

CUSTODIAL DEATHS IN INDIA: POLICE ACCOUNTABILITY AND THE EMERGING FRAMEWORK UNDER BNS, BNSS AND BSA

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Abstract

Custodial deaths in India are a major problem that indicates the misuse of police powers and the overall system in the country, despite the presence of constitutional provisions and the existence of judicial rules and regulations. The recent amendments in the Indian Criminal Justice System through the Bharatiya Nyaya Sanhita (BNS, 2023), Bharatiya Nagarik Suraksha Sanhita (BNSS, 2023), and Bharatiya Sakshya Adhinyam (BSA, 2023) provide a ray of hope for the Indian legal system. This report seeks to answer the following questions: Have our reforms really made us safer in terms of deaths in custody? How do our oversight and redress mechanisms actually work? It examines the latest laws, court judgments, institutional reports, and data to reveal what has improved and what still lags behind. While there is more clarity in the laws regarding judicial and magisterial oversight, arrest, remand, and admissibility of evidence, there is still inadequate enforcement, under-reporting of incidents, inconsistent methods in investigations, and delays in holding people to account. On the basis of this research, the paper suggests specific recommendations that could help enhance transparency, strengthen the enforceability of the law, and provide better access to justice to victims and their families. The conclusions drawn from this paper suggest that while the new laws represent progress, the true measure is how well they translate into practice.

Keywords – Custodial Deaths · Police Accountability · Judicial / Magisterial Inquiry · Evidence Admissibility · Torture and Ill-Treatment · Institutional Oversight.

I. Introduction

Custodial deaths, or those who died in police custody or judicial custody, reflect an alarming deterioration in the duty of the criminal justice system to safeguard the most fundamental of all rights, the right to life. Even in a country like India, in spite of constitutional, judicial, and legal protection, custodial deaths occur far too frequently. Not only do these reflect a lack of respect for individual dignity and freedom, but there is also a loss of faith in police and judicial institutions.

Article 21 of the Indian Constitution guarantees protection of life and liberty. The Supreme Court has interpreted it as protection against torture.

The judgment in *D. K. Basu v. State of West Bengal* laid down certain guidelines, including issuance of arrest memos, prompt medical examination, notification of detention to family members, and access to legal aid. However, there have been problems in the mechanism of arrest, remand, collection of evidence, and investigations into custodial deaths.

For example, in 2023, the Indian government has introduced three major laws: Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhinyam (BSA). These laws are expected to change the Indian criminal justice system by overhauling the colonial-era laws and introducing more effective procedures, more

checks and balances, and more rights for the arrested or detained. For example, the BNSS is expected to modify the CrPC and introduce new provisions for arrest and detention procedures, judicial or magisterial inquiries, and the rights of court appearances and detained persons. Similarly, the BNS is expected to modify the IPC by introducing the consequences of custodial violence and deaths due to negligence and abuse. The BSA is expected to modify the procedures for confessions and the admissibility of evidence while emphasizing the importance of fair and transparent procedures.

Yet even with these promising changes in the law, there is an apparent disconnect between what the law is intended to accomplish and what is actually happening. The numbers and human rights organizations suggest that not all custodial deaths are being investigated and that there is often no accountability. Some of the new rules have not yet been fully vetted in the courts or across the country. There are also some nagging questions about the independence of judicial/magisterial inquiries, the effectiveness and promptness of medical examinations, and the accountability and remedies available to victims and their families.

This research paper seeks to explore the extent to which the recent criminal laws enacted in India (BNS, BNSS, BSA) really strengthen the legal framework on custodial deaths. It examines the extent to which the systems of accountability established under these laws are effective and identifies gaps and challenges. It also seeks to explore the extent to which these legal reforms really benefit the people in custody, especially the marginalized sections of society.

To do this, the research will make use of legal analysis, including the study of the laws and precedents, as well as relevant reports, and verifying the most recent available statistical data and reports from human rights groups. The goal is not just to present the laws, but also to evaluate them, highlighting the ones that are working well and the ones that need

improvement.

