furthermore, contemporary judgments rendered by Higher Courts play a significant role in shaping crucial laws pertaining to the rights of arrested individuals. The prevailing socio-economic and political conditions during various historical periods have been instrumental in shaping the laws. In ancient times in our country, the concept of Dharma/Law was paramount, encompassing all individuals, including the King, who were subject to its authority. The administration of justice under the rule of Dharma was guided by certain underlying principles, which also pertained to basic human rights, including the rights of the arrested person. Although not codified, the rule of Dharma offered insight into the treatment of arrested individuals during that era. Due to the absence of codified laws, there is a lack of direct evidence regarding the rights of the arrested person in ancient times. However, from studying the historical systems of that period, some indications of the arrested person's rights can be gleaned.

The Researcher¹ Custodial violence constitutes a pervasive pattern of abuse inflicted upon individuals worldwide, irrespective of their race, sex, age, or state of health. In the context of a third-world nation like India, custodial violence represents a grave and concerning issue. Law enforcement agencies' perpetration of brutal atrocities on suspects, offenders, and convicts is escalating at an alarming rate. It is crucial to note that custodial abuse affects various segments of the population, particularly economically disadvantaged and socially marginalized groups, who form the majority of torture victims. Despite the universal prohibition of custodial abuse and its constitutional and legal protections, such incidents persist without significant deterrence. Custodial brutality encompasses any form of violence committed while an individual is in custody, irrespective of its legality, that does not align with the applicable law. Such violence may range from subtle to extreme, including emotional or physical abuse, whipping, beating, sexual assault, and even causing death. Custodial situations may arise in civil, police, or institutional settings responsible for housing prisoners, such as hospitals or correctional facilities. It can also occur in the custody of terrorist organizations, armed groups, activists, or other similar entities. Instances of torture by law enforcement or other forms of mistreatment exemplify custodial brutality.

V. Legal Framework:

National Perspectives:

1. Comparative analysis of the rights of the accused in common law and civil law jurisdictions.

Common Law Jurisdictions in India:

- India's legal system uniquely blends common law principles inherited from its colonial past and the civil law framework based on the country's indigenous legal traditions. This article aims to provide a comparative analysis of the rights of the accused in common law and civil law jurisdictions within India.
- In Examination of the adversarial system, where two opposing parties present evidence and arguments before an impartial judge and jury. Focus on the role of legal representation and cross-examination as essential elements of the adversarial process.
- Analysis of the presumption of innocence as a fundamental principle in common law jurisdictions. Exploration of how the burden of proof rests with the prosecution to establish guilt beyond a reasonable doubt.
- Examination of the accused's right to remain silent and protection against self-incrimination. Understanding the importance of this right in safeguarding against coercive tactics during interrogations.
- Analysis of the accused's right to legal representation and the significance of ensuring access to competent counsel. Exploration of the role of defence attorneys in protecting the rights of the accused during trial proceedings.

Civil Law Jurisdictions in India:

- Examination of the inquisitorial system, where the judge is more active in investigating and gathering evidence. Focus on the judge's responsibility to ensure a fair and impartial trial.
- Analysis of how the principle of presumption of innocence is also recognized in civil law jurisdictions in India. Exploration of how this presumption influences the burden of proof and the conduct of trial proceedings.
- Evaluate the accused's right to legal representation and the extent to which it is recognized in civil law jurisdictions. Understanding the role of legal representation in ensuring a fair trial and upholding the rights of the accused.
- Comparative analysis of the right to a fair trial in both common law and civil law jurisdictions. Exploration of the elements of a fair trial, including impartiality, transparency, and due process.

2. Statutory Provisions and constitutional provisions safeguarding the rights of accused persons:

Examining specific legislation and constitutional provisions safeguarding the rights of accused persons is crucial in upholding the principles of justice, fairness, and human rights in the criminal justice system. These legal safeguards provide accused individuals with the necessary protections to ensure a fair trial, prevent abuse of power, and safeguard their fundamental rights during the entire criminal process. By understanding and applying these provisions effectively, the legal system in India can continue to uphold the rights of the accused and maintain its commitment to justice and due process.

A. The Code of Criminal Procedure (CrPC):

¹ Dr.Ishita Chatterjee, CUSTODIAL VIOLENCE AND THE LAW, 10 International Journal of Multidisciplinary Educational Research 38 (2021).

- The Code of Criminal Procedure, 1973, is a crucial piece of legislation in India that governs the procedure for the investigation, trial, and adjudication of criminal cases.
- It outlines the rights of the accused, including the right to be informed of the grounds of arrest¹, the right to Medical Examination², and the right to legal representation³ during the investigation and trial stages, present before Magistrate within 24 Hours of Arrest⁴
- The CrPC also sets forth the rule to be informed regarding bail⁵, providing for the issuance of habeas corpus to prevent unlawful confinement⁶, decency regarding search of female⁷.

B. Indian Evidence Act (IEA):

- The Indian Evidence Act is another significant legislation that establishes the rules of evidence in criminal trials.
- The doctrine of presumption of innocence is also the basis of Indian Jurisprudence. This is a fundamental right provided to Accuse under the provisions of the Indian Evidence Act 1872.
- It includes provisions ensuring the admissibility of evidence obtained legally while excluding evidence obtained through illegal means, such as coerced confessions.
- The Act further protects the accused from self-incrimination, as statements made to the police during the investigation are generally not admissible as evidence in court.
- As per Sec:24-26⁸, Confession given by the accused by Police Custody is also not Admissible unless given in the immediate presence of a Magistrate

C. Juvenile Justice (Care and Protection of Children) Act:

- The Juvenile Justice Act provides special protection to accused individuals who are children (below 18 years) at the time of the alleged offence.
- It establishes separate procedures for dealing with juvenile offenders, focusing on rehabilitation and reformation rather than punitive measures.

C. Constitutional Provisions:

(a). Right to Life and Personal Liberty (Article 21):

- Article 21 of the Indian Constitution enshrines the right to life and personal liberty as a fundamental right.
- It provides broad protection to all individuals, including accused persons, against arbitrary arrest, illegal detention, and custodial violence.

(b). Right to Equality (Article 14):

- Article 14 guarantees the right to equality before the law and equal protection of the laws to all persons.
- This provision ensures that accused individuals are treated fairly and without discrimination during the criminal justice process.

(c). Right against Self-Incrimination (Article 20(3)):

- Article 20(3) safeguards an accused person from being compelled to be a witness against themselves.
- This provision prohibits the use of testimonies obtained through coercion or duress.

(d). Right to Legal Representation (Article 22(1)):

- Article 22(1) grants the right to consult and be defended by a legal practitioner of one's choice during the investigation and trial stages.
- This provision ensures that accused individuals can access legal counsel to protect their interests and defend their rights⁹.

