



INDIAN JOURNAL OF
LEGAL REVIEW

VOLUME 6 AND ISSUE 8 OF 2026

INSTITUTE OF LEGAL EDUCATION



INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 6 and Issue 8 of 2026 (Access Full Issue on – <https://ijlr.iledu.in/volume-6-and-issue-8-of-2026/>)

Publisher

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CUSTODY, COERCION, AND COMPLICITY: A CONCEPTUAL AND THEORETICAL FRAMEWORK OF CUSTODIAL VIOLENCE IN INDIA

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BEST CITATION – RACHIT MATHUR, CUSTODY, COERCION, AND COMPLICITY: A CONCEPTUAL AND THEORETICAL FRAMEWORK OF CUSTODIAL VIOLENCE IN INDIA, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 6 (8) OF 2026, PG. 246-252, APIS – 3920 – 0001 & ISSN – 2583-2344.

INTRODUCTION

In India, custodial violence cannot be addressed without regard to the conditions that create it. Prior to exploring the legal protections and judicial responses to custodial deaths, it is important to lay down a preliminary framework of understanding – a framework that defines the notion of custody, the typology of custodial violence, and the underlying causes that allow custodial violence to flourish despite constitutional prohibitions. This Research Paper seeks to provide that foundation. The Research Paper starts with a distinction between the two main types of custody in the Indian criminal justice system: police custody and judicial custody. Although both involve state power over a person's liberty, they vary in terms of the power exercised, the conditions under which they operate and the potential for abuse. This difference is not just semantic – it impacts the legal remedies and accountability frameworks that apply. Drawing on this distinction, the Research Paper then moves on to mapping the typology of custodial violence, which includes physical torture, psychological torture, fake encounters and custodial rape. These are not only associated with different legal consequences, but also different forms of power abuse by State authorities. The Research Paper then moves on to the institutional and structural causes of custodial violence – the pressure on the police to extract confessions, political interference in police work, lack of professional training, and systemic social biases – and relates these factors to the theories of state accountability and institutional abuse of power. In all, these discussions demonstrate that custodial violence is not an anomaly, but a failure of the Indian system of policing.

ABSTRACT

This Research Paper sets out the conceptual and theoretical framework for analysing custodial violence in India. It starts by outlining the two main forms of custody in the Indian criminal justice system – police custody and judicial custody – and how they create different sets of circumstances that expose the custodial bodies to certain forms of abuse. Police custody, where the accused is in direct physical control of the police, is found to be the most perilous stage of the criminal justice process, while, though more formal, judicial custody is also not without its dangers of neglect, overpopulation and institutional apathy. The Research Paper then

explores the typology of custodial violence, outlining five main types: physical torture, psychological coercion, custodial torture (in its broad sense), fake encounters and custodial rape. Each type is explained with its specific features, power relations and human-rights abuses involved. The Research Paper proceeds to map the structural and institutional causes of custodial violence, namely the systemic pressure on police to extract confessions instead of conducting scientific investigations, political interference that undermines police autonomy and independence, lack of training in scientific investigation and human rights, and social prejudices that condone the use of violence against marginalised groups. These causes are

framed within two theoretical models: the theory of state accountability and the institutional power abuse model. These models present custodial violence not as a collection of isolated acts of transgression, but as a systemic and structural problem, and hence, the reform strategies discussed in the Research Papers that follow.

Keywords:

1. Custodial Violence
2. Police Custody
3. Judicial Custody
4. Institutional Accountability
5. Confession-Based Policing

1.1 Meaning of Custody (Police Custody and Judicial Custody)

Custody is defined as the legal reserving or immediate authority of a human being by the law enforcers or even the courts where the rights to move freely within the law is curtailed. In criminal law, custody ordinarily starts when an individual is either taken into custody or arrested following a criminal offense by law enforcement. The custody concept is extremely significant to the criminal justice system since once an individual is detained, the State takes care of the safety, well-being and life of the individual. Anything that happens in custody which is related to injury, torture and death makes it of great legal and constitutional concern, particularly, the human rights and what can be found to be an abuse of power. There are two main types of custody; police custody and judicial custody. The difference between these two types of custody is critical in the awareness of custodial violence and custodial deaths in India.

Police Custody

Police custody is the arrest of an alleged offender in a lock-up room in a police station or at the direct charge of the police officers to be investigated and interrogated. The period of police custody normally starts with the moment in which a person has been arrested. Upon arresting an individual, the police have to

present the charged party before a magistrate within 24 hours after the arrests. The accused can be held in custody by the police to be interrogated and investigated, this may happen during this period and in other occasions it may happen after the permission of the magistrate.