II. Statement of Problem

Custodial deaths in India have been a grave concern. These deaths not only result in loss of life but also speak volumes about the failure of the legal system, institutional accountability, and the basic regard for human rights. The Constitution of India grants the right to life under Article

21. Several landmark judgments of the Supreme Court have established the rights of individuals who are under arrest or in custody. However, deaths in police or judicial custody continue to occur frequently. There has also been a trend of under-reporting these deaths.

With the enforcement of the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhinyam (BSA) in 2023, it appears that true legal reform may be within our grasp. However, there are a number of important issues that need to be addressed:

1. Implementation gap: Even where the law provides safeguards, such as requirements for judicial or magisterial inquiry, rights to present evidence in court, and medical exams for detainees, there is uncertainty about whether those safeguards are consistently followed across states. This is especially true in remote or underresourced areas.
2. There's a worrying gap in accountability, as we do not know how many custodial deaths under the new legal regime have led to actual disciplinary or criminal action. There is also a tendency for those in command to avoid accountability. This is a breeding ground for impunity, which reduces the effectiveness of deterrence.
3. Deaths in custody often happen in situations where there is no, or insufficient, evidence, which is sometimes discarded or never collected in the first place. This is made worse by the delay in conducting medical examinations, the lack of independent oversight during investigations, the standards of proof,

and the weak guarantees of protection for witnesses and families.

4. Data and Transparency Issues: Obtaining accurate, relevant, and up-to-date data on custodial deaths, including the causes of custodial deaths, how investigations into these cases proceed, what findings emerge, and how cases are concluded, is not easy to obtain. This is a problem that affects how well researchers and policymakers can understand the issue, as well as how well communities in these societies trust their justice systems.

5. There is a fear that even though the new laws are intended to be reforms, some provisions could be interpreted to extend detention or give the police new powers that could be abused to reinstate the old problems under different names.

Some provisions may be ambiguous in practice and susceptible to interpretations that limit the effectiveness of the provisions.

The short answer is that the legal reforms in the BNS, BNSS, and BSA indeed signal a shift in the law. However, the overarching concern remains: do the new laws actually reach the individuals experiencing custodial abuse? This study seeks to examine the disparity between the paper promises of the legal reforms and the lived reality of police accountability. Do the new laws actually help reduce custodial deaths? And if they don't, what accounts for the disparity?

III. Legal Framework Before the Reforms

Custodial deaths in India have been governed by a plethora of laws, including the Indian Penal Code, Code of Criminal Procedure, and the Evidence Act. Constitutional provisions under Article 21, protecting life, and Article 20, protecting individuals from self-incrimination, also play a role. Courts, in cases like *D. K. Basu v. State of West Bengal*, have laid down procedural safeguards for individuals who are arrested or detained. The procedural safeguards include dealing with arrest memos, informing family members, medical examinations, access to legal aid, and prompt production of arrested

individuals before magistrates. Even though these judicial norms act as checks, there is a lack of enforcement of these norms. There was institutional oversight by bodies like the National Human Rights Commission, State Human Rights Commissions, and Police Manuals.¹ However, these were not effective.¹

Another important part of the old system was the judicial investigation into deaths in custody under Section 176 of CrPC. This empowered the Magistrate to investigate deaths in police custody or in suspicious circumstances. However, many of these investigations were delayed, stayed, or limited in scope. There was loss of evidence, delays in medical examinations, and no accountability in prosecutions or disciplinary actions. The regulations of CrPC were seen as giving too much discretionary power to law enforcement agencies without adequate procedural regulations, leading to an abuse of remand and detention powers. It is seen by scholars that, despite constitutional and legal protection, custodial torture and violation of human rights were institutionalized in many parts of the country, with marginalized communities being impacted in a greater way than others.²