3. Identification of procedural safeguards during arrests, detentions, and interrogations.

During arrests, specific procedural safeguards include the requirement for law enforcement officers to inform the accused of the grounds for their arrest, as well as their right to remain silent and the right to legal representation. The accused must be

¹ Code of Criminal Procedure, 1973, 50-A

² Code of Criminal Procedure, 1973, 54

³ Code of Criminal Procedure, 1973, 41-D

⁴ Code of Criminal Procedure, 1973, 57

⁵ Code of Criminal Procedure, 1973, 50

⁶ Code of Criminal Procedure, 1973, 94

⁷ Code of Criminal Procedure, 1973, 51(2)

⁸ Indian Evidence Act, 1872

⁹ Janardhan Reddy v. State of Hyderabad, A.I.R. 1951 SCR 344

promptly brought before a magistrate, and a judicial authority must justify and review any prolonged detention. In *Gopalan Case*¹, the court had to decide whether the Procedure established by law" meant a "fair and reasonable procedure or it was just a semblance of procedure prescribed by the state for the de personal liberty of the Individual. It means that the "law made by the State does not come under the ambit of the courts to enquire about its reasonableness". The court said the reasonableness should not meet the standards given under Article 19 of the Indian constitution. This view of the court was criticised everywhere, and after this, *Maneka Gandhi Case*², held that the procedure contemplated in Article 21 must be "right, just and fair" and "not arbitrary, fanciful or oppressive", otherwise it would be no procedure at all, and the requirement under Article 21 would not be satisfied. That means Law should be reasonable rather than a piece of Legislation only.

Detentions must be conducted by prescribed legal procedures, ensuring the accused is held lawfully and not subjected to arbitrary or indefinite confinement. The right to be produced before a judicial authority within a reasonable time is paramount, enabling the accused to challenge the legality of their detention.

During interrogations, strict procedural safeguards must be in place to protect the accused from coercion, duress, or any other form of mistreatment. The right against self-incrimination must be respected, preventing using statements obtained through force or intimidation as evidence against the accused. Legal representation during interrogations is also critical to safeguard the interests and rights of the accused and to prevent any potential abuse of power during the questioning process. These procedural safeguards serve as essential checks and balances to ensure that arrests, detentions, and interrogations are conducted fairly, transparently, and in compliance with the law. By upholding these safeguards, the legal system demonstrates its commitment to protecting the rights of the accused and maintaining the integrity and legitimacy of the criminal justice process³.

4. Analysis of the role of habeas corpus and its impact on safeguarding personal liberty.

In legal language, the analysis of the role of habeas corpus and its impact on safeguarding personal liberty is paramount in upholding individuals' fundamental rights. Habeas corpus is a legal remedy that serves as a powerful safeguard against arbitrary detention and ensures that personal liberty is protected from unlawful and unwarranted infringements. This analysis explores the significance of habeas corpus in the context of safeguarding personal liberty and its impact on the criminal justice system.

Habeas corpus, which means "produce the body" in Latin, is a writ issued by a court to a detaining authority, compelling them to produce the detained individual before the court and justify the legality of their detention. The objective of habeas corpus is to prevent unlawful and indefinite detention, thereby safeguarding personal liberty and ensuring that individuals are not deprived of their freedom without just cause.

The writ of habeas corpus plays a crucial role in protecting personal liberty by acting as a check on the exercise of state power. It empowers the judiciary to scrutinise the grounds and legality of an individual's detention, ensuring that the detaining authority adheres to due process and follows the rule of law. Moreover in cases of Habeas Corpus, to pronounce whether the arresting authority has communicated the grounds of Arrest as early as reasonable in the circumstances, and if time has already passed and the arrested person has not yet been informed about the grounds of his arrest, the court would have to release him⁴.

The impact of habeas corpus on safeguarding personal liberty is far-reaching. By providing a mechanism for immediate review of detention, it acts as a safeguard against potential abuses by law enforcement and executive authorities. The prompt resolution of habeas corpus petitions ensures that individuals are not held in custody unlawfully and protects them from arbitrary or unlawful actions by the state.

Habeas corpus also serves as a deterrent against unlawful detention, as detaining authorities are aware that any detention can be promptly challenged and reviewed by the judiciary. This ensures accountability and prevents any misuse or abuse of state power, thus preserving the sanctity of personal liberty.

Furthermore, habeas corpus reinforces the principle that the state must justify its actions in depriving individuals of their liberty. It places the burden on the detaining authority to provide valid and lawful reasons for detention, ensuring that personal freedom is not curtailed without proper legal justification. In the realm of criminal justice, habeas corpus is a vital remedy for accused individuals to challenge their pre-trial detention and ensure that their rights are protected throughout the legal process. It acts as a safeguard against prolonged detention without charge or trial, thus preserving the presumption of innocence until proven guilty⁵.

The role of habeas corpus in safeguarding personal liberty cannot be overstated. Its impact on the criminal justice system and protection of fundamental rights is profound. By providing a swift and effective remedy against unlawful detention, habeas corpus ensures that personal liberty is respected and upheld, bolstering the principles of justice, fairness, and the rule of law in any democratic society.

¹ A.K. Gopalan v. State of Madras, A.I.R. 1950 S.C. 227

² Maneka Gandhi v. Union of India, A.I.R. 1978 S.C. 659

³ Dr. Ishita Chatterjee, CUSTODIAL VIOLENCE AND THE LAW, 10 International Journal of Multidisciplinary Educational Research 38 (2021).

⁴ 9 D.D. Basu, Shorter Constitution of India 156-57 (2020)

⁵ Mahuya Bandyopadhyay, *Reform and Everyday Practice: Some Issues of Prison Governance*, 41 Contributions to Indian Sociology 387 (2007)

International Perspectives:

1. Overview of international human rights conventions protecting the rights of the accused:

The international human rights conventions serve as important benchmarks for countries to protect the accused's rights. States that have ratified these conventions are bound to adhere to their provisions and implement measures to guarantee the rights enshrined within them. By recognising the importance of fair treatment, due process, and the presumption of innocence, these conventions contribute to promoting justice, the rule of law, and the protection of fundamental human rights globally. international human rights conventions protecting the rights of the accused reveals a comprehensive framework aimed at ensuring the fair treatment, due process, and protection of individuals facing criminal charges¹. These conventions, which have been ratified by numerous countries worldwide, establish international standards and obligations to safeguard the rights of the accused during all stages of the criminal justice process². The following provides an overview of some key international human rights conventions relevant to the protection of the rights of the accused:

A. Universal Declaration of Human Rights (UDHR):

- The UDHR, adopted by the United Nations General Assembly in 1948, sets out fundamental human rights principles that apply to all individuals, including the accused³.
- Relevant provisions include Article 10, which recognizes the right to a fair and public hearing by an independent and impartial tribunal, and Article 11, which upholds the principle of "presumption of innocence until proven guilty."

