

Judicial Approach to Custodial Violence in India: Constitutional Safeguards, Accountability, and Human Rights

Aabha Rana

PhD Research Scholar, Department of Law, The IFCAI University, Baddi, Himachal Pradesh, India
Email: aabharana61[at]gmail.com

Abstract: *This research explores and examines the current legal system dealing with custodial violence in India. Through this study, an attempt has been made to analyze the root cause of custodial violence in India. Although the national legal framework is built on fundamental guarantees aimed at preserving human dignity and individual liberty, the practice of custodial torture, third-degree interrogation tactics, and lockup deaths remains a persistent challenge to the rule of law. This paper highlights how the judiciary has played a vital role in curbing the menace of custodial violence under police custody or any investigating officer in power. In doing so, the courts have consistently relied upon international human rights principles prohibiting custodial torture, protecting human dignity, and providing justice to the victims and their families. In spite of the fact that constitutional principles, statutory safeguards, and judicial guidelines already exist, incidents of custodial violence continue to occur with alarming frequency. Addressing this issue, it is evident that there is an urgent need for stronger implementation of existing legislations and constitutional safeguards to completely eradicate custodial violence from India. Furthermore, this study evaluates the contemporary statutory landscape by examining the newly implemented criminal laws-the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhiniyam (BSA)-alongside independent legal frameworks like the Protection of Human Rights Act. By evaluating these new codes, the research identifies deep structural weaknesses, such as protective procedural barriers and the absence of independent oversight, which often shield wrongdoers. Ultimately, this study aims to assess the effectiveness of judicial interventions, enhance institutional accountability, and promote public confidence in the criminal justice system by proposing actionable legislative reforms.*

Keywords: Custodial Violence, Human Rights, Police Accountability, Criminal Justice Reforms, Judicial Safeguards

1. Introduction

Custodial violence can be defined as physical, psychological, or sexual abuse of individuals by public officials in detention, whether in police custody, judicial custody, or any other forms of state detention. It is known as one of the worst human right abuse in India. While police excesses are not unique to India, the absence of strong legal deterrents, institutional indifference, and deeply entrenched power asymmetries make the Indian scenario particularly an alarming issue.

While the Constitution of India guarantees equal protection for everyone, the reality on the ground is very different. Wealthy people have the money to hire top private lawyers, allowing them to get bail quickly and defend themselves easily. On the other hand, poor people, migrant workers, Dalits, and Adivasis must rely on a slow and overburdened government legal aid system. This often leads to poor people spending long periods in jail for very minor offenses. Additionally, these marginalized groups usually do not know their legal rights or how the system works. Because they lack money and influential social connections, they easily become targets for police misconduct and arbitrary arrests without any way to fight back. This unfair reality directly violates the fundamental rights promised to every Indian citizen. Under Article 21, the Constitution guarantees the right to life and personal liberty to everyone, including suspects and prisoners. The Supreme Court of India has made it clear many times that this right means every person must be treated with human dignity, and the police can never treat a human being poorly. Furthermore, this system breaks Article 14, which

promises equal treatment under the law, because a person's freedom ends up depending on how much money they have. It also goes against Article 39A, which says the government must provide free legal help so that poverty does not stop someone from getting justice. In the end, these systemic flaws turn the legal system into a place that protects the rich while neglecting the poor. The issue has drawn the attention of domestic courts, civil society, and international human rights organizations, yet comprehensive reform remains elusive. In several reported cases, custodial torture has led to fatalities, but convictions of police officials remain rare. A culture of impunity persists, wherein the perpetrators of custodial violence are shielded by bureaucratic and legal procedural complexities. This leads to loss of trust by general public in our very own judicial system. In Jayaraj and Bennix custodial deaths (Tamil Nadu)- Allegations of severe custodial torture leading to deaths sparked nationwide outrage and comparisons with international police brutality cases. Custodial deaths strike at the heart of justice as well as public trust. They must be curbed firmly, as any leniency leads towards weakening and challenges the essence of rule of law.