Prior to the 2023 reforms, there has been an effective body of law and constitutional provisions that sought to protect the rights of detainees, as well as hold authorities accountable in the event of deaths in custody. However, the system has not been effective in practice, as there were issues in the implementation of laws, statistics, inquiries, and follow-ups on court directives. Court proceedings and various reports by NGOs reveal that there were delays in the process in allowing families of victims to seek investigations into deaths in custody. There were also issues in forensic and medico-legal investigations, as well as convictions of police officers.³

IV. Key Provisions of the New Laws (BNS, BNSS, BSA) Relating to Custodial Deaths and Accountability

As the changes have been made in the law in 2023 with the introduction of the BNSS, BNS, and BSA, the Indian legal scenario has changed significantly in the area of criminal law, arrest and detention, and the rules of evidence. However, the most striking change is in Section 196 of the BNSS, where the Magistrate is required to probe the circumstances when a person dies or goes missing while in police custody or any other lawful custody.⁴ The Magistrate has the power to record the evidence, summon the witnesses, and arrange for a medico-legal examination within a span of twenty-four hours, but only if there's a valid reason not to. The inquiry can be carried out by the Magistrate with a police investigation or instead of it.

Torture in custody is categorically banned by the BNSS in section 379. This section makes the mistreatment and torture of detainees a crime. It also deals with crimes related to the death or serious harm of individuals resulting from the negligence of public servants in the line of duty. The BSA reform has strengthened the handling of evidence, especially in the context of custodial cases. Evidence obtained through the use of forced confessions and torture will be subjected to much greater scrutiny. The handling of proof and the chain of custody has been strengthened. However, the full BSA document has many provisions. Some of the significant provisions deal specifically with the handling of confessions, oral statements, medical-legal evidence, and forensic evidence.⁵

Significant changes with the BNSS include magistrates being in charge of judicial inquiries under Section 196. This is particularly significant in the event of deaths or disappearances in police custody or when rape is alleged in relation to the disappearance in police custody. The inquiries are conducted in the area of the magistrate in charge of the area where the disappearance or death occurred. Section

196(6) provides that the body of the deceased is to be handed over to a qualified medical examiner within twenty-four hours, unless reasons for delay are given. The law has also become more protective in the procedures followed in these inquiries, with the magistrate being required to notify the relatives of the deceased, whose names and addresses are known, of the inquiries and allow them to attend when feasible. The magistrate can order the exhumation of the body for a post-mortem if necessary for the determination of the cause of death.⁶

V. Institutional & Judicial Mechanisms under BNSS and Related Laws

Apart from BNSS, additional protective mechanisms are available in BNS and BSA. Under BNS, it is more obvious when public servants or police officers are liable for causing serious injuries or death due to their actions or inactions in custody. BSA overhauls the rules of evidence. Coercive or inadmissible confessions, including those obtained through torture or mistreatment, are less likely to be admitted. The rules for the chain of custody, forensic evidence, and medical-legal reports are more stringent. These changes enhance the procedural and substantive accountability mechanisms.

A recent court ruling is an illustration of how these new mechanisms are being implemented. The ruling in a case in the Punjab & Haryana High Court relating to custodial death of Bhinder Singh, by a judicial inquiry under Section 196 BNSS, prompted the Magistrate to take action under Section 210(1)(c) BNSS, even when police officials resisted, citing procedural infirmities. The Court ruled that even if it is based on findings of the judicial inquiry under Section 196, it is open to the magistrate to take action, even if it is based on his own knowledge. The Court also ruled that it is not relevant to argue whether it is necessary to comply with Chapter XVI, as it does not affect this action in these circumstances. This is an indication of BNSS provisions being implemented in real life, as opposed to being

merely cosmetic.⁷

Though it is early days for these new laws, there is a mix of hope and challenges. Where there is a strong presence of civil society organizations or local human rights groups, there is an increase in inquiries under Section 196, awareness among families, as well as better medico- legal autopsies. For example, it is seen that in states with better infrastructure, like Kerala and Tamil Nadu, there is a better implementation of these laws. Magistrates can conduct inquiries, as well as send bodies for autopsy, without delays.