B. International Covenant on Civil and Political Rights (ICCPR):

- The ICCPR, adopted by the United Nations General Assembly in 1966, provides comprehensive protection of civil and political rights, including the rights of the accused⁴.
- Article 14 of the ICCPR establishes specific safeguards, such as the right to be informed promptly and in detail of the charges, the right to a fair and public hearing, the right to legal representation, and the right to examine witnesses.

C. European Convention on Human Rights (ECHR):

- The ECHR, adopted by the Council of Europe in 1950, protects the rights and freedoms of individuals within the jurisdiction of member states.
- Relevant provisions include Article 5, which safeguards the right to liberty and security, and Article 6, which guarantees the right to a fair trial, including the presumption of innocence and the right to legal assistance⁵.

D. American Convention on Human Rights (ACHR):

- The ACHR, adopted by the Organization of American States in 1969, sets forth the rights and freedoms of individuals within the American region⁶.
- Article 8 of the ACHR guarantees the right to a fair trial, including the right to be presumed innocent, the right to defence, and the right to examine witnesses.

E. African Charter on Human and Peoples' Rights (ACHPR):

- The ACHPR, adopted by the Organization of African Unity (now African Union) in 1981, outlines the rights and duties of individuals within Africa.
- Article 7 of the ACHPR recognises the right to a fair trial, including the presumption of innocence, the right to defence, and the right to examine witnesses.

2. Assessment of International standards and principles governing arrest and detention.

It involves an examination of the established norms and obligations set forth by various international instruments to ensure that human rights principles conduct these processes. These standards aim to protect individuals from arbitrary arrest and detention, safeguard their fundamental rights, and uphold the principles of fairness and due process. These cases and others have played a significant role in shaping and reinforcing international human rights standards regarding custody rights. They have underscored the importance of protecting individuals from arbitrary arrest and

¹ Sudipto Roy, *Violations of the Rights of the Accused and the Convicted in India*, *Kriminologija i socijalna integracija*, 5, pp. 83–88 (1998).

² Cedric De Koker, *Hassan v United Kingdom: The Interaction of Human Rights Law and International Humanitarian Law with Regard to the Deprivation of Liberty in Armed Conflicts*, 31 *90* (2015), <https://utrechtjournal.org/articles/10.5334/ujel.db> (last visited Aug 1, 2023)

³ United Nations, *Universal Declaration of Human Rights* United Nations, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited Aug 1, 2023).

⁴ *The International Covenant on Civil and Political Rights - Manual for Human Rights Education with Young people* - www.coe.int, *Manual for Human Rights Education with Young people*, <https://www.coe.int/en/web/compass/the-international-covenant-on-civil-and-political-rights> (last visited Aug 1, 2023)

⁵ *European Convention on Human Rights (ECHR) | Summary, History, & Facts* | Britannica, (2023), <https://www.britannica.com/event/European-Convention-on-Human-Rights-Europe-1950> (last visited Aug 3, 2023).

⁶ *American Convention on Human Rights* (no date) <https://humanrightscommitments.ca>. Available at: <https://www.globalhealthrights.org/wp-content/uploads/2013/10/American-Convention-on-Human-Rights-ACHR.pdf> (Accessed: 28 July 2023).

detention, ensuring access to legal counsel, and prohibiting torture and ill-treatment. The decisions from these international tribunals and human rights bodies have contributed to developing a robust and protective framework for safeguarding the rights of individuals in custody. The assessment includes the following key aspects:

A. Prohibition of Arbitrary Arrest and Detention:

- International human rights standards unequivocally prohibit arbitrary arrest and detention, such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR)¹.
- States must ensure that arrests and detentions are conducted only on legally recognised grounds and under established procedures.

B. Right to Liberty and Security of Person:

- The right to liberty and security of person, as enshrined in the UDHR (Article 3) and the ICCPR (Article 9), guarantees that no one shall be subjected to arbitrary arrest or detention².
- Any deprivation of liberty must be based on legitimate legal grounds, such as committing a recognisable criminal offence.

C. Right to be Informed of the Reasons for Arrest:

- standards, including Article 9(2) of the ICCPR, require that individuals who are arrested must be informed promptly and in detail of the reasons for their arrest³.
- This information is crucial to enable the individual to understand the charges against them and seek legal assistance.

D. Right to Prompt Judicial Review:

- The right to prompt judicial review, as provided by Article 9(4) of the ICCPR, ensures that individuals have the right to challenge the lawfulness of their detention before a competent court⁴.
- This judicial review acts as a safeguard against arbitrary and indefinite detention.

E. Right to Legal Assistance and Access to Counsel:

- International standards, including Article 14(3) of the ICCPR, recognize the right of the accused to legal assistance during arrest and detention.
- States are obligated to ensure that individuals have access to legal counsel to protect their rights effectively⁵.

F. Presumption of Innocence and Fair Trial Rights:

- The presumption of innocence, as enshrined in Article 11(1) of the UDHR and Article 14(2) of the ICCPR, guarantees that everyone charged with a criminal offense is presumed innocent until proven guilty.
- Individuals also have the right to a fair and public hearing by an independent and impartial tribunal, as established by Article 14 of the ICCPR⁶.

G. Prohibition of Torture and Ill-Treatment:

- International standards, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, strictly prohibit torture and ill-treatment of individuals in custody⁷.
- States must take measures to prevent and eradicate such practices.

3. Precedents by International tribunals and Human Rights bodies

Several notable cases from international tribunals and human rights bodies have addressed the rights of individuals during custody. These cases have provided important interpretations and clarifications on the scope and application of human rights principles in the context of arrest, detention, and interrogation. Here are a few key cases:

a) A v. United Kingdom (European Court of Human Rights, 2009):

- This case involved the detention and questioning of terrorist suspects without access to legal counsel for 48 hours under the Terrorism Act 2000. The European Court of Human Rights held that the lack of access to

¹ United Nations, Universal Declaration of Human Rights, United Nations, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited Aug 2, 2023)

² Id.

³ LawBhoomi, Documents Relating to Protection of Human Rights: UDHR, ICCPR and ICESCR, LawBhoomi (Jan. 10, 2021), <https://lawbhoomi.com/documents-relating-to-protection-of-human-rights-udhr-iccpr-and-icescr/> (last visited Aug 2, 2023).

