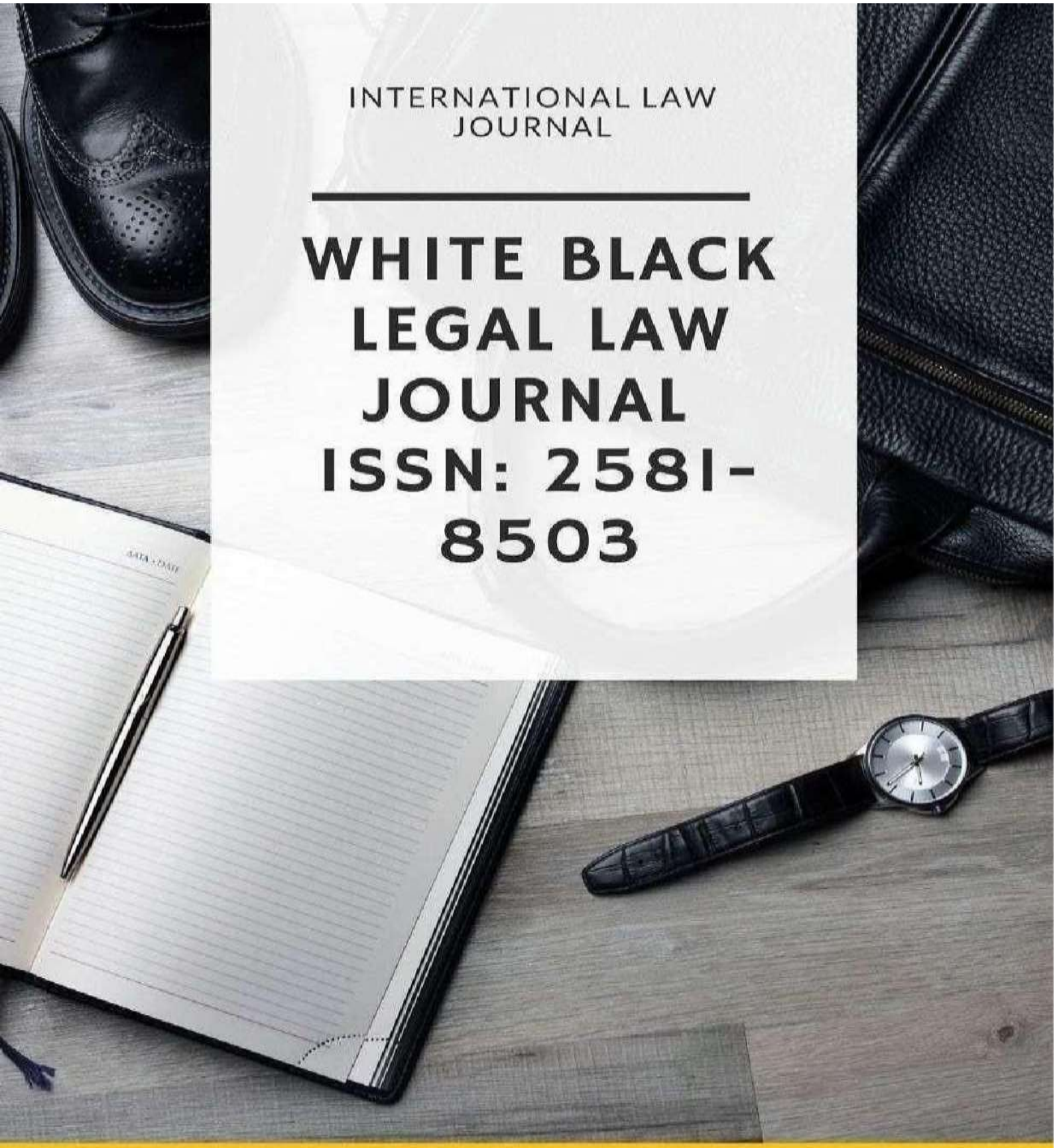

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"VICTIM COMPENSATION AND CUSTODIAL DEATHS IN INDIA: A RIGHTS BASED APPROACH"

AUTHORED BY - B.POORANA KARTHIYAYINI [1] & MRS. JISHA.J.S

ABSTRACT

Victim compensation in cases of custodial deaths has emerged as a crucial component of a rights-based approach to justice in India. Custodial deaths, often resulting from torture, negligence, or abuse of authority, constitute a direct violation of the fundamental right to life and dignity guaranteed under Article 21 of the Constitution of India. This paper examines how compensation is not merely a remedial measure but an enforceable public law right aimed at acknowledging state accountability and providing immediate relief to victims' families.

