

## Custodial violence in india: Legal gaps and the quest for police accountability

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### Abstract

Custodial violence remains a pervasive and deeply troubling issue in India's criminal justice system. Despite constitutional guarantees and international human rights obligations, instances of torture, ill-treatment, and custodial deaths continue to occur with impunity. This paper explores the legal framework governing custodial violence in India, highlights the gaps in existing laws, and evaluates the mechanisms for holding law enforcement accountable. Through a critical analysis of landmark cases, reports, and statutory instruments, the research emphasizes the urgent need for structural reforms, judicial oversight, and robust enforcement to uphold the rule of law and protect human dignity. The study concludes that a multi-pronged approach, combining legal reform with institutional accountability, is essential to end custodial abuse and ensure justice.

**Keywords:** Custodial violence, police accountability, human rights, indian legal system, torture

### Introduction

Custodial violence, including physical torture and death in police or judicial custody, represents a fundamental breach of the rule of law and human rights. In India, this issue has been persistently reported by media, human rights organizations, and statutory bodies. The Indian Constitution guarantees fundamental rights that are central to personal liberty and human dignity. Article 21 ensures the Right to Life and Personal Liberty, interpreted expansively by the Supreme Court to include protection against torture and inhuman treatment. Article 22 offers procedural safeguards to arrested persons, including the right to be informed of grounds of arrest and the right to consult a legal practitioner. Despite such constitutional safeguards, the frequency and severity of custodial abuses point toward critical failures in law enforcement and institutional accountability, the frequency of custodial abuse signals deep flaws in accountability mechanisms and legal enforcement.

### Concept and Forms of Custodial Violence

- **Physical torture:** inflicting bodily harm to extract confessions. These actions directly contravene the protections under Article 21 of the Indian Constitution and are punishable under Sections 330 and 331 of the Indian Penal Code. Medical examinations of detainees often reveal untreated injuries, fractures, and internal bleeding—indicative of deliberate infliction of pain.
- **Mental torture:** threats, isolation, or humiliation. Victims often suffer from anxiety, depression, PTSD, and other psychiatric disorders, even after release. Unfortunately, this form of torture remains underreported due to lack of physical evidence and limited access to psychological support in prisons.
- **Sexual abuse:** a gross violation of bodily autonomy. Many such incidents go unreported due to stigma, fear of retaliation, and lack of gender-sensitive complaint mechanisms. Sexual abuse in custody not only violates bodily autonomy but also breaches international conventions, including the Convention on the

Elimination of All Forms of Discrimination Against Women (CEDAW).

- **Custodial deaths:** fatal consequences resulting from abuse or negligence. According to the NHRC, India reported over 2,100 custodial deaths in 2021–22, highlighting the critical failure in safeguarding life during detention (NHRC, 2022). According to the National Human Rights Commission (NHRC), India reported 2,152 deaths in judicial and police custody in 2021–22 (NHRC, 2022).

### Constitutional and Legal Framework

- **Article 20(3):** Protects an individual from being compelled to be a witness against themselves. This provision directly addresses the issue of forced confessions extracted under torture or coercion, which are a common feature in custodial interrogations.
- **Article 21:** Guarantees the right to life and personal liberty. The Supreme Court of India has interpreted this article to include the right to live with human dignity, and the right to protection from torture, inhuman, and degrading treatment (*Maneka Gandhi v. Union of India*, 1978). Any form of custodial abuse is a violation of Article 21.
- **Article 22(1) and (2):** Mandate that every person arrested must be informed of the reasons for their arrest, and they must be produced before a magistrate within 24 hours. This provision seeks to prevent illegal detention and is crucial in limiting police discretion and arbitrariness.
- **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS):** which supersedes the colonial-era Code of Criminal Procedure, 1973, aims to modernize India's criminal procedure system with an emphasis on accountability, transparency, and protection of citizens' rights. The new provisions provide detailed mechanisms to safeguard individuals from custodial abuse and ensure lawful arrest and detention procedures.

- **Sections 35 to 51:** These sections correspond to the earlier Sections 41 to 60A of the CrPC. They comprehensively outline the procedure for arrest and detention. Notably, Section 35 of BNSS restricts the power of arrest to circumstances where it is absolutely necessary and mandates that arrest must be carried out only after recording reasons in writing—thereby adding a crucial layer of transparency and judicial scrutiny.
- **Section 43:** Regulates the use of force during arrest. It explicitly prohibits the use of lethal force except in cases where the person being arrested is accused of a serious offence punishable with death or life imprisonment and actively resists arrest or attempts to flee. This clause reaffirms the principle of proportionality in law enforcement.
- **Section 51:** Grants the arrested person the right to a medical examination by a registered medical practitioner. This provision is essential for detecting any injuries or signs of custodial torture and for establishing a medico-legal record that could serve as vital evidence in cases of abuse or mistreatment during detention.
- **Section 198:** Mandates a judicial inquiry in all cases of death, disappearance, or alleged rape in custody. This provision strengthens the mechanism of judicial oversight in custodial settings and is intended to prevent impunity. However, concerns remain about the independence, timeliness, and thoroughness of such inquiries, especially when state police are tasked with initial investigations.
- The Bharatiya Nyaya Sanhita (BNS), 2023, which has replaced the Indian Penal Code (IPC), incorporates specific provisions addressing torture and custodial deaths while retaining and restructuring earlier protections under IPC Sections 330, 331, and 302. The following sections are now applicable under the new legal framework:
  - **Section 73:** This section criminalizes voluntarily causing hurt or grievous hurt to extort a confession or information. It is particularly relevant in custodial settings where law enforcement officials use physical torture to extract statements from detainees. The provision prescribes stringent punishments for such acts, especially when committed by public servants during official duties.
  - **Section 101:** Deals with the offence of murder, including custodial deaths caused by torture, excessive use of force, or deliberate neglect. If a police officer is found guilty of causing the death of a person in custody, they may be prosecuted under this section. The provision allows for life imprisonment or death penalty, depending on the gravity of the act and judicial findings.
  - **Section 112:** Addresses causing death by negligence, applicable in custodial situations where death results from deliberate omission to provide medical care or

through unsafe detention practices that lead to fatal consequences.