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Hurst Hannum, The UDHR in National and International Law, 3 Health and Human Rights 144 (1998)

legal counsel during that initial period violated Article 5(3) of the European Convention on Human Rights (ECHR), which guarantees the right to legal assistance promptly after arrest¹.

b) *Al-Skeini and Others v. United Kingdom (European Court of Human Rights, 2011)*:

- In this case, the European Court of Human Rights addressed the extraterritorial application of the ECHR in relation to the actions of British soldiers in Iraq. The Court clarified that the ECHR applied to situations where individuals were under the control of the British authorities, including during detention and interrogation².

c) *Hassan v. United Kingdom (European Court of Human Rights, 2014)*:

- This case involved the detention of a terrorism suspect and the use of diplomatic assurances regarding his treatment if deported to Jordan. The European Court of Human Rights held that there was a real risk of torture in Jordan, and the use of diplomatic assurances did not provide adequate protection. As a result, his deportation would violate Article 3 of the ECHR, which prohibits torture and inhuman or degrading treatment³.

d) *Prosecutor v. Delalić et al. (International Criminal Tribunal for the Former Yugoslavia, 1998)*:

- In this case⁴, the International Criminal Tribunal for the Former Yugoslavia (ICTY) dealt with the issue of torture and inhuman treatment of detainees in Bosnia and Herzegovina during the conflict in the 1990s. The Tribunal found that the accused were responsible for committing war crimes, including torture, and held them accountable for violations of international humanitarian law.

e) *Chahal v. United Kingdom (European Court of Human Rights, 1996)*:

- This case⁵ concerned the detention and potential extradition of a Sikh separatist who was alleged to be a security threat in the United Kingdom. The European Court of Human Rights held that there was a real risk of ill-treatment in India if the individual was extradited, violating Article 3 of the ECHR.

VI. Statistical Data:

According to the data from the National Crime Record Bureau from 2019-2021 2019, 51,56,158 offences were committed within India, in 2020, 66,01,285 offences were committed, and in 2021, 60,96,310 offences were committed in India. (Fig 1.1)

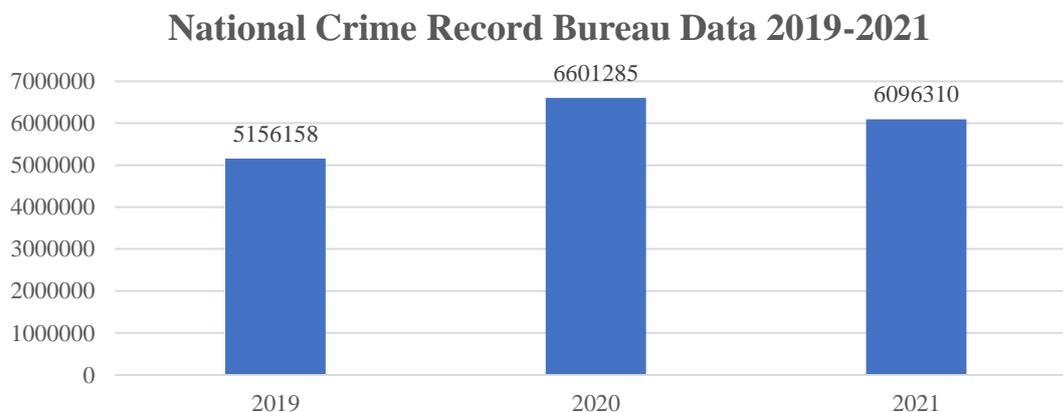


Fig 1.1

In the year 2021, a total of 60,96,310 cognizable crimes were reported in India, comprising 36,63,360 Indian Penal Code (IPC) crimes and 24,32,950 Special & Local Laws (SLL) crimes. This data reflects a decrease of 5,04,975 cases (7.6%) compared to the number of cases registered in 2020 (66,01,285 cases). The crime rate registered per lakh population has also declined, decreasing from 487.8 in 2020 to 445.9 in 2021⁶.

A closer examination of the crime data reveals that there has been a significant decrease of 13.9% in the registration of cases under the Indian Penal Code, whereas cases under Special & Local Laws have witnessed a slight increase of 3.7% over the previous year. The percentage share of IPC crimes stands at 60.1%, while the percentage share of SLL cases constitutes 39.9% of the total cognizable crimes reported during the year 2021.

¹ A. v. The United Kingdom (2009) 3455/05

² Al-Skeini and others v. United Kingdom (2011) 53 EHRR 18

³ Hassan v. United Kingdom Hassan v. United Kingdom (2014) 29750/09.

⁴ Prosecutor v. Zdravko Mucic aka "Pavo", Hazim Delic, Esad Landzo aka "Zenga", Zejnil Delalic IT-96-21-T

⁵ Chahal v UK (1996) 23 EHRR 413

⁶ National Crime Records Bureau <https://ncrb.gov.in/>. <https://ncrb.gov.in/sites/default/files/CIH%202020%20Volume%201.pdf> (Accessed: 28 July 2023).

Overall, the data indicate fluctuations in the crime rates, with a notable decrease in IPC crimes and a modest increase in SLL crimes. Understanding and analysing these crime statistics can provide valuable insights for policymakers and law enforcement agencies to address and effectively combat various forms of criminal activities in the country.

As per Table 1.1, it can be seen from data¹ that number of Arrested offenders against whom the chargesheet has been filed has increased in the year 2020 from 2019 but it got lower in 2021. Also, the rate of chargesheet against the offenders increased significantly from 2019² to 2021. Moreover, the table also indicates that the rate of conviction got lower in the year 2020 but again it rose up in the year 2021. Now the question that needs to be answered by the courts is that in 2019, chargesheet was filed against 58,74,562, and only 63% of offenders were Tried and either Acquitted, Convicted or Discharged. The same was in 2020, 69,83,188 were charge-sheeted, and 32% of offenders were Tried and either Acquitted in 2021- 72,09,851 were charge-sheeted, and only 47% of offenders were tried and either Acquitted, Convicted or Discharged. Now as per this data, it is clear that in the years 2020 and 2021, not even 50% of offenders were tried, points out the delay in the procedure of Criminal Trial and that violates the basic Fundamental rights guaranteed under Article:21 of the Indian Constitution and that is Right to speedy trial.

NCRB Data from 2019-2021

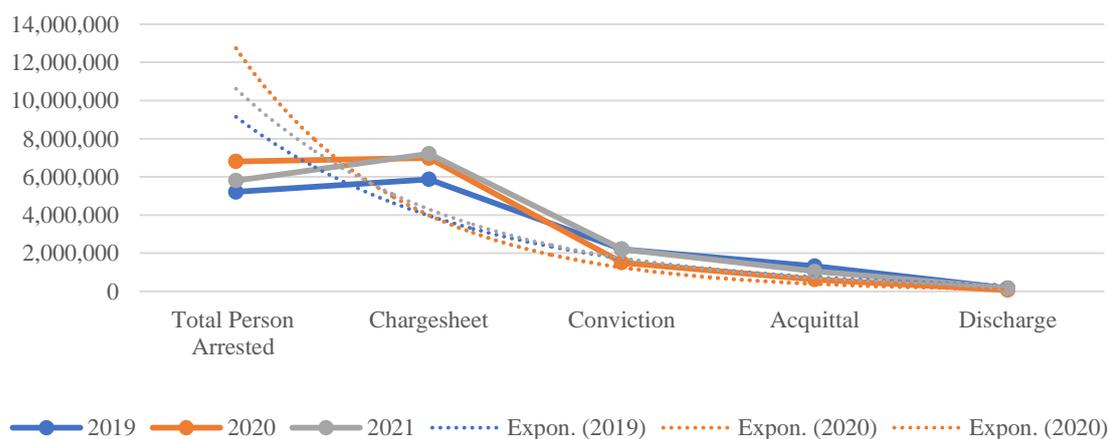


Fig1.2

Years	2019	2020	2021
Total Person Arrested	52,13,404	68,14,614	58,09,441
Chargesheet	58,74,562	69,83,188	72,09,851
Conviction	22,15,397	15,10,782	22,14,307
Acquittal	13,27,137	6,20,583	10,47,356
Discharge	1,69,748	69,405	1,66,703

