

A CRITICAL ANALYSIS OF CUSTODIAL VIOLENCE IN INDIA, WITH A SPECIAL EMPHASIS ON HUMAN RIGHTS

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CHAPTER I

CONCEPTUAL FRAMEWORK & LEGAL PROVISIONS

Custodial violence strikes at the very heart of democracy, violating the fundamental human rights guaranteed by the Constitution of India and various international covenants. A comprehensive legal framework exists to prevent and address custodial violence, although the effectiveness of these legal instruments largely depends on their implementation. Analyzing this legal framework provides insights into the strengths, gaps, and challenges that characterize India's efforts to combat custodial torture and deaths. At the apex of the legal structure lies the Constitution of India, which enshrines the principles of liberty, equality, and dignity. Article 21, often referred to as the "heart of the Constitution," guarantees the right to life and personal liberty. The judiciary has interpreted this provision to include protection from torture and inhuman treatment, even during lawful detention. Further reinforcing this protection, Article 20(3) safeguards individuals against self-incrimination, thereby addressing the use of coercion and torture during custodial interrogation. Article 22 provides specific protections to arrested persons, including the right to be informed of the grounds of arrest, the right to consult a legal practitioner, and the requirement that an arrested person be produced before a magistrate within twenty-four hours. These constitutional guarantees lay the foundation for the legal response to custodial violence⁴.

Complementing constitutional protections are various statutory provisions embedded in the Bharatiya Nyaya Sanhita (BNS), 2023, the Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, and specific legislations that address the conduct of law enforcement officials. Under the BNS, Sections 120(1) and 120(2) specifically criminalize acts causing hurt or grievous hurt to extort confessions or information. Section 101 can be invoked to charge police personnel with murder in cases where custodial violence results in death. Section 348 deals with wrongful confinement for the purpose of extorting confessions. These provisions create a basis for criminal prosecution of offending officers, although challenges in investigation, evidence

collection, and institutional protection often hinder successful convictions.

The Bharatiya Nagarik Suraksha Sanhita (BNSS) further supplements protections against custodial violence. Section 35 of the BNSS limits the power of arrest without a warrant, emphasizing that police officers must exercise discretion reasonably and must record reasons for arrest. The amendments made in 2009 through the CrPC (Amendment) Act introduced critical safeguards by making it mandatory for police to notify the family members or friends of the arrested person about the arrest. Section 35(BNSS) mandates that police personnel involved in the arrest carry visible identification and prepare an arrest memo, duly signed by

the arrestee and a witness. Section 52 insists on informing the arrested person about the right to bail and the grounds of arrest. Section 53 mandates that the arrested individual must be medically examined by a registered medical practitioner soon after the arrest, and this provision plays a crucial role in documenting injuries caused by torture.⁵

Despite the existence of these provisions, the problem of custodial violence persists, necessitating judicial interventions to fill the legislative and executive gaps. Over the decades, the Supreme Court of India and various High Courts have played a proactive role in evolving jurisprudence on custodial rights. In the landmark case of *D.K. Basu v. State of West Bengal* (1997), the Supreme Court laid down detailed guidelines to prevent custodial torture and deaths. These guidelines mandated the maintenance of arrest records, medical examination of the detainee, informing relatives or friends of the arrest, and granting access to a lawyer during interrogation. The Court emphasized that non-compliance with these directives would attract departmental action and contempt of court proceedings. These judicially crafted guidelines were subsequently incorporated into statutory law through amendments to the CrPC.

Another significant judgment is *Nilabati Behera v. State of Orissa* (1993), where the Court reinforced the principle that custodial deaths breach the right to life and warrant compensation. The Court held that sovereign immunity could not be used as a defense in cases of human rights violations by state authorities. This judgment marked a shift in the Court's approach, from mere condemnation to providing tangible remedies to victims and their families.

The judiciary has also addressed the issue of custodial rape. In *Sheela Barse v. State of Maharashtra* (1983), the Court stressed the need for separate lock-ups for women and mandatory presence of female officers during the interrogation of women detainees. The Court

recognized that women in custody are particularly vulnerable and that additional measures are necessary to ensure their safety and dignity.

In addition to constitutional, statutory, and judicial frameworks, India has an obligation under international law to prevent custodial violence. India signed the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) in 1997. However, India has yet to ratify the Convention, citing the need to enact domestic legislation. Although efforts were made to introduce an anti-torture bill, such as the Prevention of Torture Bill, 2010, and the Prevention of Torture Bill, 2017, none of these proposed laws have materialized into enforceable statutes. The absence of specific anti-torture legislation remains a glaring gap in India's legal framework, undermining its international commitments and weakening its domestic fight against custodial violence.