- The Protection of Human Rights Act, 1993, was enacted by the Indian Parliament with the objective of providing a robust institutional framework for the promotion and protection of human rights. The Act defines human rights as the rights relating to life, liberty, equality, and dignity guaranteed by the Constitution or embodied in international covenants enforceable by Indian courts. This legislation plays a critical role in addressing custodial violence, torture, and other forms of state-inflicted human rights abuses.

### Legal Gaps and Institutional Failures

- **Absence of a Specific Law Against Torture:** India is yet to ratify the UN Convention Against Torture (UNCAT), and the Prevention of Torture Bill, 2010, lapsed.
- **Weak Enforcement:** Conviction rates in custodial death cases remain abysmally low.
- **Inadequate Oversight:** Internal inquiries are often biased; external mechanisms like judicial inquiries are rare.
- **Impunity and Delayed Justice:** Police personnel often escape accountability due to lack of evidence, threats to witnesses, and institutional protection.

### Role of National Human Rights Commission (NHRC) and State Human Rights Commissions (SHRCs)

They play a pivotal role in India's institutional response to custodial violence and related human rights violations. Created under the Protection of Human Rights Act, 1993, these commissions are tasked with the promotion and protection of fundamental human rights, including the right to life, dignity, and protection from torture.

#### 1. Mandate and Jurisdiction

Under Section 12 of the Protection of Human Rights Act, the NHRC is empowered to:

- Investigate complaints of custodial deaths, torture, illegal detention, and denial of timely medical care.
- Undertake suo motu inquiries into cases involving serious human rights violations.
- Visit jails, detention centers, and police lock-ups to examine living conditions.
- Review existing constitutional and legal safeguards and recommend reforms.
- Promote awareness through human rights literacy, research, and training.

#### 2. Achievements in Addressing Custodial Violence

The NHRC has significantly contributed to:

- Bringing national attention to underreported cases of custodial torture and death.
- Recommending monetary compensation to victims or their families.
- Issuing guidelines for arrest procedures, medical examination of detainees, and police accountability.
- Releasing annual reports and data that expose trends in custodial abuse, helping civil society and the judiciary to act.

### Recommendations- A Way Forward

To address the systemic issues surrounding custodial torture and impunity in India, a multi-pronged approach is essential. The following recommendations are aimed at creating a more accountable, transparent, and rights-based law enforcement system: Enact a Comprehensive Anti-Torture Law in Line with UNCAT- India signed the United Nations Convention Against Torture (UNCAT) in 1997 but has yet to ratify it. A dedicated anti-torture legislation is urgently needed to define torture clearly, outline criminal liability for public officials, and provide enforceable remedies to victims. The Prevention of Torture Bill, though introduced multiple times in Parliament, has not been passed. A standalone law should provide procedural safeguards, victim rehabilitation, mandatory reporting, and criminal penalties for erring officials. Strengthen Independent Oversight Bodies with Binding Powers- Bodies such as the National Human Rights Commission (NHRC) and State Human Rights Commissions (SHRCs) must be given statutory authority to enforce their decisions. These institutions should have autonomous investigative wings with powers to summon witnesses, collect evidence, and initiate prosecution. A system of annual performance review and parliamentary oversight should be established to ensure their accountability. Install CCTV and Digital Monitoring Systems in Lockups and Prisons- The Supreme Court, in *Paramvir Singh Saini v. Baljit Singh* (2020), directed the installation of CCTV cameras in all police stations and interrogation rooms. All lockups and custodial facilities should have real-time audio-visual surveillance, backed by a centralized monitoring unit. Video footage must be securely stored and accessible to courts and human rights bodies during investigation and trial.

### Conclusion

Custodial violence is not only a legal failure but also a profound moral lapse. It reflects the persistent erosion of fundamental rights, particularly the right to life and dignity enshrined under Article 21 of the Indian Constitution. The routine and unchecked abuse of power by law enforcement authorities shatters the very ideals of a democratic republic. When institutions that are meant to protect citizens become perpetrators of harm, the credibility of the justice system is fundamentally undermined. This not only erodes public trust but also fosters a climate of fear, especially among marginalized communities who are disproportionately affected by such violence. Addressing custodial violence requires more than token administrative reforms or superficial inquiries. It demands a paradigm shift in the legal and institutional architecture—grounded in the principles of transparency, accountability, and human dignity. While India has a robust constitutional framework and a rich jurisprudence on fundamental rights, the gap between law and practice remains wide. Enacting a comprehensive anti-torture law, empowering independent oversight bodies with enforcement capabilities, and ensuring prompt judicial scrutiny are immediate legal imperatives. Equally important is the need to transform the culture within law enforcement agencies. The normalization of coercive methods, the valorization of third-degree interrogation, and the institutional resistance to external scrutiny must be systematically dismantled. Police training must emphasize constitutional values, ethical behavior, and empathy, rather than just crime control and enforcement. Furthermore, India

must urgently align its domestic laws with international human rights standards, such as the UN Convention Against Torture (UNCAT), which it has signed but not yet ratified. Doing so would not only bolster India's global human rights reputation but also reinforce its constitutional commitment to justice and dignity.

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