Table 1.1

1. Data on Prisons-

In 2021, a total of 18,06,823 inmates were admitted in various jails of the country, and the admission of inmates has increased by 10.8% over 2020 (16,31,110 inmates). Around (5,54,034) prisoners were confined on 31st December 2021 in various jails across the country. The number of Convicts, Undertrial inmates and Detenues were reported as 1,22,852, 4,27,165 and 3,470, respectively, accounting for 22.2%, 77.1% and 0.6%, respectively at the end of 2021. Other prisoners accounted for 0.1% (547 prisoners) of the total prisoner.

Year	Number of Convicts	Number of Undertrial Prisoners	Number of Detenues	Number of Other Inmates	Number of Prisoners
2019	1,44,567	3,32,916	3,223	681	4,81,387
2020	1,12,589	3,71,848	3,590	484	4,88,511
2021	1,22,852	4,27,165	3,470	547	5,54,034

¹ National Crime Records Bureau <https://ncrb.gov.in/>. Available at: <https://ncrb.gov.in/sites/default/files/CII%202020%20Volume%201.pdf> (Accessed: 28 July 2023).

² राष्ट्रीय अपराध रिकॉर्ड ब्यूरो ncrb.gov.in. Available at: <https://ncrb.gov.in/sites/default/files/CII%25202019%2520Volume%25201.pdf> (Accessed: 22 July 2023).

Table 1.2

Status of Prisons 2019-2021

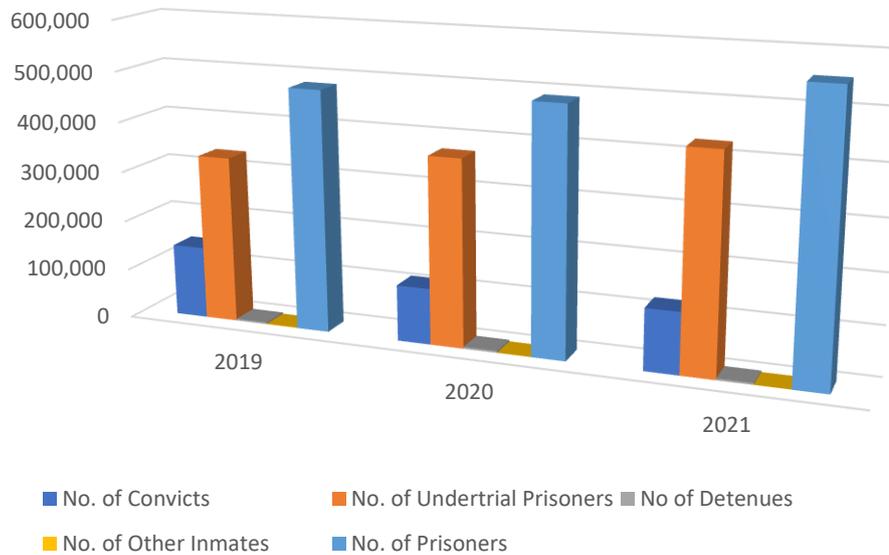


Fig 1.3

As per the demographic data given under Fig 1.3, it can be portrayed that number of Undertrial Prisoners are much more the number of Convicts in all three years of data. Moreover, such delay violates the rights of under trial prisoners, even though the detention rates are also increasing rapidly.

As per the data¹, the number of prisoners increased from 1,12,589 in 2020 to 1,22,852 in 2021, having increased by 9.1%. Out of 1,22,852 convicts, the highest number of convicted prisoners were lodged in Central Jails (66.4% i.e. 81,551 convicts) followed by District Jails (27.8%, i.e. 34,214 convicts) and Sub Jails (2.0%, 2,461 convicts). Moreover, Uttar Pradesh has reported the maximum number of convicts (21.9%, i.e. 26,956 convicts) in the country, followed by Madhya Pradesh (15.7%, i.e. 19,266 convicts) and Chhattisgarh (6.3%, i.e. 7,762 convicts) at the end of 2021. The number of undertrial prisoners increased from 3,71,848 in 2020 to 4,27,165 in 2021, having increased by 14.9% during this period. Among the 4,27,165 undertrial prisoners, the highest number of undertrial prisoners was lodged in District Jails (51.4%, i.e. 2,19,529 undertrials) followed by Central Jails (36.2%, i.e. 1,54,447 undertrials) and Sub Jails (10.4%, i.e. 44,228 undertrials). Moreover, Uttar Pradesh has reported the maximum number of undertrials (21.2%, i.e. 90,606 undertrials) in the country, followed by Bihar (13.9%, i.e. 59,577 undertrials) and Maharashtra (7.4%, i.e. 31,752 undertrials) at the end of 2021².

2. Statistical data on Violations of Human Rights during custody-

Custodial death is an enduring phenomenon, particularly evident in India, tracing back to the period when India was under British sovereignty. Over the past four to five years, instances of police brutality and violence have seen a significant increase. These occurrences underscore the inadequacy of existing legal provisions within our judicial system to hold law enforcement agencies accountable for engaging in brutal practices and employing 'performance of duty' as a defence to justify acts of torture. As per the report³, around 113 people died in police custody in 2020, and as per Fig. 1.4, it can be seen that the maximum number of Custodial deaths were reported from Gujarat and Uttar Pradesh, with 11 custodial deaths each, followed by 10 custodial deaths reported in Madhya Pradesh; 9 in West Bengal, 8 in Tamil Nadu; 6 each in Odisha, Punjab and Rajasthan; 4 each in Andhra Pradesh, Jharkhand and Maharashtra; 3 each in Chhattisgarh, Delhi, Haryana, Jammu & Kashmir and Karnataka; 2 each in Arunachal Pradesh, Assam, Uttarakhand; and 1 each in Bihar, Himachal Pradesh, Kerala, Manipur, Mizoram, Telangana and Tripura.

¹ Prison statistics India 2021 - National Crime Records Bureau (no date) <https://ncrb.gov.in/>. Available at: https://ncrb.gov.in/sites/default/files/PSI-2021/Executive_ncrb_Summary-2021.pdf (Accessed: 19 July 2023).

² Prison statistics India 2021 - National Crime Records Bureau <https://ncrb.gov.in/>. Available at: https://ncrb.gov.in/sites/default/files/PSI-2021/Executive_ncrb_Summary-2021.pdf (Accessed: 19 July 2023).