Certain special legislations also impact the dynamics of custodial violence. Laws like the Armed Forces (Special Powers) Act (AFSPA) grant security forces extraordinary powers, including arrest without warrant and immunity from prosecution without prior sanction from the government. Human rights organizations have criticized such laws for fostering a culture of impunity and enabling custodial abuses, particularly in conflict-ridden regions like Jammu and Kashmir and parts of the Northeast. Although intended for security purposes, the unchecked powers under such laws often result in violations of fundamental rights, including torture and extra-judicial killings.

The Protection of Human Rights Act, 1993, represents an institutional effort to address human rights violations, including custodial violence. The Act established the National Human Rights Commission (NHRC) and corresponding State Commissions, empowered to investigate complaints of human rights abuses by public servants. The NHRC has

developed detailed guidelines on reporting custodial deaths and rapes, making it mandatory for state authorities to submit detailed reports within twenty-four hours of such incidents. While the NHRC plays an important role in bringing public attention to cases of custodial violence, its recommendations are not binding, limiting its ability to enforce accountability effectively. Recognizing the deep-rooted problems in investigating custodial violence, the Law Commission of India, in its 113th and subsequent reports, recommended changes to evidence laws. It proposed shifting the burden of proof onto police officers accused of custodial violence once it is established that the victim was last seen in their custody. These recommendations, however, have not been fully translated into law, and custodial violence cases continue to suffer from evidentiary hurdles. Victims and their families often face immense pressure, intimidation, and delays that deter them from pursuing justice.

Another important aspect of the legal framework involves compensation mechanisms. Courts have increasingly awarded compensation to victims of custodial violence or their families as a means of providing relief. However, monetary compensation, while significant, does not substitute for criminal accountability. The balance between compensatory and punitive measures remains an ongoing debate within Indian jurisprudence.

Efforts to incorporate technological interventions into policing practices have gained traction in recent years. The Supreme Court, in *Paramvir Singh Saini v. Baljit Singh* (2020), mandated the installation of CCTV cameras in all police stations and investigation agencies across the country. This step aims to ensure transparency in custodial procedures and reduce the scope for violence. However, the practical implementation of this directive remains uneven, with many police stations either lacking functional cameras or not preserving recordings appropriately.

The role of civil society organizations, lawyers, journalists, and human rights defenders is also critical within the broader legal framework. These actors often bring custodial violence cases into the public domain, exert pressure for reforms, and assist victims in seeking justice. Nevertheless, they frequently encounter resistance, harassment, or threats, which underscores the challenges in building a robust legal and institutional environment against custodial violence.

The existing legal framework reveals a complex interplay of constitutional mandates, statutory protections, judicial interventions, international obligations, and institutional mechanisms. While substantial protections exist on paper, persistent custodial violence highlights the chasm between law and practice. Factors such as a culture of impunity, institutional bias, lack of political will, evidentiary challenges, and inadequate enforcement mechanisms hinder the effective realization of custodial rights.⁶

Strengthening the legal framework necessitates multiple interventions: ratifying the UNCAT and enacting specific anti-torture legislation, ensuring strict compliance with arrest and detention procedures, enhancing the independence of investigating agencies, creating fast-track courts for custodial violence cases, and promoting a culture of human rights within law enforcement agencies through training and accountability measures. Political commitment, administrative reforms, and societal awareness must converge to realize the constitutional vision of dignity and liberty for all individuals, especially the most vulnerable.

The legal framework addressing custodial violence in India is wide-ranging and theoretically robust. However, its success in protecting human rights depends not merely on the existence of laws but on their faithful, consistent, and impartial enforcement. Bridging the gap between the ideals enshrined in law and the realities experienced by detainees requires an unwavering commitment to justice, accountability, and the rule of law. Only then

can the scourge of custodial violence be eradicated and the promise of a rights-respecting democracy be fully realized.

The Indian legal system provides a detailed set of provisions aimed at preventing custodial violence and safeguarding the rights of individuals against unlawful treatment by law enforcement agencies. Although these provisions exist within a broad constitutional and statutory framework, their actual impact largely depends on interpretation, implementation, and awareness. A critical examination of the legal provisions reveals the efforts taken by lawmakers and judiciary to secure human dignity and fundamental rights, particularly in custodial settings.