Concept of Custodial Violence in India

Custodial violence encompasses a wide range of abusive conduct by state agents, especially the police, against persons held in any form of custody. It includes not only physical torture but also mental harassment, illegal detention, denial of medical aid, custodial rape, and custodial deaths. The scope of this violence extends to persons held in pre-trial detention, convicted prisoners, and even those taken in for preventive custody.

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Internationally, custodial violence is addressed under instruments which defines torture broadly and mandates state parties to criminalize and prevent acts of torture by public officials. Although India signed the Convention in 1997, it has not ratified it, nor has it enacted a standalone anti-torture law, which exacerbates the challenge of ensuring accountability for such crimes.

This brutal practice directly breaks the main constitutional and legal rules meant to protect citizens from police abuse. To stop torture in custody, the Supreme Court of India set clear and strict rules for arrests in the famous *D.K. Basu v. State of West Bengal* case. These rules include making medical checkups compulsory and giving arrested persons the right to inform their families immediately. Furthermore, police violence completely violates Article 21, which promises that the state cannot take away anyone's life or personal freedom without a fair and proper legal process. The *Bharatiya Nyaya Sanhita* (BNS) explicitly makes it a crime for officers to torture suspects to force confessions, while the Indian Evidence Act states that confessions made to the police cannot be used as proof in court. Despite these strong legal protections, a deep habit of secrecy and a lack of independent supervision allow custodial violence to continue as a major flaw in India's democracy.

Any form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity and constitute an in-road into this right to live and it would, on this view, be prohibited by Article 21 unless it is in accordance with the procedure prescribed by Law. II-Justice P.N. Bhagwati.

Types of Custodial Violence

- 1) **Physical Torture:** Physical torture is the intentional infliction of severe bodily pain, injury, or suffering on a person. It is carried out to force a confession, gather information, punish, or scare people. For eg. giving electric shocks, beating with rod, burning someone etc.
- 2) **Psychological Trauma:** Psychological trauma is an emotional and cognitive response to an event or series of events that are deeply distressing, overwhelming, or life-threatening. It occurs when the severity of an experience overloads an individual's internal ability to cope, shattering their sense of safety and predictability in the world. For eg. threat of injury, verbal abuse, etc.
- 3) **Sexual Abuse:** Sexual abuse is any non-consensual sexual activity or contact forced on a person without their explicit consent. It involves the misuse of power, control, or force. For eg. rape, gang rape, sexual assault, forced stripping, etc.
- 4) **Institutional Neglect:** It occurs when an organization fails to provide the proper care, safety, and basic necessities to individuals under its supervision. It happens in structured environments where the institution has a legal or ethical duty of care, but systemic failures lead to harm. For eg. denial of food, water, medical treatment, legal aid, sanitary fatalities, etc.

- 5) **Economic coercion:** It occurs when a person, business or even State is forced to act or agree against their free will by using any kind of financial pressure. There must be some malafide intentions behind the financial leverage to influence someone's decision. For e.g. forcing confession through financial pressure etc.
- 6) **Custodial death:** An abuse of power by authorities through which a person in a custody die in jail or prison. It is the gravest form of custodial violence which may also occur while being transported by law enforcement or in any other form of official detention. It results from torture, negligence, suicide due to custodial abuse, etc.

2. Constitutional Provisions Regarding Custodial Violence

Seventh Schedule (State Subject Accountability): Places "Police and Public Order" firmly under the State List. This constitutional division of power makes individual state governments directly accountable for preventing human rights violations and maintaining discipline within their local police forces.

Article-14 Equality before law: This article protects the essence of rule of law for common people. It says that no one is above law and everyone shall be treated equally in front of law. This is the duty of state to guard laws for everyone one us in fair and logical manner.

Article 20(1) (Protection from Excessive Punishment): States that an individual can only be penalized according to the exact laws active at the time of the offense. This serves as a constitutional barrier against police officers inventing arbitrary, extra-legal corporal punishments inside lockups.

