



PRESUMPTION OF DATE OF STATE OFFICIALS IN CUSTODIAL DEATHS: A LEGAL NECESSITY

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Custodial death refers to the death of a person when he or she is under police or judicial custody. These deaths can be of any type, for example, it can be a violence or torturous, death or death due to negligence or even death due to encounter or police actions. These deaths are not only a violation of human rights but also an abuse of state power which weakens the rule of law and reduces the public trust in police. They say a person in custody is completely dependent on state for survival, but who is there to get the explanation since the individual is under state control, The state has duty to protect life. The word custody itself means the legal, right or duty to take care of someone or something, but when that someone to be taken care of his dead or even injured, how this duty of state could be considered as fulfilled. Such deaths, raise a serious constitutional and human rights concern, especially under article 21. Custodial deaths reflect structural deficiencies in accountability, mechanisms within law enforcement, and custodian institution, in simple words, we can say that existing safeguard fail to prevent abuse or ensure responsibility. The topic of custodial deaths is not only a legal issue, but also a human concern, as it involves the loss of life of individuals while under state protection. The responsibility of safety and life shifts to the state when someone is taken into custody. Their family expects protection, not tragedy in a custody, as it removes personal freedom and creates a power imbalance. Authorities have a legal duty of care, but when a death occurs it damages, public trust and raises serious human rights concerns. Adopting a doctrinal and analytical research methodology, this study relies on a comprehensive examination of constitutional provisions, statutory enactments such as the Indian Penal Code and the Indian Evidence Act, landmark judicial pronouncements, Law Commission reports, and international human rights instruments including the UN Convention Against Torture. The dissertation also incorporates a comparative analysis of legal frameworks in jurisdictions such as the United Kingdom and the United States, with particular emphasis on mechanisms of independent investigation, custodial safeguards, and accountability structures. A key argument advanced in this study is the necessity of introducing a rebuttable presumption of responsibility against State officials in cases of custodial death. It is argued that such a calibrated shift in the burden of proof is essential to address the structural disadvantage faced by victims and their families. The dissertation contends that a reverse burden, if carefully designed with adequate procedural safeguards, would not violate constitutional guarantees under Articles 20 and 21 but would instead reinforce the substantive protection of fundamental rights. Reference is made to analogous provisions within Indian law where reverse burdens have been upheld in the interest of justice. The study ultimately concludes that custodial deaths are not merely aberrational incidents but are indicative of deeper systemic deficiencies within the criminal justice administration, including lack of transparency, weak enforcement of safeguards, and institutional reluctance to ensure accountability. In response, the dissertation proposes a set of comprehensive reforms, including the introduction of evidentiary presumptions in custodial cases, establishment of independent investigative bodies, mandatory use of technological safeguards such as CCTV surveillance, stricter

compliance with arrest and detention procedures, and the urgent enactment of standalone anti-torture legislation.

The burden of proof in criminal law serves both a functional and a normative purpose. Functionally, it allocates responsibility for establishing facts; normatively, it embodies a commitment to fairness by requiring the prosecution to prove guilt beyond reasonable doubt. This principle is closely tied to the presumption of innocence, recognised as a cornerstone of criminal jurisprudence. However, in custodial death cases, this allocation becomes deeply problematic. The prosecution is required to establish facts that are often inaccessible due to the State's exclusive control over the victim, the location of detention, and the relevant evidence. At the same time, the accused officials—who are in possession of crucial information—are under no obligation to disclose it unless specific statutory provisions impose such a duty. Judicial observations have acknowledged these inherent difficulties. In *State of M.P. v. Shyamsunder Trivedi* (1995), the Supreme Court recognised that direct evidence in custodial violence cases is rarely available and cautioned against an overly rigid application of the standard of proof that may defeat justice.¹ Similarly, in *Munshi Singh Gautam v. State of M.P.* (2005), the Court emphasised that crimes committed in custody often occur behind closed doors, requiring courts to adopt a more realistic and sensitive approach in evaluating evidence. Despite such recognition, the structural limitations of evidentiary rules continue to impede effective prosecution².

This imbalance gives rise to a form of procedural inequality that undermines the integrity of the trial process. The burden of proof, instead of functioning as a safeguard of fairness, becomes a mechanism through which accountability is diluted or avoided. The law, in effect, insists upon proof while simultaneously

permitting conditions that enable the suppression or non-disclosure of evidence necessary to establish that proof. In *Trimukh Maroti Kirkan v. State of Maharashtra* (2006), the Supreme Court observed that when an offence occurs in circumstances where the accused has special knowledge of the facts, the failure to provide an explanation may justify an adverse inference. This principle highlights the need to recalibrate evidentiary standards in situations involving exclusive control.