The study analyzes the evolution of compensation jurisprudence through landmark decisions of the Supreme Court of India, particularly in cases such as Nilabati Behera v. State of Orissa and D.K. Basu v. State of West Bengal. These judgments established that monetary compensation can be awarded under public law for the violation of fundamental rights, independent of private law remedies such as civil suits or criminal prosecution. The Court emphasized that compensation serves both a restorative and deterrent function, reinforcing the principle that the state is liable for the actions of its agents.

Further, the paper evaluates statutory provisions and schemes, including Section 357A of the Code of Criminal Procedure, which mandates victim compensation schemes at the state level. It also explores the role of institutions like the National Human Rights Commission, which has issued guidelines recommending interim relief and standardized compensation in custodial death cases. However, the implementation of such schemes remains inconsistent, with disparities in compensation amounts, delays in disbursement, and lack of awareness among victims' families.

1. Author **B.POORANA KARTHIYAYINI, Reg No.21119243 B.A., LL.B (Hons) VISTAS**

2. Co Author **Mrs. JITHA.J.S, ASSISTANT PROFESSOR, LAW DEPARTMENT VISTAS**

INTRODUCTION

The true test of a democracy lies in how it treats its most vulnerable citizens, particularly those who are stripped of their liberty and placed under the custody of the State. In India, the police and prison authorities are entrusted with the constitutional duty to uphold the rule of law and protect citizens. However, when the protectors turn into perpetrators, the resulting custodial violence represents one of the most egregious violations of human rights and a profound betrayal of public trust.

Custodial death is not merely a failure of the criminal justice system; it is a direct assault on the fundamental right to life and dignity guaranteed under Article 21 of the Constitution of India. Historically, the Indian legal system relied heavily on the colonial-era framework, which prioritized sovereign immunity and focused almost exclusively on the criminal prosecution of errant officials. This approach often left the dependents of the deceased grappling with the loss of their breadwinner, facing insurmountable legal hurdles, and receiving little to no reparative justice.

The transition from a state-centric model to a rights-based approach marked a critical turning point in Indian jurisprudence. The Supreme Court of India, through judicial activism, pioneered the concept of public law remedies, establishing that the State is strictly liable for the tortious acts of its agents resulting in custodial deaths. This shift brought victim compensation to the forefront, transforming it from an act of state charity into a constitutionally mandated right. Despite statutory interventions like Section 357A of the Code of Criminal Procedure (CrPC) and the active role of the National Human Rights Commission (NHRC), the journey from a judicial pronouncement to the actual realization of monetary compensation remains fraught with systemic delays, institutional apathy, and enforcement deficits

1.1 THE LEGAL LANDSCAPE OF VICTIM COMPENSATION IN INDIA

The jurisprudential evolution discussed in the preceding chapters established that the right to compensation for custodial violence is an integral facet of Article 21. However, translating this constitutional idealism into tangible financial relief requires a robust, accessible, and efficient statutory framework. The legal landscape of victim compensation in India is a complex matrix, navigating between traditional criminal law mechanisms, public law remedies, statutory schemes, and the oversight of quasi-judicial bodies. This chapter provides a comprehensive examination of this landscape, critically analyzing the dual-track legal system, the evolving provisions of the Code of Criminal Procedure (and the newly introduced Bharatiya Nagarik

Suraksha Sanhita), the indispensable role of the National Human Rights Commission, and the glaring gaps left by India's international legal postures.

1.2 The Dual Track System: Criminal Law vs. Public Law Remedies

Victims of custodial violence and their dependents are often forced to navigate a bifurcated legal architecture. The Indian legal system effectively operates on a "Dual Track," where the pursuit of justice is split into two distinct, though theoretically parallel, trajectories: the Criminal Law Track and the Public Law Track. Understanding the dichotomy between these two tracks is crucial to comprehending why victim compensation is often delayed or denied.

The Criminal Law Track: The Pursuit of Punishment

The traditional approach to custodial death is rooted in penal law. When a custodial death occurs, an FIR must be registered against the offending police officers under relevant sections of the Indian Penal Code (IPC)—or the Bharatiya Nyaya Sanhita (BNS)—such as murder, culpable homicide, or voluntarily causing hurt to extort a confession.

- **Objective:** The primary goal of this track is punitive; it seeks to establish the individual guilt of the police officer and impose a custodial sentence.
- **Burden of Proof:** The evidentiary standard is exceptionally high, requiring the prosecution to prove the officer's guilt "beyond a reasonable doubt."
- **The Flaw for Victims:** For the dependents of the deceased, the criminal track is often an agonizingly slow and hostile process. It relies on the police to investigate their own colleagues, leading to compromised evidence, intimidated witnesses, and ultimately, abysmally low conviction rates. More importantly, the criminal trial is entirely accused-centric. Until the conclusion of the trial—which can take decades—the victim's family receives no financial rehabilitation, rendering this track practically useless for immediate reparative justice.