Article 20(2) (Protection Against Double Jeopardy): Prevents a citizen from being prosecuted and punished twice for the exact same offense. This structural safeguard stops law enforcement from repeatedly detaining and harassing the same suspect under the same charges.

Article-20 (3) Right not to be a witness against himself: No arrestee shall be forced to become a witness himself in his own case. It provides a protection against self-incrimination in front of courts.

Article-21 Right to Life: "No person should be deprived of his life or personal liberty except according to procedure established by law". The judiciary has repeated examined the scope and importance of Right To Life And Personal Liberty and noted that it definitely includes protection against all kinds of custodial torture.

Article-22(1) Right to be Informed of the Ground of Arrest and Consult of lawyer: Every arrestee detained must get a reasonable opportunity to know the grounds of his arrest and a right to consult a legal practitioner to defend him in court.

Article-22 (2) Right to be produced before Judicial Magistrate: Each person detained in custody shall be produced within 24 hours his arrest before the nearest magistrate excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

Article 39A (Mandatory State Legal Aid): Obligates the government to provide free legal services to underprivileged individuals. By ensuring that poverty does not block access to justice, this provision directly aims to protect marginalized groups who are the most frequent targets of custodial violence.

Statutory Framework Regarding to Custodial Violence
Custodial violence continues to pose a significant threat to human rights in India. The country's legal landscape has not yet seen the formulation of a dedicated anti-torture law, despite long-standing domestic and international advocacy for one. Consequently, the regulatory mechanism for addressing such violations remains largely dispersed across several general criminal laws. Although these laws do not explicitly define or comprehensively address torture or custodial abuse, they contain provisions that in effect criminalize certain acts associated with it.

Bharatiya Nyaya Sanhita (BNS), 2023: To avoid any kind of third- degree torture during investigation or arrest of a crime, certain provisions are mentioned in Bharatiya Nyaya Sanhita to deter the police officers incharge. Those are Section 100, Section 105, Section 115, Section 117, Section 119, Section 120, Section 126, Section 127 and Section 308.

The Prisons Act, 1894: This Act regulates the administration of prison facilities. It mandates strict record-keeping regarding the physical health of inmates upon admission and holds jail superintendents directly accountable for any unauthorized corporal punishment or physical abuse inside judicial facilities.

Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023: The Act provides procedural safeguards for arrestees against custodial violence in India. It says that the arrest must follow prescribed legal procedures. The significant procedural safeguards includes Section 35, Section 36, Section 38, Section 39, Section 183 and Section 187.

Bharatiya Sakshya Adhiniyam (BSA), 2023: The Act provides evidentiary safeguards for arrestees against custodial violence in India. It states that the statement leading to discovery of facts are admissible only to the limited extent permitted by law. The important safeguards includes Section 23, Section 24 and Section 27.

Section 29 of the Police Act, 1861: This colonial-era statute remains active and targets internal department discipline. It explicitly states that any police official who offers "unwarrantable personal violence" to any person in their custody faces a criminal penalty of up to three months' pay, up to three months of imprisonment, or both.

Protection of Human Rights Act, 1993: The Act

established National Human Rights Commission (NHRC) and State Human Rights Commissions (SHRC) in India. It empower the NHRC and SHRC to inquire into complaints of custodial violence, recommend compensation and monitor violation of human rights during custody. The important safeguards includes Section 12 and Section 17.

The Juvenile Justice (Care and Protection of Children) Act, 2015: This Act creates strict operational boundaries regarding minors. It totally prohibits placing children in standard police lockups or jails. Any form of physical force or mental distress inflicted upon a juvenile by law enforcement is treated as a specialized, heavily penalized offense under this statute.

The Mental Healthcare Act, 2017: This modern statute provides specific protection for individuals with mental illness who are under state custody. It explicitly prohibits cruel, inhuman, or degrading treatment in custodial institutions and mandates that prisoners with mental health needs must receive immediate access to specialized medical care rather than punitive isolation.