At the core of protections against custodial violence lies the Constitution of India, the supreme law of the land. Article 21, which guarantees the right to life and personal liberty, forms the bedrock of all legal provisions against torture and ill-treatment. The judiciary has expansively interpreted Article 21 to include protection from torture, cruel, inhuman, and degrading treatment. Thus, any act of custodial violence is considered a direct violation of this fundamental right. Additionally, Article 20(3) provides protection against self-incrimination, ensuring that no person accused of an offense can be compelled to be a witness against themselves. This provision seeks to eliminate the use of coercion, physical or psychological, during interrogation. Article 22 strengthens the safeguards for arrested persons by mandating the right to be informed of the grounds of arrest, the right to consult and be defended by a legal practitioner, and the right to be produced before a magistrate within twenty-four hours. These constitutional protections collectively create a foundation to guard individuals against custodial abuse.

Beyond constitutional rights, several provisions within the Bharatiya Nyaya Sanhita, 2023, address acts of custodial violence directly and indirectly. Section 120(1) of the BNS punishes anyone, including public servants, who

voluntarily causes hurt to extort confessions or information. Section 120(2) deals with causing grievous hurt for the same purpose. The punishment prescribed for these offenses includes imprisonment and fines, reflecting the seriousness with which such acts are viewed. Section 127(2) deals with wrongful confinement, a common occurrence in custodial abuse cases, prescribing punishment for illegally detaining an individual. Section 127(8) specifically targets wrongful confinement with the objective of extorting confession or information, thus directly addressing the misuse of police powers. Moreover, where custodial violence results in death, Section 103(1)(2) (punishment for murder) and Section 105 (punishment for culpable homicide not amounting to murder) are applicable against the erring officers. These penal provisions make it clear that acts of violence, abuse, or death in custody are not immune from criminal prosecution and can attract serious charges.

The Bharatiya Nagarik Suraksha Sanhita, 2023, introduces important procedural safeguards to prevent custodial violence. Section 35 provides guidelines for arresting a person without a warrant, emphasizing that police officers must record valid reasons for making such an arrest. Section 35 introduces the concept of notice of appearance, wherein the police must issue a notice to the accused to appear before them rather than resorting to immediate arrest, particularly in cases involving offenses punishable by less than seven years. Section 50 mandates that every arrested person must be informed of the reasons for their arrest and of their right to bail if the offense is bailable. Section 52 and 53 provides for mandatory medical examination of the arrested person by a registered medical practitioner, thereby creating a legal record that can later be used to establish allegations of torture. Section 196 requires a magisterial inquiry into deaths, disappearances, or rapes occurring in custody, adding an extra layer of accountability. Collectively, these procedural protections are intended to create transparency, reduce the

scope for abuse, and protect the rights of individuals under detention.⁷

Another critical statutory provision is the Bharatiya Sakshya Adhiniyam 2023, which has important implications for custodial violence cases. Traditionally, the burden of proof in criminal cases lies on the prosecution. However, Sections 23(1) and 23(2) of Bharatiya Sakshya Adhiniyam 2023 render confessions made to a police officer inadmissible unless made in the immediate presence of a magistrate. This aims to prevent confessions extracted through torture or intimidation. Section 23 carves out a narrow exception, allowing certain confessions leading to the discovery of new facts to be admitted as evidence. Nevertheless, courts have been cautious in interpreting these sections, mindful of the possibility of custodial torture leading to forced confessions.

Recognizing the importance of independent oversight, the Protection of Human Rights Act, 1993, established the National Human Rights Commission (NHRC) and State Human Rights Commissions. The Act empowers these bodies to inquire into complaints of human rights violations, including custodial torture and deaths, and recommend action against the guilty officials. The NHRC has issued detailed guidelines for reporting custodial deaths and rapes, including mandatory reporting within twenty-four hours and conducting independent post-mortem examinations. While the recommendations of the NHRC are not binding, they carry significant moral authority and can be used to exert public and judicial pressure on state authorities.

While general criminal laws apply to custodial violence cases, certain special legislations have contributed to the complexities surrounding custodial rights. Laws like the Armed Forces (Special Powers) Act (AFSPA) grant wide-ranging powers to security forces in disturbed areas, including arrest without warrant and immunity from prosecution without prior government sanction. Although enacted with the purpose of maintaining national security,

AFSPA has been heavily criticized for fostering an environment of impunity and contributing to custodial abuses in regions like Jammu and Kashmir and the Northeast. The Unlawful Activities (Prevention) Act (UAPA) and National Security Act (NSA) similarly allow preventive detention under broad terms, sometimes resulting in long periods of incarceration without trial, increasing the risk of custodial misconduct.