³ Campaign against torture <http://uncat.org/wpcontent/uploads/2021/03/IndiaTortureReport2020.pdf> (Accessed: 28 July 2023).

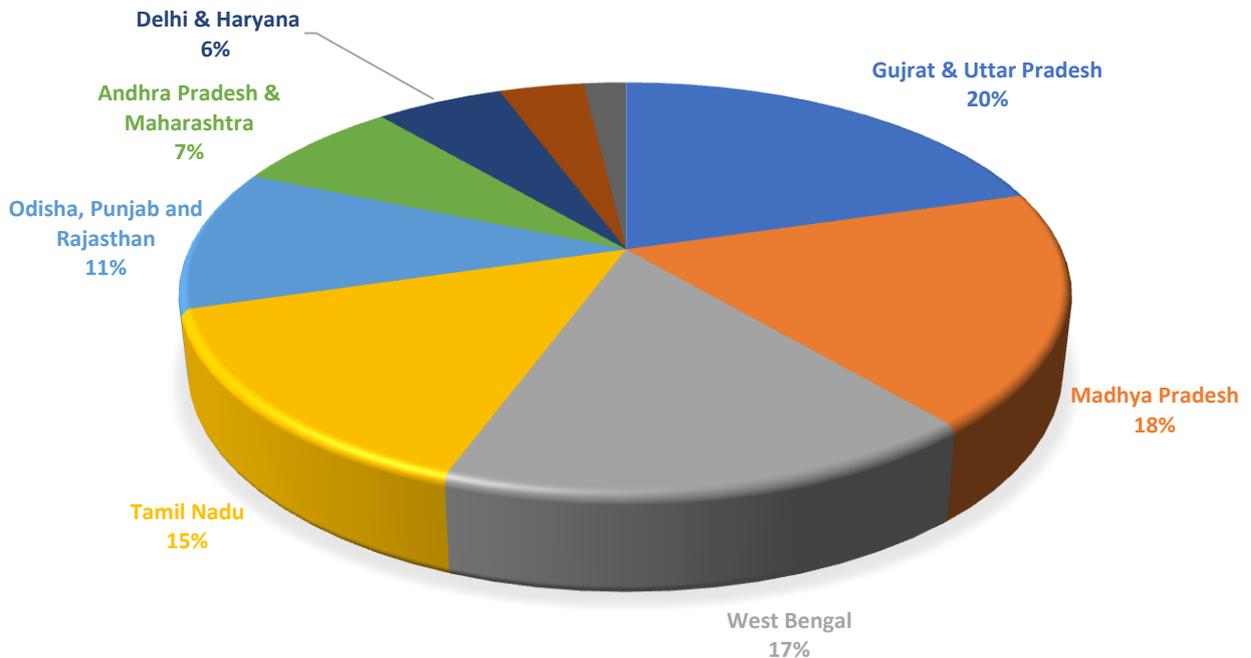


Fig.1.4

The atrocities which Police officials are causing can be seen as deduced from the Fig 1.5 it can be seen that maximum custodial deaths are caused due to Torture, and minimum death is caused when the offender is trying to escape from Police Custody. In India, custodial deaths have become synonymous with suicide as victims commit suicide to escape torture as well as humiliation including in front of family members.

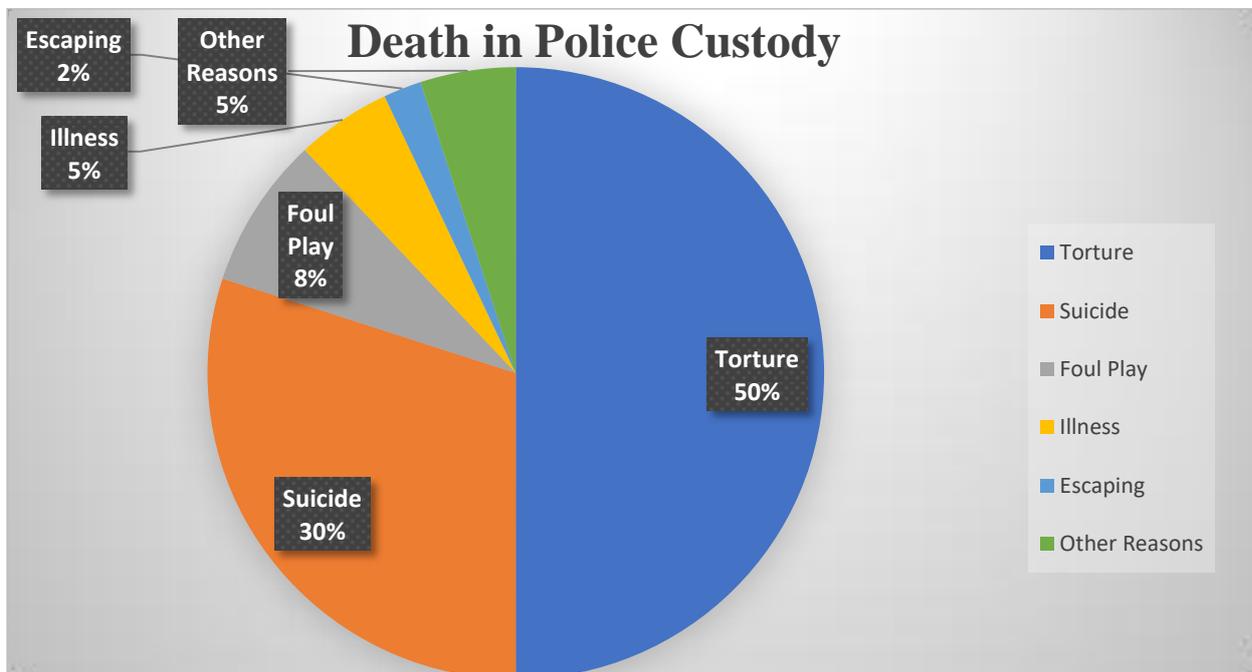


Fig 1.5

3. Case studies highlighting instances of alleged human rights abuses-

(a) On the 3rd of February 2020, Amrik Singh, aged 49 and the son of Dharam Singh, passed away due to alleged torture while in police custody at Baddi police station in Solan district, Himachal Pradesh. The deceased, a resident of Bhatolikalan village in the district, was apprehended by the police on the 28th of January 2020 and was subsequently granted a four-day period of police custody in connection with a wood smuggling case. Thereafter, on the 1st of February, he was remanded to judicial custody by a court. According to the police, on the same day of remand to judicial custody, the deceased was admitted to the Post Graduate Institute of Medical Education & Research, Chandigarh, due to his poor health, where he eventually passed away on the 3rd of February. The police asserted that the deceased had a pre-existing medical condition of high blood pressure, and his demise in the hospital resulted from a brain hemorrhage. Contrarily, the family members of the deceased alleged that he died due to torture endured during his police custody from the 28th to the 31st of January. The deceased's father, Dharam

Singh, asserted that his son was in good health at the time of his arrest on the 28th of January, and that the police demanded bribes even to allow him to meet his son while in police custody¹.