Such a framework, if left unaddressed, is incompatible with the broader objectives of criminal justice, which seek not only to protect the innocent but also to ensure that the guilty are held accountable. Where the structure of proof systematically favours one party—particularly the State, which already wields institutional power—the legitimacy and credibility of judicial outcomes become open to serious doubt. Therefore, a re-examination of the burden of proof in custodial death cases becomes necessary to restore balance, fairness, and public confidence in the justice delivery system.

The death occurring in custody engage constitutional protection and statutory safeguard because the individual is under the control of state authorities. custodial death is a constitutional issue because the state has exclusive control over detainees. Although safeguards exist, but prosecution often fails due to evidence in balance. A rebuttal presumption of guilt may help to ensure accountability while remaining constitutionally valid. The constitutional concern regarding presumption of guilt against state officials has evaluated the concept by some fancy terms such as presumption of innocence, which reverses the burden provisions and has given the power to officials by which they cannot be compelled to testify against themselves. When a death occurs in custody, a presumption arises

¹ *State of M.P. v. Shyamsunder Trivedi* (1995)

² *Munshi Singh Gautam v. State of M.P.* (2005)

regarding the responsibility of custodial authorities, authorities may rebut the presumption by providing some credible Evidence, independent investigation and medical evidence may also remain essential, but the presumption operates only after foundational facts are established. The presumption may be rebuttal or irrebuttal, but when rebuttal it shifts the evidentiary burden to accused while preserving the ultimate burden of proof. The adjudication of custodial death cases reveals a fundamental tension at the heart of criminal jurisprudence: the need to protect individual liberty through procedural safeguards, and the equally compelling need to ensure accountability when the State itself is implicated in the deprivation of life. While constitutional and statutory frameworks articulate substantive rights, the real test of justice lies in the evidentiary processes that govern criminal trials. It is within this evidentiary domain that custodial death cases encounter their most profound challenges. Traditional criminal law operates on the assumption of procedural neutrality, where both prosecution and defence have relatively equal access to evidence and the adjudicatory process is structured to ensure fairness through adversarial contest. However, custodial death cases fundamentally disrupt this assumption. The State, which ordinarily prosecutes crime, becomes the accused; the victim is silenced; and the evidentiary record is largely constructed by those under suspicion. This inversion of roles creates a structural asymmetry that conventional doctrines fail to adequately address. This article undertakes a critical re-examination of the principles of presumption of innocence and burden of proof in the context of custodial deaths. It interrogates whether adherence to these principles, without contextual adaptation, perpetuates impunity. It further develops the argument that a calibrated shift in evidentiary burden—through a rebuttable presumption of responsibility—may be necessary to restore equilibrium within the justice system. The importance of independent

investigation cannot be overstated. In custodial death cases, where the accused are State officials, internal investigations are inherently problematic. The UK model addresses this concern by structurally separating investigative authority from the institutions under scrutiny. In contrast, the Indian system continues to rely heavily on police-led investigations, even in cases where police officials themselves are implicated. This structural flaw significantly undermines the effectiveness of accountability mechanisms. The theoretical foundation of the proposed presumption lies in the principle that control entails responsibility. This principle is not alien to legal systems and finds expression in various doctrines across civil and criminal law. Situations involving guardianship, custodial relationships, and institutional care all recognise that those who exercise control over others must bear responsibility for their safety and well-being. In custodial settings, the degree of control exercised by the State is absolute. The detainee is deprived of autonomy, cannot seek assistance independently, and is entirely dependent on State authorities for basic necessities such as food, medical care, and protection from harm. This relationship creates a heightened duty of care that goes beyond ordinary legal obligations.

Custodial deaths happen due to custodial torture, which refers to infliction of physical or mental pain on a person by state officials while the person is in custody. If you talk about the forms of custodial torture, it could be physical, psychological, or sexual or coercive, in basic words, it may include beating, electric shocks, injuries, threats, intimidation, sleep, deprivation, humiliation, assault or harassment, forced confession, or illegal pressure techniques. In the case of *DK Basu versus State of West Bengal (1997)* The court said that. The state cannot use torture as a method of investigation, even accused persons have fundamental rights and abuse of police power undermines the rule of

law. The state handles its actions of its officials and victims can claim compensation³.