VI. Trends, State-wise Variation & Challenges in Practice

Despite the progress that has been made, there are still major hurdles to overcome. One such issue is the delays that occur. This is particularly true when the 24-hour deadline set by BNSS to send the bodies for medical examination is not met due to issues such as a lack of infrastructure, such as the availability of forensic pathologists in rural areas. Another issue that is affecting the implementation is the lack of standardization in different states. This is due to the fact that different state governments have not clearly empowered magistrates. In fact, in some states, police investigations occur without any input from the magistrates. In other cases, the investigations carried out by the police negate the investigations carried out by the magistrates.

There is a significant difference between posing questions and receiving genuine answers. Even if the inquiry is conducted by the magistrates, they don't go the whole way in terms of prosecution and disciplinary action against the police officers involved. Some pieces of evidence go missing, witnesses are reluctant or scared to appear, and medical reports are ambiguous and even disputed.

Additionally, there is a lack of awareness among the families of the victims, lawyers, and even the police and other authorities regarding the new rights that have been conferred through the

BNSS, BNS, and BSA. Because of this, the issues are not reported, and the investigations that the law actually requires are not demanded.

Fifth, access to the results and overall transparency is limited. In many cases, the results of the magistrate's inquiry are not made public, and reports from the inquest/inquiry to the medical- legal conclusion are not readily accessible to the families or the NGOs. This further diminishes the deterrent impact. The variety of state laws and procedures indicates that while the legal reform holds promise, a number of obstacles deficits in terms of resources, capacity, infrastructure, as well as social-political obstacles remain to be overcome for the implementation of the legal protection to be fully effective.

VII. Findings

An overview of the statutes, case laws, reports, and initial data indicates several important aspects of custodial deaths and police accountability under the new regime (BNSS, BNS, BSA). The findings highlight the positive and negative aspects.

A. Statutory Improvements with Mandated Oversight

Under the BNSS, Section 196 indicates a significant shift in the judicial oversight of investigations into deaths in police or any other lawful custody, with the mandatory requirement for magistrate investigations. Courts and commentators have highlighted the importance of the section in requiring judicial involvement while police investigations are still in progress, a level of clarity not as visibly implemented in the past. The law has introduced significant procedural safeguards with the enforcement of time limits for medical examinations (within twenty-four hours), requiring magistrates to justify any delay, notification of the family, and the option for independent investigation.⁸

B. Early Cases Showing the Statutory Provisions Having Teeth

Recent custodial deaths under the BNSS have been dealt with in the same swift manner that the law expects. One of the most prominent examples is the Sivaganga custodial death in Madurai, Tamil Nadu, in 2025. Initial post-mortem results showed that the victim sustained various injuries on his body. Five police officers were arrested, and an FIR was registered under section 196(2)(a) of the BNSS. A judicial inquiry was ordered by a Magistrate, and the post-mortem was video recorded in front of the victim's family. This is an example that shows that the accountability mechanisms provided by the BNSS can indeed be put into practice in real life, especially in scenarios that receive significant media and public attention.⁹

C. Persistent Delays and Gaps in Implementation

The law requires an immediate medical examination within 24 hours. However, bodies often arrive late due to the scarcity of medical staff, distance from the mortuaries, and movement of bodies. Additionally, magistrates are not notified in time in some states, and the public is not informed either. The results of an investigation under Section 196 BNSS are not made public, and no action is taken even if required.¹⁰

D. Variations Across States, Jurisdictions

The implementation of the BNSS and the accompanying laws (BNS, BSA) is not uniform. States that have better infrastructure, better forensic facilities, and active civil society monitoring, such as Tamil Nadu and Kerala, seem to be implementing the law at a better pace. They have conducted a larger number of inquiries, better medico-legal investigations, and clearer inquiry reports. However, in many of the rural areas, the implementation of the law is lagging behind the deadlines.¹¹

E. Insufficient Data, Transparency

However, reliable and contemporary information is still difficult to obtain. For example, in the report "*Torture Normalised:*

State Violence in India" (Redress, 2025), while the high rates of deaths in custody are highlighted in a disturbing fashion, the report itself points out how often the figures are not only incorrect in their assessment of the cause of death, but also how often they obscure the actual facts of the case. Legal and scholarly work has highlighted how little is available in terms of the results of the magistrate inquiries that the BNSS has urged, despite the fact that many of these inquiries have been conducted in many of the states.

