

**ANALYSIS OF POLICE BRUTALITY: VIOLATION OF LAW,  
CUSTODIAL DEATH — HATE THE CRIME, NOT THE CRIMINAL**

- Sumedh Khandalkar<sup>1</sup> & Piyush Maheshwari<sup>2</sup>

**Abstract**

*Police brutality and custodial deaths represent grave violations of fundamental human rights and constitutional guarantees. This article undertakes a comprehensive legal and socio-political analysis of police brutality in India and globally, examining the normative framework governing custodial conduct, the causes and consequences of institutional violence, and the urgent need for systemic reform. Drawing upon constitutional provisions, judicial precedents, and international human rights law, the article argues that accountability and oversight mechanisms must be substantially strengthened. The guiding philosophical premise is that justice demands we hate the crime—not the criminal—a principle that is equally applicable to those who perpetrate acts of brutality from within the apparatus of the State. Ultimately, democratic governance cannot be reconciled with impunity for its enforcers.*

**Keywords:** *Police brutality, custodial death, human rights, Article 21, third degree torture, accountability, criminal justice reform, custodial violence, rule of law, India.*

**I. Introduction**

The relationship between the state and the individual is fundamentally defined by the rule of law. Central to this relationship is the expectation that those entrusted with the power to enforce the law will themselves operate within its boundaries. Yet, across the world—and most acutely in developing democracies such as India—the custodian of law has, on numerous occasions, become its violator. Police brutality, in its many forms, constitutes one of the most disturbing manifestations of state violence against its own citizens.

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<sup>1</sup> Student at CSMU Law College

<sup>2</sup> Associate Professor at CSMU Law College

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Custodial deaths—the loss of life of a person in police or judicial custody—are among the gravest indicators of institutional failure. According to data published by the National Crime Records Bureau (NCRB), India reported.<sup>3</sup> numerous custodial deaths annually, many of which occur under suspicious circumstances, with allegations of torture, denial of medical care, and fabrication of encounter narratives. These figures represent not only personal tragedies but systemic breakdowns in the rule of law.

This article seeks to analyse the phenomenon of police brutality through a multi-dimensional lens encompassing constitutional law, criminal jurisprudence, international human rights standards, and sociological inquiry. The central argument is that police violence is neither an aberration nor an inevitable by-product of law enforcement—it is a legal wrong and a moral failure that demands institutional accountability. The philosophical principle embedded in the title—'hate the crime, not the criminal'—is deliberately turned upon the perpetrators of custodial violence: we must condemn the act of brutality with the full force of law while pursuing structural reform over retributive populism.

The article proceeds as follows: Section II examines the constitutional and statutory framework governing police conduct; Section III traces the historical and sociological roots of custodial violence; Section IV analyses landmark judicial pronouncements; Section V engages with international human rights standards; Section VI proposes a comprehensive reform agenda; and Section VII concludes.

## **II. Constitutional and Statutory Framework Governing Police Conduct**

### **2.1 Fundamental Rights and Custodial Obligations**

The Constitution of India provides the primary normative foundation for protecting persons in custody. Article 21 guarantees the right to life and personal liberty and stipulates that no person shall be deprived of this right except according to procedure established by law.<sup>4</sup> The Supreme Court has progressively expanded the scope of Article 21 to encompass the right to live with dignity, the right against torture, and the right to health—all of which are directly implicated in cases of custodial violence.

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<sup>3</sup>National Crime Records Bureau (NCRB), Crime in India 2022 (Ministry of Home Affairs, Government of India, 2023). The NCRB compiles annual data on custodial deaths reported by state police.

<sup>4</sup>Constitution of India, Article 21: 'No person shall be deprived of his life or personal liberty except according to procedure established by law.'