The Public Law Track: The Pursuit of Restitution

To cure the inherent defects of the criminal track, the higher judiciary developed the Public Law remedy, invoked via Writ Petitions under Article 32 (Supreme Court) or Article 226 (High Courts) of the Constitution.

- **Objective:** The primary goal is restorative and compensatory. It seeks to penalize the State for its failure to protect the fundamental right to life, regardless of the individual officer's criminal conviction.

- **Burden of Proof:** This track operates on the principle of strict liability. The courts rely on the doctrine of *res ipsa loquitur* (the thing speaks for itself). If a healthy individual is taken into police custody and is subsequently found dead with unexplained injuries, the burden shifts entirely to the State to explain the death.
- **The Advantage for Victims:** The Constitutional Courts can award monetary compensation based on affidavits, Magisterial inquiry reports, and autopsy findings without waiting for the criminal trial to conclude. Crucially, the Supreme Court has repeatedly held that an acquittal in the criminal trial (often due to lack of evidence) does not preclude the State's liability to pay compensation under public law.

The Intersection and Friction

While the dual tracks are meant to be complementary, they often cause socio-legal friction. State authorities frequently attempt to delay public law compensation by arguing that the criminal trial is still pending. However, Indian jurisprudence has firmly established that the right to compensation in public law is independent of the criminal prosecution, acting as a crucial safety net for victims who are failed by the traditional penal system.

1.3 Statutory Provisions: Section 357 and 357A of the CrPC / BNSS

The realization that the criminal justice system was heavily skewed toward the accused, leaving the victim as a forgotten entity, prompted significant statutory amendments. The evolution of compensation within the procedural codes—from Section 357 to Section 357A of the Code of Criminal Procedure (CrPC), 1973, and their corresponding iterations in the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023—marks a critical shift from offender-funded restitution to State-funded rehabilitation.

Section 357 CrPC (Section 395 BNSS): The Conditional Compensation

Historically, Section 357 of the CrPC empowered trial courts to award compensation to victims. However, this provision was severely structurally flawed:

- **Dependence on Conviction:** Compensation under this section could only be awarded *if* the accused was convicted. In cases of custodial death, where police officers are rarely convicted due to the "blue wall of silence," this provision was practically a dead letter.

- **Linked to Fine:** The compensation was to be paid out of the fine imposed on the convicted officer. If the officer lacked the financial capacity to pay a heavy fine, the victim received nothing. The State bore no financial responsibility under this section.
- **Judicial Reluctance:** For decades, trial courts viewed Section 357 as a discretionary power rather than a mandatory duty, leading to its gross underutilization.

Section 357A CrPC (Section 396 BNSS): The Paradigm Shift to State Liability

Recognizing the absolute failure of Section 357, and acting upon the recommendations of the Malimath Committee on Reforms of the Criminal Justice System, the legislature introduced Section 357A through the CrPC (Amendment) Act, 2008 (effective 2009). This was a watershed moment for victimology in India.

- **The Victim Compensation Scheme:** Section 357A mandates every State Government, in coordination with the Central Government, to prepare a scheme for providing funds to compensate victims or their dependents who have suffered loss or injury and require rehabilitation.
- **Decoupling from Conviction:** The most revolutionary aspect of Section 357A is that compensation is no longer tethered to the conviction of the accused. Sub-section (4) explicitly states that where the offender is not traced or identified, but the victim is identified, the victim or their dependents may make an application to the State or District Legal Services Authority (SLSA/DLSA) for an award of compensation.
- **Interim Relief:** The provision empowers the DLSA to order immediate first-aid facility or medical benefits free of cost on the certificate of the police officer, and to grant interim compensation to address immediate financial destitution.

Critical Analysis of the Statutory Reality

While Section 357A (and its BNSS equivalent) reads as a triumphant piece of welfare legislation, its ground-level implementation remains deeply flawed.

1. **Disparity in Funds:** Since Victim Compensation Schemes are formulated by individual state governments, there is a massive disparity in the quantum of compensation awarded. A life lost in police custody in Maharashtra may be valued drastically differently than a life lost in Bihar.
2. **Bureaucratic Hurdles:** The DLSAs are often underfunded and bogged down by bureaucratic red tape. Victims' families—who are predominantly from marginalized socio-economic backgrounds—struggle to navigate the complex application processes.