During police custody, the accused is physically controlled by the police officers and the police can interrogate the accused to raise information, retrieve evidence, detect accomplices or simply know the facts of the case. Nonetheless, police are not entitled to torture, batter, intimidate or compel the accused to make a confession. The explicit thing in the law is that confession made under force, threat and torture are illegal.

The police custody is believed to be the most sensitive and the most dangerous phase in the criminal justice administration since the accused is totally at the mercy of the police and in a defenseless stance. Custodial violence, torture and custodial death are very rampant during police custody since the police at times apply unlawful means including beating, mental torture, sleep deprivation, threats and humiliation to ensure that the arrested party provides details or confession. The police can use the third-degree methods in an interrogation process because of the pressure to close cases, the absence of scientific investigation methods and institutional pressure.

Thus, police custody has been linked to custodial violence, coercive influence, wrongful arrest, and infringement of human rights. This is why the law offers various measures to protect against being exploited in the police custody, including medical checking of the accused, right to notify relatives, right to counsel and production in front of the magistrate.

Judicial Custody

Judicial custody can be defined as imprisonment of an accused individual in jail or prison at the specifications of a magistrate or court. In the event an accused individual is brought before a magistrate upon being

arrested, the magistrate has the choice of either sending the accused to police custody to be investigated further or send the accused to judicial custody. The accused is in judicial custody in jail where he is controlled by jail authorities instead of being controlled by the police.

When the accused is in judicial custody, the police can not question the accused without the court consent. Judicial custody is seen to be relatively more secure than police custody whose accused is under the police supervision and direct rule and also more under jail supervision. Nevertheless, leadership-custodial deaths may take place within the context of judicial custody because of deplorable prison conditions, excessive congestion, absence of medical centers, inmate violence, mental strain, suicide, or laxity among prison officials.

Judicial custody comprises of cases where undertrial prisoners or convicted prisoners are held in jail. Their safety, health and human dignity remains the concern of the State. A death in judicial custody also counts as a custodial death and the State can be found guilty of negligence or of breach of fundamental rights.

1.2 Types of Custodial Violence (Physical, Mental, Torture, Fake Encounters, Custodial Rape)

Custodial violence can be defined as any kind of violence, abuse, torture, or unlawful treatment on a person while he or she is under the police or judicial custody. There are numerous types of custodial violence, and it is not necessarily based on physical attack. It consists of acts of physical violence, mental harassment, torture, sexual violence, and fabricated encounters. Such forms of violence are normally employed in order to obtain confessions, punishing suspects, or as a result of an abuse of power by the law enforcement officials.

- Physical violence: The most widespread custodial violence is physical violence. It covers beating, kicking, punching, use of sticks, electric shocks, burning or inflicting

bodily harm to the arrested person. In some cases, police officers employ physical force in order to obtain information or confession out of the accused. In most cases of custodial deaths the victim dies because of internal injuries, fractures, or over physical torture. Aggression in the form of physical violence is contrary to human dignity and the Constitution.

- Mental violence: The other custodial violence, which is not necessarily observable, but equally disastrous, is mental violence or psychological torture. Mental violence involves intimidating the accused, verbal abuse, verbal threats to the family members, during which a prisoner is forced to take long hours, stand long hours, humiliate the accused, or induce the perceived risk of death. The mental torture can be extremely stressful, traumatic, depressive, and even lead to suicide in custody.
- Custodial torture: Another term of greater scope, which takes into account physical and mental torture, is custodial torture. Torture is pain or suffering that is inflicted with purpose of extracting confession, information, or punishment by the police officers. Torture is regarded as one of the greatest violations of human rights. Although torture is unlawful, it continues to be applied in most instances to speed up in resolving crimes or to make the accused to confess.
- Fake encounters: Another type of custodial violence is fake encounters. A fake encounter is a circumstance whereby the police kill an individual and justify the causes by saying he or she died in self-defense or when confronted with criminals. The fake effect in most instances is to evade legal processes, subject suspected criminals to trials without a trial, or demonstrate fast outcomes in criminal investigations. The fake encounters are unlawful and infringe

into the right to life as well as the due process of the law.

Custodial rape unlawful detention, denial of medical treatment and inhumane prison conditions are also considered as custodial violence. All such types of custodial violence breach the human rights and constitutional rights. Custodial violence is not just a legal problem, it is also a human right problem since it entails misuse of authority by people tasked with citizen protection.