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Article 20(3) guarantees the right against self-incrimination, prohibiting any accused from being compelled to be a witness against himself.<sup>5</sup>The use of third-degree methods to extract confessions is a direct violation of this constitutional guarantee and renders any confession so obtained inadmissible under Section 25 of the Indian Evidence Act, 1872, which bars confessions made to police officers from being used as evidence.<sup>6</sup>

Article 22 provides limited but important procedural protections for persons arrested. Sub-clause (1) mandates that every person arrested must be informed of the grounds of arrest, and sub-clause (2) requires production before the nearest magistrate within twenty-four hours.<sup>7</sup> These provisions, though basic, serve as critical checks against arbitrary detention and custodial abuse.

## 2.2 Statutory Provisions

The Code of Criminal Procedure, 1973 (CrPC), now substantially replaced by the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), contains numerous provisions regulating arrest, detention, and interrogation. Section 41 of the CrPC (now reflected in BNSS provisions) circumscribes the power of arrest without warrant, while Section 41A mandates the issuance of a notice of appearance in cases where arrest may not be necessary.<sup>8</sup>

The Prevention of Torture Bill, 2010, though passed by the Lok Sabha, was never enacted into law due to lapse in the Rajya Sabha—a significant legislative gap that India continues to grapple with.<sup>9</sup>In the absence of a dedicated anti-torture statute, prosecutions against custodial torturers are typically pursued under Sections 330, 331, and 342 of the Indian Penal Code (now Sections 117, 118, and 127 of the Bharatiya Nyaya Sanhita, 2023), which deal with voluntarily causing hurt to extort confession and wrongful confinement respectively.<sup>10</sup>

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<sup>5</sup>Constitution of India, Article 20(3): 'No person accused of any offence shall be compelled to be a witness against.'

<sup>6</sup>Indian Evidence Act, 1872, Section 25: 'No confession made to a police officer shall be proved as against a person accused of any offence'

<sup>7</sup>Constitution of India, Article 22(1) and 22(2), which guarantee procedural safeguards upon arrest including production before a magistrate within twenty-four hours.

<sup>8</sup>Code of Criminal Procedure, 1973, Sections 41 and 41A. See also *Arnesh Kumar v. State of Bihar* (2014) 8 SCC 273, where the Supreme Court elaborated on the conditions necessary for arrest.

<sup>9</sup>The Prevention of Torture Bill, 2010 was passed by the Lok Sabha on 6 May 2010 but lapsed upon dissolution of the 15th Lok Sabha in 2014 without being taken up by the Rajya Sabha.

<sup>10</sup>Indian Penal Code, 1860, Sections 330 (voluntarily causing hurt to extort confession), 331 (voluntarily causing grievous hurt to extort confession), and 342 (wrongful confinement); now reflected in the Bharatiya Nyaya Sanhita, 2023.

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The Protection of Human Rights Act, 1993, established the National Human Rights Commission (NHRC) and State Human Rights Commissions (SHRCs) as quasi-judicial bodies empowered to investigate custodial violations and recommend compensation.<sup>11</sup> However, the NHRC's mandate is recommendatory, and its orders are not binding on state governments—a structural limitation that severely hampers effective accountability.

### III. Historical and Sociological Roots of Police Brutality

#### 3.1 Colonial Legacy

To understand police brutality in India, one must engage with its colonial genealogy. The Indian Police Act, 1861, was enacted in the aftermath of the 1857 uprising, primarily to serve as an instrument of suppression and colonial control.<sup>12</sup> The police were deliberately constituted as a force that served the colonial administration rather than the citizenry. Coercive methods of interrogation, including physical torture, were systematically deployed against political dissenters and ordinary suspects alike.

Post-independence, despite constitutional transformation, the organisational culture, hierarchical structure, and legal framework of the police remained largely unchanged. The 1861 Act continued to govern police functioning in most states until recently, with its emphasis on authority, obedience to executive commands, and minimal accountability to the public.<sup>13</sup> This institutional inheritance has perpetuated a culture in which custodial violence is normalised rather than stigmatised.

#### 3.2 Institutional Culture and Impunity

Sociological studies of police organisations reveal that a 'code of silence'—or what scholars refer to as the 'blue wall'—operates to shield officers from accountability.<sup>14</sup> Witnesses to custodial abuse within police stations rarely come forward, internal investigations are conducted perfunctorily, and departmental proceedings seldom result in meaningful

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<sup>11</sup>Protection of Human Rights Act, 1993, Sections 3–5 (establishment and composition of NHRC) and Section 18 (powers of NHRC including recommendation of monetary compensation).