Internationally, India has signed but not ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). This convention obligates signatories to prevent torture and ensure that all acts of torture are offenses under domestic criminal law. Although India introduced the Prevention of Torture Bill, 2010, and later efforts were made to pass similar legislation, the bills lapsed and have not been enacted into law. The absence of a specific anti-torture law in India weakens the overall legal framework against custodial violence and undermines India's credibility in the international human rights arena.

The judiciary has played an instrumental role in strengthening legal protections against custodial violence by interpreting and expanding upon existing laws. The guidelines laid down in the landmark case of *D.K. Basu v. State of West Bengal* (1997) established mandatory procedures for arrest and detention. These include preparing an arrest memo, informing a relative or friend of the arrested person, allowing medical examination every 48 hours during detention, and providing access to a lawyer. Although these guidelines were later incorporated into statutory law through amendments to the CrPC, the Supreme Court's proactive role highlights the judiciary's recognition of the systemic nature of custodial violence.

In addition to statutory protections, administrative guidelines have been issued from time to time to prevent custodial violence. Circulars from the Ministry of Home Affairs and directives issued by various state police

organizations stress the need for proper conduct during arrest and detention, adherence to human rights standards, and strict disciplinary action against erring officers. However, the effectiveness of these administrative measures often suffers due to poor enforcement, lack of awareness among police personnel, and systemic inertia.

Technology has also been introduced as a legal and administrative tool to combat custodial violence. Following the Supreme Court's directive in *Paramvir Singh Saini v. Baljit Singh* (2020), it is now mandatory for police stations and interrogation rooms to be equipped with CCTV cameras. The aim is to ensure continuous recording of police behavior and to provide evidence in cases alleging custodial misconduct. These measures, if implemented sincerely, can play a crucial role in bringing transparency and accountability to custodial practices.⁸

The role of legal aid services is another significant aspect of the legal framework. The Legal Services Authorities Act, 1987, established the National Legal Services Authority (NALSA) and State Legal Services Authorities to provide free legal services to the marginalized, including individuals in custody. Access to legal representation is a crucial safeguard against custodial abuse, as lawyers can advocate for the detainee's rights, monitor police behavior, and report violations.

In recent years, the idea of independent investigating agencies for custodial deaths has gained traction. Courts have recommended that cases involving custodial deaths or serious allegations of torture be investigated by independent bodies such as the Central Bureau of Investigation (CBI) or Special Investigation Teams (SITs) to ensure impartiality. Although such recommendations are case-specific, they highlight the broader need for structural reforms in how custodial violence cases are investigated.

Despite the existence of a comprehensive legal framework, challenges persist. One major

obstacle is the protection provided to public servants under Section 218 of the BNSS, which requires prior sanction from the government to prosecute a public servant for actions performed during the discharge of official duties. This provision, intended to protect honest officials from frivolous litigation, often becomes a shield for police officers accused of custodial violence. Courts have tried to narrow the scope of this protection by emphasizing that acts like torture and custodial death cannot be considered part of official duties, yet the procedural hurdle of obtaining sanction remains a significant barrier to accountability.

Another pressing issue is the lack of witness protection. Victims of custodial violence and their families often face intimidation and harassment, deterring them from pursuing legal remedies. Though some states have introduced witness protection schemes, a comprehensive national framework with strong enforcement mechanisms is still needed to effectively protect complainants and witnesses in custodial violence cases.

Public awareness about custodial rights and legal remedies remains low, particularly among marginalized communities who are most vulnerable to custodial abuse. Legal literacy campaigns, public interest litigations, and human rights advocacy are vital to bridge this gap and empower individuals to assert their rights.

The legal provisions dealing with custodial violence in India span constitutional guarantees, statutory protections, judicial guidelines, and administrative measures. While the framework is theoretically sound, its effectiveness is undermined by gaps in enforcement, institutional bias, procedural hurdles, and societal apathy. Strengthening these legal provisions through ratification of international conventions, enactment of anti-torture legislation, ensuring independent investigations, and promoting a human rights culture within law enforcement agencies is essential to bridge the divide between law and

practice. A robust, dynamic, and people-centric legal framework is crucial for upholding the dignity, rights, and freedoms of every individual, particularly those subjected to the vulnerabilities of custodial environments.

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