3. **Lack of Awareness:** Despite statutory mandates, police officers and magistrates rarely inform the dependents of a custodial death victim about their right to claim compensation from the DLSA, defeating the very purpose of the legislation.

1.4 The Role of the National Human Rights Commission (NHRC)

The institutional landscape of victim compensation in India is incomplete without examining the role of the National Human Rights Commission (NHRC). Established under the Protection of Human Rights Act (PHRA), 1993, the NHRC acts as a specialized, quasi-judicial watchdog designed to curb state excesses, particularly custodial violence.

Mandatory Reporting and Procedural Oversight

To pierce the secrecy that typically shrouds police lock-ups, the NHRC issued stringent, binding guidelines regarding custodial deaths:

- **The 24-Hour Rule:** Every death in police or judicial custody must be reported to the NHRC by the District Magistrate or Superintendent of Police within 24 hours of its occurrence. Failure to do so raises a presumption of foul play.
- **Videography of Post-Mortem:** To prevent the manipulation of medical evidence, the NHRC mandates that the post-mortem examination of a custodial death victim must be videographed, and the autopsy must be conducted by a panel of at least two doctors.
- **Magisterial Inquiry Reports:** The detailed report of the mandatory Magisterial Inquiry (under Section 176(1A) CrPC) must be forwarded to the NHRC within two months.

The Power to Recommend Compensation: Section 18 of the PHRA

When the NHRC, upon analyzing the reports and conducting its own inquiry, concludes that a custodial death was the result of torture or negligence, it invokes Section 18 of the PHRA.

- **Interim Relief:** Section 18(a)(i) empowers the NHRC to recommend to the concerned Government or authority the initiation of proceedings for prosecution, and more importantly, to recommend the payment of compensation or damages to the complainant or to the victim's family.
- **The Quantum:** The NHRC has consistently utilized this power to award immediate monetary relief (often ranging from ₹5 Lakhs to ₹10 Lakhs, depending on the

circumstances), directing the State Government to pay the amount and subsequently recover it from the salaries of the guilty officials.

The "Toothless Tiger" Critique

Despite its critical role, the NHRC operates under severe statutory limitations. The Commission has frequently been termed a "toothless tiger" because its powers are strictly recommendatory. It cannot issue binding judicial decrees or enforce its compensation orders independently. If a State Government ignores or formally rejects an NHRC recommendation for compensation, the Commission's only recourse is to approach the Supreme Court or High Court to compel compliance. Consequently, while the NHRC is an excellent fact-finding body that greatly assists the constitutional courts, it lacks the independent penal authority to ensure swift financial restitution.

1.5 India's Stance on the UN Convention Against Torture (UNCAT)

The domestic legal landscape of victim compensation is heavily influenced—and constrained—by India's precarious position on the international stage regarding human rights frameworks, specifically the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).

The International Gold Standard

Adopted by the UN General Assembly in 1984, UNCAT is the definitive international legal instrument aimed at eradicating torture. Crucially for victimology, Article 14 of UNCAT mandates that every State Party must ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, their dependents are entitled to compensation.

India's Ambivalent Position

India became a signatory to the UNCAT on October 14, 1997. However, signing a treaty merely indicates an intention to comply; it is not legally binding until ratified. Nearly three decades later, India remains one of the few liberal democracies that has not ratified the Convention.

Legislative Paralysis and the Missing Anti-Torture Law

Ratifying UNCAT requires India to enact a comprehensive, standalone domestic law that specifically defines and criminalizes torture, and establishes a statutory right to compensation.

- The **Prevention of Torture Bill, 2010** was passed by the Lok Sabha but subsequently lapsed after being sent to a Select Committee of the Rajya Sabha.
- In 2017, the **Law Commission of India, in its 273rd Report**, strongly urged the government to ratify UNCAT and proposed a draft "Prevention of Torture Bill, 2017." The draft explicitly included provisions for courts to grant immediate and adequate compensation to victims. Yet, the legislature has failed to enact this bill.

The Consequence of Non-Ratification

The absence of a standalone anti-torture law forces Indian courts and victims to rely on a patchwork of IPC provisions (like "voluntarily causing hurt") that fail to capture the aggravated, systemic nature of custodial violence. By treating torture as standard criminal assault, the State evades the mandatory, codified rehabilitation and compensation frameworks required by international law. India's refusal to ratify UNCAT not only damages its international human rights credentials but also perpetuates a domestic legal environment where victim compensation remains a matter of judicial discretion rather than an ironclad statutory right.

1.6 The Legal Victory and Enforcement Deficit in Custodial Jurisprudence

When evaluating the legal landscape of victim compensation in India, a stark paradox emerges: a resounding victory in constitutional jurisprudence juxtaposed against a profound deficit in ground-level enforcement.