<sup>12</sup>The Indian Police Act, 1861 was drafted following the First War of Independence of 1857. See David Arnold, *Police Power and Colonial Rule: Madras 1859–1947* (Oxford University Press, 1986) for a comprehensive historical account.

<sup>13</sup>Second Administrative Reforms Commission, Fifth Report: Public Order – Justice for Each, Peace for All (Government of India, 2007) 47–52.

<sup>14</sup>Jerome H. Skolnick, *Justice Without Trial: Law Enforcement in Democratic Society* (4th edh, Quid Pro Books, 2011). The concept of the 'blue wall of silence' is extensively discussed in police sociology literature.

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punishment. This culture of impunity is reinforced by political patronage, as police officers frequently perform their duties at the behest of elected representatives rather than in accordance with law.

The Second Administrative Reforms Commission (2007) highlighted that police stations in India operate with minimal oversight, inadequate infrastructure, and significant resource constraints.<sup>15</sup> Overworked and undertrained personnel, operating under pressure to deliver quick results, are more likely to resort to violence as an interrogation shortcut. The absence of scientific investigation methods and forensic infrastructure further incentivises the resort to confession-extraction through coercion.

### **3.3 Marginalisation and Differential Application of Violence**

Custodial violence does not fall equally across all segments of society. Empirical research consistently demonstrates that Dalits, Adivasis, religious minorities, and the economically marginalised are disproportionately subjected to police brutality.<sup>16</sup> The intersection of caste prejudice, communal bias, and class discrimination within police institutions means that those least able to assert legal rights are most likely to experience custodial abuse. This dimension renders police brutality not merely a law enforcement problem but a human rights crisis with deep structural roots.

## **IV. Judicial Response to Custodial Violence**

### **4.1 Landmark Pronouncements of the Supreme Court**

The judiciary has been the most consistent institutional voice against police brutality in India. In *D.K. Basu v. State of West Bengal* (1997),<sup>17</sup> the Supreme Court laid down a comprehensive set of guidelines governing arrest and detention, now codified under law. These included requirements of arrest memos, medical examination, notification of relatives, and the prohibition against torture. The court categorically held that custodial torture is a naked violation of human dignity and strikes at the very foundations of a democratic polity.

In *Nila Bati Behera v. State of Orissa* (1993),<sup>18</sup> the court awarded monetary compensation for custodial death under its constitutional jurisdiction under Article 32, recognising that

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<sup>15</sup>Second Administrative Reforms Commission (n 11) 78–83.

<sup>16</sup>Human Rights Watch, *Broken System: Dysfunction, Abuse, and Impunity in the Indian Police* (2009). The report documents the disproportionate impact of custodial violence on marginalised communities in India.

<sup>17</sup>*D.K. Basu v. State of West Bengal* (1997) 1 SCC 416.

<sup>18</sup>*Nila Bati Behera v. State of Orissa* (1993) 2 SCC 746.

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constitutional rights impose positive obligations upon the state to ensure that persons in custody are not subjected to violence. The court distinguished between public law remedies and private law tortious claims, asserting that compensation under the constitution is a distinct and enforceable right.

In *Joginder Kumar v. State of U.P.* (1994),<sup>19</sup> the court emphasised that the power of arrest is not absolute and must be exercised judiciously. No arrest can be made merely because it is lawful to do so; the arresting officer must have credible information and a reasonable ground to believe that an arrest is necessary. This judgment has been pivotal in curbing preventive and arbitrary arrests.

In *People's Union for Civil Liberties v. Union of India* (1997),<sup>20</sup> the court examined a series of alleged encounter killings in Manipur and held that every death in police action must be independently investigated. The court established that the state cannot claim immunity for extrajudicial killings and that the burden of proof in custodial death cases shifts to the state once a prima facie case is established.