F. Accountability Outcomes Weak Despite Legal Reforms

However, the outcome of the law's application often fails to hit the target. For example, arresting police officers does not often result in charges being filed; in many cases, the charges are dropped due to lack of evidence, and successful prosecutions are the exception. In addition, institutional resistance, lack of independent investigators, difficulties in getting witness testimony, and weaker medico-legal evidence, particularly when the case is delayed, all contribute to the problem. For many families, redress in the form of compensation and the results of inquiries is often too little, too late.¹²

G. Public Awareness and Rights Literacy Still Low

The recently acquired rights under BNSS, BNS, and BSA are not well known among police officers, magistrates, legal aid practitioners, and the affected communities. Media reports indicate that many are not demanding a magistrate inquiry and are not even aware that there are rules governing the time limits for post-mortems. Civil society organizations have often cited ignorance of the law as one of the main impediments to accountability and justice.¹³

VIII. Suggestions

A. Mandatory Anti-Torture Legislation

India is still in need of a law that clearly defines custodial torture. It must explain the consequences of all forms of custodial torture,

including physical, mental, and sexual torture. The law must ensure that the victims of custodial torture are compensated and rehabilitated. The Prevention of Custodial Torture Bill, 2023 must be implemented immediately with broader definitions similar to the UNCAT and with necessary procedural mechanisms.¹⁴

B. Time-Bound Medical Examination and Autopsy Protocols

Laws such as the BNSS require that the body in custody death cases must undergo medical examination within 24 hours; however, there are valid documented reasons for delay. The requirement must be followed stringently. States must invest in infrastructure for forensic pathology so that the experts are accessible in remote regions. In emergency cases, telemedicine can also be utilized.¹⁵

C. Full Use of Judicial / Magistrate-led Inquiries Under Section 196 BNSS

Delays in inquiries should be avoided by magistrates. Our goal is to reduce delays in our processes. The findings of these inquiries should be disclosed to the public. There should be effective means of ensuring that these findings lead to investigations, charges, or disciplinary action. Public audits should be conducted to monitor how many of these inquiries lead to tangible outcomes.

D. Strengthening Transparency and Public Accountability

According to BNSS Section 37(b), it is mandatory for every police station/district to designate an officer (not below the rank of Assistant Sub-Inspector) to maintain and display the information relating to arrested persons. This must be adhered to strictly. This includes the display of boards relating to the status of custody, status of inquiry, and the rights of the detainees. In addition to this, the police reports must also indicate the sequence of custody along with the progress reports to the victims/informant within a stipulated time period, which is usually around 90 days as

prescribed in Section 193.¹⁶

E. Independent Police Complaint Authorities (PCAs) with Real Powers

The current PCAs in various states lack the requisite authority. For instance, the current PCAs' recommendations are not binding, the process of appointing members is slow, and the level of transparency is wanting. However, for the PCAs to be effective, they need to be supported by the law, financially and administratively independent, and have the requisite authority to investigate, make recommendations, and monitor. The inclusion of civil society members and legal experts in the PCAs would help in the independence of the members.

F. Mandatory Use of Technology: Body-cams, CCTV, Digital Records, Recording Interrogations

All custody, detention, and remand facilities must be provided with CCTV and body-worn cameras. The audit trail must be maintained. Video and audio recordings of interrogations must be made, especially when custody is involved. The recordings must be tamper-proof, and copies must be available to the accused, their lawyers, or their families.¹⁷

G. Legal Aid Access and Rights Literacy

Most victims or detainees are unaware of their rights under the BNSS, BNS, and BSA. Legal aid must be strengthened, and individuals must have access to legal counsel immediately, notify their families, and receive medical treatment. Local-level awareness must be conducted through police stations, courts, and communities.