3. Structural Weaknesses in the Existing Legal Framework

The continuous occurrence of custodial torture and the systemic denial of justice highlight deep structural weaknesses within India's current legal framework. Although the Constitution of India provides comprehensive theoretical protections, the statutory laws on the ground contain major procedural gaps that shield wrongdoers. A structural weakness in a legal system refers to a scenario where the written laws appear fair on paper, but the actual administrative and procedural systems make those laws impossible to implement. In the context of criminal jurisprudence, this failure is evident in the absolute asymmetry between the power held by state actors and the legal remedies available to ordinary citizens.

These statutory measures, systemic failures allow custodial violence to persist:

- **Absence of a Clear Torture Definition:** Indian law does not yet define torture as an autonomous offence, creating ambiguity in prosecution.
- **No Standalone Anti-Torture Law:** India lacks a specific, dedicated criminal statute against custodial torture because it has not ratified the UN Convention Against Torture (UNCAT).
- **Weak Classification of Offences:** Many relevant provisions are either non-cognizable or bailable, reducing their deterrent value.
- **Lack of Independent Oversight:** There are no permanent, neutral external agencies tasked with monitoring police actions inside lockups and detention facilities.
- **Lack of Independent Investigation Mechanisms:** Internal inquiries often lack credibility, as police investigate their own.
- **Biased Internal Investigations:** Complaints regarding police misconduct are investigated internally by the police department itself, creating an inherent conflict

of interest.

- Conviction Rates Remain Low: Institutional protection, tampered evidence, and hostile witnesses often lead to acquittals or non-initiation of trials-21.

4. Judicial Interpretations and Activism

The judicial approach towards custodial violence in India has evolved significantly, shifting from addressing isolated instances of abuse to recognizing custodial torture as a grave violation of human rights and elevating police accountability. When the legislature fails to pass specific laws to curb misconduct by law enforcement, the courts often use their interpretive powers to fill these institutional gaps. This proactive approach, commonly known as judicial activism, has shifted the courts from being passive interpreters of legal text into active guardians of human rights. Instead of waiting for the government to create protections, the judiciary has continuously re-evaluated existing constitutional principles to ensure that state power is never used to crush individual human dignity. The Supreme Court has been consistent towards a approach of guaranteeing Article 21 of Constitution which extends equally to individuals in custodial set up, affirming that lack of liberty does not mean depriving a person of their fundamental rights. Through series of landmark judgments, the Indian judiciary has been at the forefront of expanding constitutional protections against custodial torture and establishing a fair system of rule of law which doesn't work on likes or whims of any influential person safeguarding individuals from arbitrary detention.

Furthermore, the judiciary has fundamentally altered the rules of state accountability. In the past, the government could avoid legal responsibility for the illegal actions of its officers by claiming sovereign immunity, an outdated concept suggesting the state cannot be held liable for administrative wrongs. The courts progressively dismantled this defense, establishing that the state bears a direct, public responsibility to financially compensate victims or their families for violence suffered in custody. This shift changed the legal landscape by making the state institutionally accountable, ensuring that poverty or lack of social connections does not completely block a victim's family from receiving some form of institutional justice.

In Nilabati Behera v. State of Orissa (1993)

The Supreme Court granted compensation of Rs.1,50,000 to the family of a victim who died in custody and Rs. 10,000 to Supreme Court Legal Aid Committee, establishing public law remedies are available for constitutional torts. The case has been regarded as one of the foundational decision till date in matters involving Custodial deaths, State accountability and Constitutional compensation.

Hussainara Khatoon v. State of Bihar (1979)

This historic Public Interest Litigation (PIL) case revealed that thousands of poor undertrial prisoners were rotting in jail for years simply because they could not afford a lawyer. The court established that a quick and

speedy trial is a core part of legal justice.

Joginder Kumar v. State of U.P. (1994)

The Supreme noted that the power of arrest is not compulsory to be exercised as a matter of routine. An arrest must be based on reasonable grounds of necessity, fairness, and legality. The police are under a legal obligation to justify the reasons for detention, ensuring that the exercise of such power conforms to constitutional and statutory safeguards. Any arbitrary exercise of power of arrest invites legal consequences.