#### **4.2 High Court Contributions**

Several High Courts have also made significant contributions. The Madras High Court, in a notable judgment concerning the 2020 custodial deaths of P. Jayaraj and J. Benik's in Thoothukudi district,<sup>21</sup> directed the National Human Rights Commission to investigate the matter, underscoring that the failure to conduct a fair and impartial inquiry into custodial deaths constitutes a violation of the victim's right to justice. The case, which provoked nationwide outrage, became a watershed moment in public consciousness regarding custodial brutality.

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<sup>19</sup>*Joginder Kumar v. State of Uttar Pradesh* (1994) 4 SCC 260.

<sup>20</sup>*People's Union for Civil Liberties v. Union of India* (1997) 3 SCC 433.

<sup>21</sup>*Shankar v. Superintendent of Police, Tuticorin* (2020), Madras High Court. The court directed the NHRC to conduct an inquiry into the custodial deaths of P. Jayaraj and J. Benik's, following media reports and petitions filed by civil society groups.

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## V. International Human Rights Standards

### 5.1 The United Nations Convention Against Torture

India signed the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) in 1997 but has not ratified it.<sup>22</sup> This status constitutes a significant anomaly, as India is bound by the obligation not to act contrary to the object and purpose of a treaty it has signed. The failure to ratify UNCAT has been consistently criticised by the UN Committee Against Torture and human rights bodies, which have urged India to enact comprehensive anti-torture legislation.

UNCAT defines torture as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person by a public official or at their instigation for purposes such as obtaining information or a confession, punishing, intimidating, or coercing.<sup>23</sup> This definition is broader than existing Indian penal provisions and its incorporation into domestic law would substantially strengthen the legal regime against custodial abuse.

### 5.2 UN Standard Minimum Rules for the Treatment of Prisoners

The Nelson Mandela Rules—the revised UN Standard Minimum Rules for the Treatment of Prisoners (2015)—establish a comprehensive international baseline for the humane treatment of prisoners and detainees.<sup>24</sup> They prohibit corporal punishment, placement in dark or inadequately ventilated cells, cruel, unusual, or degrading punishments, and require that all instruments of restraint be used only under prescribed circumstances and never as punishment. Indian prison and police station conditions frequently fall short of these standards.

### 5.3 The UN Basic Principles on the Use of Force and Firearms

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) establish that law enforcement officers shall, as far as possible, apply non-violent means before resorting to force, and that any use of force must be proportional, necessary,

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<sup>22</sup>India signed UNCAT on 14 October 1997 but has not ratified it as of date. See United Nations Treaty Collection, <<https://treaties.un.org>> (accessed April 2025).

<sup>23</sup>Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, Article 1.

<sup>24</sup>United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), UN General Assembly Resolution 70/175 (17 December 2015).

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and used only to the extent required for the performance of their duty.<sup>25</sup> Extrajudicial killings and staged encounters are incompatible with these principles and constitute violations of international law.

## VI. Custodial Deaths: Patterns, Data, and Documentation

The NCRB's annual publication 'Crime in India' provides data on custodial deaths, though critics have noted significant underreporting due to inadequate state compliance in furnishing data.<sup>26</sup> According to available NCRB data, hundreds of custodial deaths are recorded annually across Indian states, with Maharashtra, Uttar Pradesh, Gujarat, and Tamil Nadu consistently featuring among the states with high incidence.

The National Human Rights Commission receives thousands of complaints relating to police conduct each year.<sup>27</sup> A substantial proportion concern allegations of illegal detention, torture, and death in custody. The Commission has emphasised that the state must demonstrate, through credible medical and circumstantial evidence, that a death in custody resulted from natural causes or external circumstances, failing which the presumption of institutional culpability ought to operate.

Project 39A, a criminal justice research initiative at National Law University Delhi, has documented the acute deficiencies in the criminal justice system that contribute to custodial violence, including inadequate legal aid, delays in trial, and reliance on confession-based prosecution.<sup>28</sup> The systemic pressure on law enforcement to deliver confessions rather than evidence-based prosecutions creates direct incentives for coercive interrogation.