H. Fast-Track Courts for Custodial Death and Violence Cases

To prevent protracted legal logjams, it is suggested that separate courts or fast-track courts be constituted for dealing with custodial deaths. This could include setting deadlines for filing FIRs, completing investigations, filing charge sheets, conducting trials, and delivering

judgments.

I. Capacity Building, Training and Sensitization of Police, Magistracy and Medical Staff

Ongoing training of law enforcement staff focuses on human rights, constitutional law, forensic work, and medico-legal reporting. Magistrates undergo training in inquiry procedures. Medical staff undergo training on the proper handling of detainees. In all these areas, the importance of ethics, non-violence, and empathy is emphasized.

VIII. Conclusion

Custodial deaths in India underscore a failure of both the law and morality. The phenomenon of custodial deaths constitutes a consistent violation of constitutional rights, even after decades of judicial intervention and the establishment of protective laws. The introduction of the Bharatiya Nagarik Suraksha Sanhita (BNSS, 2023), Bharatiya Nyaya Sanhita (BNS, 2023), and Bharatiya Sakshya Adhinyam (BSA, 2023) has marked a significant step towards bridging the gap between rights enshrined in the constitution and rights enforced in reality. The new laws have incorporated carefully crafted procedural protections. For example, the new laws have mandated investigations by a magistrate under Section 196 BNSS for deaths or disappearance in custody. The new laws have also established timeframes for medical investigations, enhanced standards of evidence, and better notifications to family members. The purpose of these new laws is to enhance transparency and accountability.

However, the study also reveals that the promise is only partially fulfilled. Some are using the key legal provisions, but there is an uneven level of implementation. Many magistrates have yet to fully grasp their role in the larger context of inquiry. Many remote districts do not have medical examiners or the necessary forensic equipment and transportation. As a result, the requirement that the body be sent for

examination within twenty-four hours is often not fulfilled. Other problems include delays in reaching families, sloppy documentation, poor evidence preservation, lack of publication of results, and the low rate of prosecution and conviction.

Data transparency is another major barrier. Sources such as the NHRC, NCRB, and state home departments are often not able to provide disaggregated and updated information on the number of deaths in custody, the cause of deaths, the number of deaths in each state, the results of inquiries into deaths in custody, and whether charges are filed or convictions made. The Status of Policing in India Report 2025 states that the absence of matches between sources and the use of different definitions often exist, even when there is an intention to share the data.

Awareness among people and the culture of institutions are one of the biggest hurdles. A large number of police, judges, arrest officers, and local legal aid services do not understand the rights and responsibilities outlined in the new laws. Civil society and the media can assist in some cases, particularly where custodial deaths gain public attention. However, a large number of these deaths occur without reporting or incorrect reporting because of a lack of awareness of rights among people or inadequate enforcement.

There are glimmers of hope. In places where civil society is more robust, media pressure is stronger, and infrastructure is better, legal reforms are having a tangible impact. Investigations are being launched, medicals are being conducted in a more timely fashion, and evidence is being stored better. Police officers are being suspended or arrested. The Supreme Court's concern with surveillance, ensuring CCTV cameras are functioning in police stations and contemplating AI-powered notifications if cameras are not functioning, underscores the fact that they recognize the value of greater transparency in reducing the extent of the problem people experience in custody.

This new legal regime is a significant step forward, but it is by no means a destination. Good laws alone do not ensure justice; their effectiveness depends on effective implementation, strong political support, capable institutions, and monitoring. For Article 21 to be effective in protecting life and dignity of all, these changes must be extended to all corners of the country, especially to those who have suffered most at the hands of custodial violence. That is when custodial deaths become an rarity. It is not about laws; it is about saving lives, restoring dignity, and ensuring accountability.

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