Sunil Batra v. Delhi Administration (1978)

The Supreme Court ruled that prisoners do not lose their basic human rights or dignity just because they are behind bars. The court actively stepped in to stop prison authorities from using brutal practices, specifically banning the arbitrary use of heavy chains and solitary confinement without proper judicial oversight. It emphasized that a person cannot be treated like an animal under the guise of prison discipline. This judgment became a major milestone because it established that the judiciary's duty to protect citizens from state cruelty extends inside prison walls, making law enforcement fully answerable for any institutional abuse.

In D.K. Basu v. West Bengal (1997)

The Supreme Court established certain binding safeguards, constitutional principles, and institutional reforms to curb custodial abuse. The 11 guidelines given by court to prevent custodial abuse, includes:

- Maintenance of arrest memos
- Mandatory medical examination
- Informing relatives about arrest.
- Duty of police officers to wear name tags
- Notify distant relatives
- Right to inform someone
- Diary entry
- Inspection memo
- Documents to Magistrate
- Right to meet a lawyer
- Police Control Room

However, the Court stopped short of imposing criminal liability for non-compliance.

Mehmood Nayyar Azam v. State of Chhattisgarh (2012)

The Supreme Court stated that human dignity is an inseparable part of the right to life under Article 21. The case broadened the concept of custodial violence as loss of dignity and mental humiliation as a custodial injury. Court noted that torture is not just limited to physical abuse, any kind of mental abuse also pertains to torture itself and awarded a compensation of Rs.5 lakh to the appellant.

In Paramir Singh Saini vs. Baljit Singh (2021)

The Supreme Court held that custodial abuse is still continued irrespective of presence of legal safeguards to protect human rights in India. The court stated that negligence will not be tolerated at any cost and to ensure custodial accountability, mandatory directions have been given for installation of cctv cameras with audio and video recordings in all police stations and investigating agency

offices.

In Supreme Court Transfer of Custodial Death Investigation Case (2025)

The Supreme Court immediately transferred custodial death investigation in Madhya Pradesh to Central Bureau of Investigation (CBI). It happened as the court found that the police investigation lack transparency because the allegations were against police themselves only. The court emphasized that no police officer shall be investigated by the same police force as it may include biasness.

The gap between India's constitutional promises and ground realities leaves marginalized communities highly vulnerable to custodial violence. While judicial activism provides vital protections, structural flaws-like the lack of a standalone anti-torture law and biased internal police investigations-allow institutional impunity to continue. These judgments reflect judicial concern but highlight the limitations of declaratory relief without enforcement.

5. Conclusion

Custodial violence in India is not merely an isolated failure of individual morality, but a systemic consequence of deep-seated structural flaws embedded within the nation's legal and constitutional architecture. Despite a robust and seemingly progressive fundamental rights framework, the persistent prevalence of torture and institutional impunity illustrates a stark divergence between constitutional promises and ground realities. While the judiciary has played a pioneering role in expanding the contours of Article 21 and recognizing the inherent dignity of detainees, its interventionist approach faces structural limitations in the absence of explicit legislative backing and genuine institutional commitment from the executive.

Furthermore, any critique of this crisis remains incomplete without contextualizing the socio-political dynamics in which custodial violence operates. It must be recognized not merely as an abstract human rights violation, but as a deliberate structural instrument of state oppression that weaponizes the criminal justice system against the vulnerable. By systematically targeting marginalized and historically disenfranchised communities, custodial violence perpetuates an inherently unequal application of justice. It reinforces existing social hierarchies and pushes those already on the socio-economic periphery further away from the protection of the law. Ultimately, dismantling this culture of impunity requires shifting from reactive judicial decrees to proactive systemic restructuring, necessitating comprehensive police reforms, the statutory criminalization of torture, and an absolute political will to align institutional practices with constitutional morality.

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