The 2020 deaths of Jayaraj and Benik's in Tamil Nadu—a father-son duo allegedly tortured to death in police custody for the comparatively minor offence of keeping their mobile phone shop open beyond permitted hours during the COVID-19 lockdown—brought custodial brutality into sharp public focus.<sup>29</sup> Their deaths were marked by gruesome accounts of sexual

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<sup>25</sup>UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August – 7 September 1990.

<sup>26</sup>NCRB (n 1). The underreporting problem is documented in Commonwealth Human Rights Initiative, *Feudal Forces: Reform Delayed – Moving the Agenda Forward* (2008).

<sup>27</sup>National Human Rights Commission, *Annual Report 2022–2023* (NHRC, New Delhi, 2023).

<sup>28</sup>Project 39A, *Annual Statistics on Death Penalty 2022* (National Law University Delhi, 2023). Project 39A's broader work on criminal justice and custodial conditions is available at <<https://project39a.com>>.

<sup>29</sup>Betwa Sharma, 'Father and Son Who Died in Tamil Nadu Custody Were Brutalised, Medical Evidence Shows', *HuffPost India* (29 June 2020).

violence, prolonged physical torture, and medical neglect, and sparked a national conversation about the impunity with which police brutality operates in India.

### **VII. Hate the Crime, Not the Criminal: A Philosophical and Jurisprudential Perspective**

The maxim 'hate the crime, not the criminal' is often invoked in the context of criminal justice reform to argue against cruel and disproportionate punishment and in favour of rehabilitation. It draws upon Kantian moral philosophy, which holds that every human being possesses intrinsic dignity by virtue of their rational nature and must not be treated merely to an end.<sup>30</sup> Applied to police brutality, this principle operates on two levels.

First, it enjoins law enforcement to treat every person in custody—regardless of the gravity of their alleged offence—with basic human dignity. The presumption of innocence, a cornerstone of criminal jurisprudence recognised under Article 14 of the International Covenant on Civil and Political Rights (ICCPR),<sup>31</sup> demands that no person be punished prior to conviction. Custodial torture inflicts pre-conviction suffering, thereby nullifying the presumption of innocence and subverting the foundational logic of criminal justice.

Second, and more provocatively, the principle demands that we apply the same moral lens to police officers who commit acts of brutality. We must hate the crime of torture and custodial killing, not reduce accountability to personal vilification of individual officers. This is not a plea for leniency—it is an argument for systemic reform. Individual prosecutions, while necessary, are insufficient if the institutions and incentive structures that produce brutality remain unchanged. True accountability requires structural transformation: independent oversight bodies, mandatory video recording of interrogations, reforms in training curricula, and genuine political will to prosecute errant officers.

The utilitarian tradition, drawing on Bentham's calculus of pleasure and pain, provides a complementary argument. Custodial torture is not merely morally wrong—it is instrumentally counterproductive. Confessions extracted under torture are inherently

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<sup>30</sup>Immanuel Kant, *Groundwork of the Metaphysics of Morals* (Mary Gregor trans, Cambridge University Press, 1998) 41 (Formula of Humanity: 'Act so that you treat humanity, whether in your own person or that of another, always as an end and never as a means only').

<sup>31</sup>International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Article 14(2): 'Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.'

unreliable, as individuals will say anything to end the pain.<sup>32</sup> Torture-based prosecution thus undermines the integrity of the criminal justice system, generating false convictions while allowing genuine perpetrators to evade justice.

## VIII. Towards a Reform Agenda: Recommendations

### 8.1 Legislative Reforms

India must urgently enact a standalone anti-torture law in conformity with UNCAT obligations. Such legislation should provide a comprehensive definition of torture, establish custodial violence as a distinct and serious offence carrying significant penalties, and create a robust mechanism for investigation independent of the police. The bill must also provide for compensation to victims and their families as a matter of right, not discretion.<sup>33</sup>

The Bharatiya Nagarik Suraksha Sanhita, 2023, while introducing certain modernising provisions, does not adequately address custodial torture. Supplementary legislation or amendments must be introduced to fill this gap, ensuring that interrogation procedures are codified with mandatory safeguards including the presence of lawyers and medical professionals.