Death occurring in custody, engage constitutional protection and statutory safeguard because the individual is under the control of state authorities, the deprivation of liberty through the arrest or detention imposes corresponding legal obligations upon the state. When death occurs in custody, the issue extends beyond the individual, criminal liberty and involves constitutional responsibility and procedural account abilities. Article 21 of constitution guarantees that no person shall be deprived of life or personal liberty, except according to procedure established by law, even the judicial interpretations have been expanded and the meaning of this provision to include protection against torture, cruel treatment, and arbitrary deprivation of life. So, the deaths occur occurring in custody, therefore, trigger constitutional scrutiny, regarding the state to demonstrate compliance with lawful procedure and constitutional safeguards. Judicial interpretations have also represented that right to life includes the right to live with dignity. Failure to ensure conditions like medical care or protection from harm amount, violation of constitutional obligations. Article 20 protects individuals against self-incrimination and arbitrary punishment while article 22 proves procedural statutes relating to arrest and detention. These articles require that the detainee has been informed on the grounds of arrest, allowed to access legal council and be produced before the magistrate within defined time limits. Judicial decisions have also played a central role in defining state responsibilities in the custodial death cases quotes have said that when a person dies in custody, the burden lies upon the state to provide a credible explanation of the circumstances that led to the death in the case of *Nelabati behra v. State of Orissa*, the Supreme Court held that the custodial death constitutes a violation of fundamental rights and may justify

compensation under the Law remedies. The decision recognised the state liabilities, independent of private remedies. While judicial guidelines have strengthened procedural safeguards, their implementation has been uneven. Judicial remedies have primarily forced on compensation rather than criminal accountability.

If we talk about the National Human Rights Commission (NHRC), they have issued guidelines requiring mandatory reporting and investigation of custodial deaths, which includes immediate reporting of custodial death, then magisterial, enquiry, videography of postmortem, examination, submission of postmortem, and forensic reports and even independent investigation of the whole scenario. The guidelines are intended to enhance transparency and accountability, but they operate as administrative directions and depend on compliance of state authority. India has been a signatory two international human rights instruments that impose obligations relating to protection of right and prevention of torture. The International Covenant on Civil and Political Rights (ICCPR) obligates state to protect the right to life and ensure human treatment of detainee. They also have emphasised the duty of state to conduct effective investigations into death occurring under custody. Conventional criminal jurisprudence is grounded in the presumption of innocence and places the burden of proof squarely on the prosecution. While these principles are fundamental to the protection of individual liberty, their strict application in custodial death cases creates serious practical and evidentiary challenges. Evidence relating to the cause of death, the nature and extent of injuries, and the conduct of officials remains largely within the exclusive control of State agencies. Independent witnesses are seldom available, and medical or forensic evidence is often contested or inconclusive. The Supreme Court in *State of M.P. v. Shyamsunder Trivedi* (1995) acknowledged the difficulty of securing direct evidence in custodial violence cases and

³ *DK Basu versus State of West Bengal* (1997)

observed that exaggerated adherence to proof beyond reasonable doubt may result in miscarriage of justice. This structural imbalance significantly weakens the prosecution's ability to establish guilt⁴. In this context, the existing legal framework frequently proves inadequate in securing effective accountability for custodial deaths. Against this backdrop, the present study critically examines the need for introducing a rebuttable presumption of responsibility against State officials in such cases. It explores whether a calibrated shift in the burden of proof can address the inherent evidentiary imbalance while remaining consistent with constitutional guarantees. The study draws support from judicial reasoning in *Munshi Singh Gautam v. State of M.P.* (2005), where the Court emphasised the need for a realistic and sensitive approach in cases involving custodial torture. It is argued that such a reform is essential for the meaningful enforcement of fundamental rights, strengthening accountability of public authorities, and restoring public confidence in the criminal justice system⁵.

Despite constitutional protection and statutory provisions, custodial deaths can occur. Several structural reputation is have affected the accountability such as evidence is controlled by custodial authorities, independent witnesses are very rare to be available or found, investigations may lack independence and medical evidences may or may not be contested, prosecution, faces, difficulties, proving guilt, beyond reasonable doubts. The existing framework emphasising safeguard, but does not adequately address, evidently imbalances the continued occurrence of custodial deaths say that prevent preventive guidelines also may be in sufficient and the legal mechanisms must address structural limitations affecting investigation and prosecution. Where that occur under executive state control, the allocation of evidentiary Burden becomes a significant issue. The reassessment of rules may be necessary to