The De Jure Victory

On paper, the Indian legal system has achieved remarkable progress. The transition from sovereign immunity to strict liability, the dynamic expansion of Article 21, the procedural safeguards laid down in the *D.K. Basu* guidelines, the insertion of Section 357A in the CrPC, and the oversight mechanisms of the NHRC collectively represent a highly progressive, rights-based legal architecture. The Supreme Court has unequivocally declared that a life extinguished in the dark confines of a police lock-up must be compensated by the State.

The De Facto Deficit

However, the distance between the courtroom and the police station remains vast. The enforcement deficit is driven by several deeply entrenched institutional pathologies:

- **The Institutional Silence:** Law enforcement agencies close ranks immediately following a custodial death. FIRs are delayed, post-mortems are compromised, and the initial, crucial evidence required to trigger both criminal and compensatory mechanisms is systematically destroyed.
- **The Attrition Strategy:** State authorities frequently employ legal attrition, appealing compensation orders from the Single Judge of a High Court to a Division Bench, and ultimately to the Supreme Court. This forces impoverished families into prolonged, expensive litigation, effectively weaponizing the legal process to starve them out.
- **Failure of Recovery:** While courts frequently order the State to pay compensation and recover it from the guilty officers, the recovery phase is rarely executed. Departmental inquiries are dragged out for years, and officers are often reinstated or promoted, meaning the financial burden falls solely on the taxpayer rather than serving as an economic deterrent to the individual perpetrator.

In conclusion, while the legal framework for claiming victim compensation in India is theoretically robust, its practical application is suffocated by institutional apathy and a persistent colonial policing culture. The jurisprudence exists, but the administrative will to enforce it does not. Until the State moves beyond reactive judicial decrees and establishes a proactive, codified, and independently monitored mechanism for immediate restitution, the right to compensation will remain a hollow victory for the families of those who perish in State custody.

 Nilabati Behera v. State of Orissa

This is the cornerstone. The Court held that compensation for custodial death is a **public law remedy** under Article 32/226, distinct from private tort claims. It emphasized State liability for violation of fundamental rights (Article 21).

 Rudul Sah v. State of Bihar

Early recognition of compensation for illegal detention. The Court awarded monetary relief for violation of fundamental rights.

CONCLUSION

The trajectory of Indian jurisprudence on custodial deaths reveals a sustained conflict between the coercive omnipotence of the State and the constitutional sanctity of human life. A custodial death is not a mere aberration in policing statistics or an isolated administrative lapse; it is the ultimate, irreversible violation of Article 21, in which the State extinguishes the very life it is bound to protect. Each such death represents a catastrophic breach of the social contract, where the guardian of law metamorphoses into its most dangerous violator.

Historically, the legal order was structurally skewed in favour of the State. The colonial doctrine of sovereign immunity and the repressive design of the Police Act of 1861 created a legal ecosystem in which the life and bodily integrity of an ordinary Indian—especially those from Dalit, Adivasi, minority, and poor communities—were rendered almost legally expendable. The traditional criminal justice system, which depended on the police to investigate allegations against their own colleagues, predictably failed to deliver either retributive or restorative justice. This failure was fortified by the "Khaki Wall of Silence": institutional solidarity, falsified station records, hostile witness climates, and medical complicity ensured that only a fraction of custodial violence ever translated into convictions or meaningful relief.

SUGGESTIONS

To narrow the gap between constitutional promises and ground realities, the following legal, policy, and institutional reforms are urgently recommended.

1. Enactment of a Standalone Anti-Torture Law and Ratification of UNCAT

India must move beyond piecemeal penal provisions and enact a comprehensive anti-torture statute as a prelude to ratifying the United Nations Convention Against Torture (UNCAT), which it signed in 1997 but has yet to ratify. Such legislation should:

Provide a precise, UNCAT-compatible definition of "torture" and "cruel, inhuman or degrading treatment" by public officials, capturing both physical and psychological harm.

Create specific, aggravated offences for torture, custodial rape, enforced disappearance, and custodial death, with higher penalties than generic IPC/BNS provisions.

Codify a uniform national mechanism for computing and disbursing compensation in custodial violence cases, including non-pecuniary harms like psychological trauma and loss of dignity,

thereby reducing over-reliance on ad hoc judicial discretion.

The Law Commission, NHRC, and parliamentary committees have already drafted and recommended versions of a Prevention of Torture Bill; failure to act on these proposals has been repeatedly criticised as "baffling" and"shameful" from a human-rights perspective.