### 8.2 Institutional and Administrative Reforms

The Supreme Court's directions in *Prakash Singh v. Union of India* (2006),<sup>34</sup> which mandated the establishment of Police Complaints Authorities, State Security Commissions, and a separation of investigation from law-and-order functions, remain only partially implemented across states. Full and faithful implementation of these directions is a prerequisite for meaningful reform.

Mandatory installation of CCTV cameras in all police stations and lockups, with footage preserved and accessible to oversight authorities, has been directed by the Supreme Court in *Paramvir Singh Saini v. Baljit Singh* (2020).<sup>35</sup> This measure must be prioritised and compliance enforced through contempt proceedings where necessary.

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<sup>32</sup>Darius Rejali, *Torture and Democracy* (Princeton University Press, 2007) 446–500. Reali's exhaustive empirical study demonstrates that torture-based interrogation yields unreliable information and corrupts criminal proceedings.

<sup>33</sup>Law Commission of India, Report No. 273: Implementation of 'United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment' through Legislation (2017).

<sup>34</sup> *Prakash Singh v. Union of India* (2006) 8 SCC 1

<sup>35</sup> *Paramvir Singh Saini v. Baljit Singh* (2020) 10 SCC 439.

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The training of police personnel must be overhauled to incorporate evidence-based interrogation techniques, human rights education, trauma-informed approaches, and legal sensitisation. Officers must be trained to treat custodial violence not as an acceptable tool of investigation but as a criminal act that will attract prosecution.

### **8.3 Prosecutorial and Judicial Reforms**

Prosecution of police officers for custodial offences is hampered by the requirement of prior sanction under Section 197 of the CrPC (now under the BNSS), which has been interpreted broadly to protect police officers acting in official capacity. Sanction requirements for prosecution of custodial violence must be removed or made subject to a strict and time-bound review mechanism.<sup>36</sup>

Special fast-track courts for custodial death cases, with dedicated public prosecutors trained in human rights law, would help address the pervasive impunity. In addition, ex gratia payments and compensation must be disbursed promptly to victims' families without waiting for criminal proceedings to conclude.

### **8.4 International Obligations**

India must ratify UNCAT and the Optional Protocol to the Convention Against Torture (OPCAT), which establishes an international system of regular visits to places of detention by independent international and national bodies.<sup>37</sup> Ratification would create legally binding obligations under international law and subject India to the scrutiny of the UN Subcommittee on Prevention of Torture, providing an additional layer of external accountability.

## **IX. Conclusion**

Police brutality and custodial death are not incidental failures of individual officers—they are systemic failures of institutions, laws, and political will. The constitutional promise of a life lived with dignity remains unfulfilled so long as the state apparatus can deprive individuals of life and liberty with impunity. Custodial violence strikes at the very legitimacy of the

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<sup>36</sup> Code of Criminal Procedure, 1973, Section 197. See also the recommendations of the Mali math Committee Report on Reforms of Criminal Justice System (2003) regarding the need to recalibrate sanction requirements.

<sup>37</sup> Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 18 December 2002, entered into force 22 June 2006) 2375 UNTS 237.

criminal justice system: it taints evidence, corrupts proceedings, and ensures that justice—if delivered at all—rests upon a foundation of coerced testimony.

The principle of hating the crime and not the criminal demands that we resist the temptation of reducing custodial violence to the moral failing of a few 'bad apples'. The orchard itself must be reformed: the legal framework must be strengthened, institutions must be made genuinely accountable, and the culture of impunity must be dismantled through consistent prosecution and political commitment.

Ultimately, the measure of a democracy is not the power it vests in those who enforce the law, but the protections it extends to those who are subject to it. A state that permits its agents to torture, brutalise, and kill with impunity is a state that has forfeited its claim to constitutional legitimacy. The reform of police brutality and the elimination of custodial deaths are, therefore, not peripheral concerns of criminal justice administration—they are central to the survival of the rule of law itself.