(b) On the 28th of January 2020, Gopal Pachori², aged 22 and the son of Kamlesh Kumar Pachori, passed away under circumstances arousing suspicion at Kishanganj police station in Indore district, Madhya Pradesh. Gopal had been arrested on the 23rd of January 2020 on allegations of stabbing his uncle, Jaiprakash Mishra, with a knife and was subsequently detained at the police station. The police contended that the deceased took his own life within the confines of the police station on the 28th of January 2020, using a piece of cloth obtained from his blanket. Following this incident, he was taken to a nearby hospital, where he was pronounced dead upon arrival. However, Kamlesh Kumar Pachori, the father of the deceased, raised allegations that his son had been subjected to unauthorized police custody since the 23rd of January, without being presented before the court within the stipulated 24-hour timeframe mandated by the law. Kamlesh Kumar Pachori further claimed that he was denied access to meet his son at the police station, and the family was suddenly informed about his purported suicide on the 28th of January.

(c) On the 13th of February 2020, a 17-year-old minor identified as Chirag Chauhan, the son of Mukesh Chauhan, passed away due to alleged torture while in police custody at Mehsana Civil Hospital in Mehsana district, Gujarat. The victim had been arrested and detained by the police on the 12th of February 2020 in Naroda, Ahmedabad, after having escaped from the zonal observation home in Mehsana on the 4th of February 2020. He had been in detention since the 2nd of December 2019 in connection with cases of murder and robbery. Amit Limchiya, the Superintendent of the Observation Home in Mehsana, claimed that the health of the deceased deteriorated around 10.30 pm on the 12th of February, shortly after he was handed over to the police. Subsequently, he was taken to Mehsana Civil Hospital where he passed away at approximately 3 am on the following day. The father of the deceased alleged that his son was subjected to assault while in police custody, which ultimately resulted in his demise. The father also contended that there were visible injury marks on the body of his son, with the left arm being broken, and torture marks observed on the back³.

(d) On the 18th of February 2020, Devendra Kushwaha, aged 35 and the son of Kadore, passed away due to alleged torture while in police custody at Sadar Chowki police station in Lalitpur district, Uttar Pradesh. As per the police account, the victim, a resident of Narahat village in the district, along with two others, was arrested on the 16th of February 2020 in connection with a case involving the abduction of a minor girl. Subsequently, he was detained at Sadar Chowki police station. The police further asserted that the deceased's health suddenly deteriorated on the 18th of February, following which he was immediately transferred to the district hospital, where he passed away on the same day. Contrarily, the family members of Devendra alleged that he was apprehended on the 13th of February 2020 (instead of the 16th of February as claimed by the police) and subjected to severe torture while in unauthorized police custody, aimed at coercing confessions, which eventually led to his demise. The family members stated that they discovered numerous injury marks on his body, supporting their claims of alleged torture⁴.

(e) On the 27th of February 2020, Jeetu Khateek, aged 22, belonging to the Dalit community, passed away due to alleged torture at Barmer Rural police station in Barmer district, Rajasthan. The deceased, who worked as a scrap dealer, was apprehended by the police from his shop on the evening of the 26th of February 2020 for interrogation in relation to a theft case. He was subsequently detained at the Barmer Rural Police Station. The following day, on the 27th of February, Jeetu was discovered deceased inside the lockup room of the police station. The family members of the deceased alleged that Jeetu's death was a result of torture inflicted upon him while in police custody. They further contended that the police had unlawfully arrested him, as no formal case had been registered against him. The family members asserted that Jeetu was in good health at the time of his arrest on the 26th of February⁵.

VII. Analysis of the role of the judiciary in protecting the rights of the accused-

(a) This case⁶ put emphasis on the report of the NCP (National Police Commission of India) that deals with custodial demoralising effect with custodial torture was creating on the society as a whole. An arrest during the investigation of a cognizable case may be considered justified if-

- i. The case involves a grave offence like murder, dacoity, robbery, rape, etc., and it is necessary to arrest the accused and infuse confidence among the terror-stricken victims.
- ii. The accused is likely to abscond and evade the processes of law.
- iii. The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.
- iv. The accused is a habitual offender and unless kept in custody he is likely to commit similar nature offences again. It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines

¹ Ambika Sharma, (2020) 'Family alleges police torture, probe ordered', <https://www.tribuneindia.com/>, 5 February. Available at: <https://www.tribuneindia.com/news/reviews/story/family-alleges-police-torture-probe-ordered-35952> (Accessed: 27 July 2023).

² MP-ACCUSED-SUICIDE, The Week, <https://www.theweek.in/wire-updates/national/2020/01/28/bes15-mp-accused-suicide.html> (last visited Aug 2, 2023)

³ Gujarat: Juvenile dies in custody; father alleges torture, THE TIMES OF INDIA, Feb. 14, 2020, <https://timesofindia.indiatimes.com/city/rajkot/juvenile-dies-in-custody-father-alleges-torture/articleshow/74124996.cms> (last visited Aug 1, 2023).

⁴ UP: Even after paying bribe, 27-year-old "tortured" in police custody; victim dies in hospital, (2020), <https://www.timesnownews.com/mirror-now/crime/article/uttar-pradesh-unable-to-pay-rs-20000-bribe-27-year-old-beaten-in-police-custody-victim-dies-in-hospital/555569> (last visited Aug 2, 2023)

⁵ Rajasthan: After Dalit Man Dies in Custody, Cops Face Murder Charges, Feb. 28, 2020, <https://thewire.in/caste/rajasthan-after-dalit-man-dies-in-custody-cops-face-murder-charges>.

⁶ Satender Kumar Antil v. Central Bureau of Investigation, AIR 2022 SC 577

(b) In this case¹ it was said that Arrest couldn't be made because it is lawful for the police officer to do so. It is necessary that the power of arrest is to be exercised in a Justified manner. No arrest should be made without a reasonable satisfaction reached after some investigation about the genuineness and truthfulness of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect the arrest. Denying a person his liberty is a serious matter.

(c) It was held in this case² It is a fundamental principle that individuals convicted, incarcerated, or awaiting trial should not be taken away of their fundamental rights as guaranteed under Article 21 of the Indian Constitution. Any limitations on exercising these rights can only be imposed if they are permissible under the law. The State bears the responsibility to ensure that the inalienable rights to life of its citizens are not violated, except in accordance with the established legal procedures, while they are in custody. The invaluable right protected by Article 21 of the Indian Constitution cannot be withheld from convicts, undertrials, or other individuals held in custody except as per the due process of law. The police or prison authorities have a significant duty to ensure that the person under their custody is not deprived of their right to life. Though the individual's liberty is inherently constrained due to confinement, their interest in the limited freedom they retain is exceptionally significant.