ensure effective protection of the right to life. The analysis indicates that while legal safeguard exists, the structural limitations hinder effective enforcement. The presumption of innocence and the requirement of proof beyond reasonable doubt are fundamental to criminal law. However, in custodial death cases, these principles operate in an environment the victim can't testify, evidence is controlled by the accused, and the prosecution relies largely on circumstantial evidence. As a result, convictions are rare and trials often end in acquittals and remain pending for years. Low conviction rates highlight the inadequacy of the existing legal framework although constitutional have developed the remedy of compensation for custodial deaths, such relief serves only a remedial purpose and does not substitute criminal accountability. In the absence of effective criminal sanctions, a culture of impunity continues to prevail with in law enforcement agencies. While sections 330 and 331 of Indian Penal Code criminalise custodial torture, there enforcement is still minimal due to evidentiary difficulties. Similarly procedural safeguards under the Code of Criminal Procedure, including mandatory judicial inquiries, focus largely on compliance rather than substantive accountability. The absence comprehensive law addressing custodial torture and deaths further aggravates the problem especially given India's failure to in-act legislation implementing the United Nations Convention Against Torture. Unlike cases involving dawory deaths or corruption, where the legislature has acknowledged the difficulty of proof and introduced statutory presumptions, custodial deaths cases. as a result, state officials are rarely compelled to explain the circumstances leading to death in custody in a manner that satisfies criminal standards.

Custodial death has long been recognised as a serious violation of human rights and constitutional guarantees. Legal scholarships, judicial discourse, and institutional reports have extensively examined the phenomena, primarily for from the perspective of constitutional

⁴ *State of M.P. v. Shyamunder Trivedi* (1995)

⁵ *Munshi Singh Gautam v. State of M.P.* (2005)

protection, state, liability, and police accountability. However, despite the growing body of legislature on custodial violence, their remains limited, doctrinal analysis on the issue of shifting burden of proof or introducing a presumption of guilt against state officials. This review examines existing literature under four broad heads to identify prevailing trends and critical gaps.

The Bharatiya Nyaya Sanhita, 2023 serves as the primary source of substantive criminal law governing acts that may lead to custodial deaths. Although the statute does not explicitly define “custodial death” as a separate offence, it criminalises conduct such as causing hurt, grievous hurt, and culpable homicide, which may arise in custodial settings. Provisions corresponding to the earlier offences under the Indian Penal Code, such as causing hurt or grievous hurt to extract confessions and acts amounting to culpable homicide or murder, are applicable to custodial violence. These provisions theoretically provide a basis for prosecuting officials responsible for custodial deaths. However, their general nature poses significant challenges. They do not account for the unique circumstances of custody, where the State exercises exclusive control over the individual and the environment in which the offence occurs.

In the United States, custodial deaths are examined primarily under constitutional provisions such as the Fourth Amendment, which protects against excessive force, and the Fourteenth Amendment, which guarantees due process and equal protection. The Supreme Court in *Graham v Connor* established the “objective reasonableness” standard for evaluating use of force by law enforcement officials⁶. This standard assesses whether the conduct of officials was reasonable under the circumstances, rather than focusing on subjective intent. While this framework provides a basis for evaluating police conduct, it sets a relatively high threshold for establishing liability.

The requirement of proving unreasonableness often places a heavy burden on the prosecution.

A major limitation of the BNS framework lies in its failure to recognise custodial violence as a distinct category of crime requiring specialised treatment. Unlike certain other offences where the legislature has introduced specific presumptions or aggravated forms of liability, custodial deaths are subsumed within general criminal provisions. This results in the application of conventional standards of proof, which are often inadequate in cases where evidence is controlled by the accused officials. Furthermore, the absence of specific provisions addressing torture or custodial misconduct reflects a broader legislative gap. Despite international obligations, particularly under the Convention Against Torture, India has not enacted a comprehensive anti-torture law. As a result, prosecution under BNS remains constrained by evidentiary difficulties and lack of contextual recognition of custodial power dynamics. Legal scholars have approached custodial deaths, primarily through the lenses of human rights, abuse of power and institutional accountability. Writers such as Upendra Baxi argue that custodian violence reflects deeper structural inequalities within the criminal justice system, where State power operates without meaningful oversight. Academic writings emphasise that imbalance of power between detaining and law, enforcement, and agencies under my fairness and Due process. Scholarly discussions on evidentiary principles highlight that traditional rule of burden of proof work unfairly in cases where the accused controls all relevant evidence. Several commentators suggest that Section 106 of the Indian evidence act provides a doctrine pieces for shifting the burden in such situations. However, they also know that quotes have applied this provision narrowly limiting its potential impact in custodial death prosecutions.