(d) In this case³ court deduced that save for the inherent constraints imposed by incarceration, necessitating the deprivation of specific rights such as freedom of movement or the practice of a chosen profession, a prisoner remains entitled to the fundamental liberties safeguarded by the Constitution.

(e) The case⁴ is related to the legal assistance to a poor or accused, arrested and put in danger of his life or personal liberty, which is a constitutional requirement not only by Article 39 A but also by Articles 14 and 21 of the Constitution of India.

(f) This case⁵ deals with the Right against Self Incrimination. The mandatory utilisation of the challenged methodologies violates the 'right against self-incrimination.' This is due to the fundamental purpose of the aforementioned right, which is to safeguard the reliability and voluntariness of statements admitted as evidence.

The Apex Court has recognised that the protective ambit of Article 20(3) of the Indian Constitution, 1950 extends to the investigatory phase in criminal cases and, when read in conjunction with Section 161(2) of the Code of Criminal Procedure, 1973, it safeguards accused individuals, suspects, as well as witnesses examined during an investigation. The test results cannot be admissible as evidence if they have been procured through the use of coercion. Article 20(3) safeguards an individual's choice between speaking and remaining silent, regardless of whether the ensuing testimony is inculpatory or exculpatory. The objective of Article 20(3) is to prevent the forcible disclosure of personal knowledge that is relevant to the facts in question. The outcomes derived from each of the challenged tests possess a 'testimonial' character and cannot be classified as material evidence.

VIII. Conclusion:

In conclusion, this research sought to bridge a critical research gap by comprehensively investigating the legal provisions safeguarding the rights of accused individuals during their detention and evaluating their practical implementation in the Indian context. By examining statistical data and case studies related to custodial deaths, torture, and violations of rights under police and judicial custody in India, the study shed light on the pressing issues surrounding the protection of these rights.

Furthermore, it put forth essential recommendations and potential reforms aimed at strengthening the protection of accused persons' rights within Indian laws and enhancing the accountability of law enforcement agencies in cases of rights violations. Drawing upon insights from international legal frameworks and best practices concerning the rights of accused individuals under custody, the research provided a broader perspective. It assessed their relevance to the Indian context.

Through this comprehensive approach, the research endeavour aspires to contribute valuable insights and foster meaningful improvements in safeguarding the rights of accused individuals, promoting fairness, and upholding the principles of justice within India's criminal justice system. This research highlights the crucial importance of safeguarding the rights of accused individuals during judicial and police custody. By analysing the legal frameworks and statistical data, the research aims to offer insights into the challenges faced by accused persons and potential remedies to strengthen protections. Upholding the rights of the accused not only ensures fair trials but also contributes to the preservation of human dignity and fundamental justice in any legal system. Imprisonment constitutes a reformatory measure introduced to rehabilitate offenders, based on the steadfast belief of our country's lawmakers that every individual, regardless of the crime committed, possesses the potential for reformation. India, along with its administrative personnel, ought to adhere to this principle and utilize imprisonment as a means to reform criminals. As evidenced in numerous legal cases, it is imperative to recognize that prisoners, notwithstanding their criminal status, retain their fundamental rights as individuals, with only limited exceptions warranting restriction. Despite the significant contributions made by the Supreme Court, various High Courts in India, the National Human Rights Commission, State Human Rights Commissions, voluntary organisations, and the media in the pursuit of custodial justice, it remains evident that custodial violence incidents are widespread in the country. Consequently, urgent action is imperative to implement practical measures aimed at curbing this menace. To effectively address the issue of human rights violations occurring in custodial situations and the underlying structural challenges that enable torture, ill-treatment, and other human rights infringements, police reforms must be implemented. These reforms should explicitly incorporate international human rights standards, focusing on procedures and safeguards concerning arrest and detention to prevent discrimination. Additionally, a comprehensive code of ethics for police officers should be integrated into the reform measures. Moreover, India's legal aid

¹ Joginder Kumar vs State Of U.P., 1994 SCC (4) 260

² Nilabati Behera Vs. State of Orissa, 1993 (2) SCC 746

³ Charles Shobraj v. Superintendent, Tihar Jail AIR, 1978 S.C. 1514

⁴ Sheela Barse v. State of Maharashtra, AIR 1983 SC 378

⁵ Smt. Selvi and Ors. v. State of Karnataka and Anr., 2010(7) SCC 263

delivery system boasts an extensive geographical reach and offers various services. However, the need for robust monitoring mechanisms significantly hampers the quality of these services. As a result, the fundamental rights to legal representation and a fair trial are compromised, leading to their abrogation.

IX. Suggestions

1. Strengthen Legal Protections:

- In India we are having Stringent Laws to protect the rights of Individuals who are kept in the custody but still there is need to enact clear and comprehensive legislation that explicitly prohibits custodial violence and torture, ensuring severe penalties for those found guilty.
- Implement and enforce international human rights standards, such as the UN Convention against Torture, to create a robust legal framework.

2. Effective Oversight Mechanisms:

- There is need to establish independent oversight bodies as to monitor custodial facilities, investigate complaints of violence, and ensure accountability for any wrongdoing.
- It is necessary to encourage regular inspections of police stations and prisons by State as well as District Human rights organizations and judicial authorities to prevent abuse.

3. Training and Sensitization:

- To Provide comprehensive training to law enforcement officers on human rights, ethics, and the proper treatment of detainees for Proper implementation of Laws.
- Awareness campaigns to sensitise police personnel and the public about the importance of respecting human rights and the consequences of custodial violence.

4. Body-Worn Cameras:

- One new Initiative can be done by equipping law enforcement officers with body-worn cameras during their interactions with detainees to deter misconduct and provide an objective record of events.

5. Legal Aid and Access to Justice:

- It is a fundamental right of every detained person to have access to legal Aid and ensure representation to safeguard their rights during the investigation and trial process.
- A mechanism can be established to expedite legal proceedings to reduce the time spent in custody and prevent opportunities for abuse.

6. Transparency and Data Collection:

- To ensure the maintenance of accurate and transparent records of arrests, detentions, and incidents of custodial violence for better analysis and informed decision-making.
- Publish periodic reports on custodial violence, highlighting trends and areas of concern, to promote accountability.

7. Community Policing and Trust-Building:

- To Foster positive community-police relations through community engagement programs, neighbourhood watch initiatives and dialogue forums.
- It is the duty of the State Govt. to build trust between law enforcement agencies and the public to encourage reporting of abuses and cooperation in investigations.

8. Whistleblower Protection:

- To Establish robust whistleblower protection mechanisms to encourage law enforcement personnel and detainees to report incidents of custodial violence without fear of reprisals.

9. Promote Non-Coercive Investigation Techniques:

- Police officials to be encouraged the adoption of modern, non-coercive investigative techniques, such as forensic evidence collection and advanced technology, to reduce reliance on physical force.