Comparative discussions within academic literature, often referred to international human rights norms, wear custodial that are treated as

⁶ *Graham v Connor*

prima facie violations of the right to life. Scholars argue that Indian law has yet to fully integrate this principal into its criminal Justice framework. A central concern in evaluating the proposed reform is its compatibility with constitutional protections, particularly under Articles 20 and 21 of the Constitution of India. Any shift in the evidentiary burden must be carefully scrutinised to ensure that it does not dilute the fundamental rights of the accused or compromise the fairness of the criminal process. At the same time, constitutional analysis must account for the State's positive obligations, especially in contexts where individuals are under its complete control.

Article 21 imposes not merely a negative obligation to refrain from unlawful deprivation of life, but also a positive duty to protect life and ensure human dignity. In *D.K. Basu v. State of West Bengal* (1997), the Supreme Court unequivocally held that custodial violence and deaths constitute a direct violation of Article 21, emphasising the State's responsibility to ensure transparency and accountability in arrest and detention⁷. Similarly, in *Nilabati Behera v. State of Orissa* (1993), the Court recognised State liability for custodial death and underscored that the protection of life does not cease upon detention⁸. The introduction of a rebuttable presumption of responsibility strengthens the enforcement of Article 21 by preventing the State from evading accountability through its exclusive control over evidence. At the heart of the problem lies the disjunction between legal form and institutional reality. Criminal law, in its classical formulation, presumes a relatively neutral terrain of adjudication, where the prosecution and defence engage on an equal footing and where the truth can be reconstructed through the adversarial presentation of evidence. Custodial death cases fundamentally disrupt this model. The State, which ordinarily acts as the prosecuting authority, becomes the potential perpetrator. The victim is silenced by death, and the

evidentiary narrative is largely shaped by those who are themselves under suspicion. In such a setting, the insistence on traditional evidentiary standards without modification results in a form of procedural formalism that obscures rather than reveals the truth.

The judiciary must adopt a more proactive and interventionist approach in cases involving custodial deaths. Given the inherent structural disadvantages and evidentiary constraints in such cases, courts cannot remain passive arbiters but must actively ensure that justice is not defeated by procedural limitations. This includes a more effective application of doctrines such as adverse inference, particularly where relevant facts lie within the exclusive knowledge of State authorities. In *Trimukh Maroti Kirkan v. State of Maharashtra* (2006), the Supreme Court recognised that where crucial facts are within the knowledge of the accused, failure to provide a satisfactory explanation may justify an adverse inference—an approach that is especially relevant in custodial contexts⁹.

Judicial proactiveness must also extend to ensuring time-bound investigation and trial of custodial death cases. Delays in investigation and adjudication not only weaken the evidentiary foundation but also contribute to a culture of impunity. In *Hussainara Khatoon v. State of Bihar* (1979), the Supreme Court affirmed that the right to a speedy trial is an essential component of Article 21, highlighting the judiciary's role in preventing undue delay¹⁰. Applying this principle in custodial death cases would significantly enhance accountability and deterrence. Further, courts must exercise closer oversight over investigative processes to ensure independence, fairness, and adherence to procedural safeguards. In *Babubhai v. State of Gujarat* (2010), the Court emphasised that a fair and impartial investigation is integral to the administration of justice and forms part of the guarantee under Article 21. Judicial monitoring,

⁷ *D.K. Basu v. State of West Bengal* (1997),

⁸ *Nilabati Behera v. State of Orissa* (1993)

⁹ *Trimukh Maroti Kirkan v. State of Maharashtra* (2006)

¹⁰ *Hussainara Khatoon v. State of Bihar* (1979)

where necessary, can serve as an important mechanism to counter institutional bias and ensure that investigations are conducted in an objective and transparent manner. Judicial innovation has historically played a transformative role in shaping custodial jurisprudence in India. Landmark decisions such as *D.K. Basu v. State of West Bengal* (1997) demonstrate how judicial creativity can fill legislative and institutional gaps by evolving procedural safeguards and accountability mechanisms¹¹. The continued evolution of such judicial approaches is essential for addressing emerging challenges and ensuring that constitutional protections remain effective in practice. Ultimately, a more proactive judiciary can act as a critical safeguard against the abuse of State power. By adapting evidentiary standards, enforcing procedural discipline, and ensuring institutional accountability, the judiciary can strengthen the rule of law and uphold the fundamental rights of individuals in custody.

A society that tolerates custodial death silently erodes its own commitment to justice and human dignity. custodial deaths are the ultimate betrayal of states duty to protect those it has restrained, behind every custodial death lies not just a body but a broken promise of justice. They need to stop and a country like india ,which is evolving and nurturing needs new reforms to conquer this situation.



GRASP - EDUCATE - EVOLVE

¹¹ *D.K. Basu v. State of West Bengal* (1997)