Custodial rape is sexual assault that is carried out by an individual in authority upon an individual he/she has been charged with custody, detention and/or under his/her control. This encompasses cases of police officers, prison officials, army officers, hospital workers or any other person who is supposed to take care of or oversee the individuals. The important factor is the power imbalance where the victim is not able to freely consent as he/she is either afraid or coerced or dependent. These offenses are deemed to be especially severe since the law is supposed to safeguard oppressed people rather than victimize them. In most countries, the laws are more severe to custody rape due to the violations of trust, power abuse, and violation of human rights.

As such, custodial violence can assume various forms and it should be noted that violence in custody is not just the emerging form of violence that encompasses physical violence alone but extends to mental and emotional violence as well as institutional violence.

1.3 Pressure for Confession

This has been among the primary reasons behind custody violence because police officers are under pressure to get confessions and close criminal cases within limited time. Within the criminal justice system, it is the role of the police to investigate crimes, gather evidence and name suspects, as well as, load the charge sheets. But because of work loads, unavailability of resources, societal pressure, media pressure, and pressure by seniors officers, the police at times attempt to coerce suspects to their

confessions rather than conduct proper investigation.

In most instances, the police officers feel that, it is the easiest and the fastest way to resolve a case by getting a confession. The police can employ force, threats or torture on the accused so that he will admit the crime instead of gathering scientific evidence like forensic evidence, witness statements or computer evidence. The result of this practice is custodial violence and even custodial deaths.

The other cause of pressure to confession is the performance based evaluation system within the police departments. The cops are mostly judged by the number of cases they resolve, the speed with which they bring on a charge sheet and the number of convictions made. This puts a strain on the police officers in need to deliver deliverables and in some cases these deliverables may involve acts of illegality such as torture to get confessions. There are also incidences when police also hold the wrong individual because of absence of evidence and to justify the arrest, law enforcement officers attempt to make the accused give in. This results in miscarriage of justice and wrongful confessions. Most of the unfortunate individuals have been coerced into criminal acts where they have been suspected to have committed crimes when they are under torture and fear.

It has been explicitly pointed out in the law that confessions made to the police cannot be used in court but nevertheless police still seek to get confessions since this will assist them to close off investigations fast. Forced confessions breach the right to avoid incrimination as well as the right to personal liberty.

Pressure for confession is therefore one of the biggest reasons for custodial torture, illegal detention, and custodial deaths. Custodial violence can only be minimized through scientific investigation methods, forensic training, application of technology, and police reforms whereby police officials do not depend on torture to resolve cases. Thus, pressure for

confession is a major structural and institutional cause of custodial violence in India.

1.4 Theoretical Framework: Understanding Custodial Violence

In order to explain why the custodial violence continues in India in spite of the wide protection provided by law, the analysis needs to be placed within a recognised theoretical context. The two complementary frames that this dissertation examines custodial violence are the theory of state accountability and the institutional power abuse theory.

The theory of state accountability as expressed by theorists like Andrew Harding and Philip Alston, is that the State has a positive duty not just to avoid infringement of rights, but it positively has an obligation to ensure that individuals are not infringed by the actions of its agents.⁶ When police officers tortures or kill their detainees, the State has a direct relationship since the officers are acting on behalf of the State and they are authorized to. The fact that custodial violence remains common in India, even with Articles 21 and 22 of the Constitution and the principles of *D.K. Basu v. State of West Bengal* (1997)^{247,7} indicates that institutional responsibility is not being met, but that instead, the perpetrators have simply done so. The inability of the State to prosecute the delinquent officers, conduct investigations and institute its own judgments, and carry out judicial orders are systemic failures on the part of the State with regard to its accountability mandate.

Based on the studies of criminologists like David Bayley in his analysis of South Asian policing, the institutional power abuse framework identifies structural characteristics of police institutions that give rise to conditions that favour abuse, such as the concentration of unsupervised coercive power, the lack of independent oversight, performance-based systems of evaluation that reinforce the value of confessions over evidence-based investigation, and a culture of impunity supported by political

interference. In India, the existence of a police force organized along the same lines as the colonial Police Act of 1861, implies that institutional characteristics that were intended to ease the administration of a colonised people continue to be present even in a democratic constitutional system.

Combined, these structures explain why a custodial violence in India is not a deviation that can be blamed on a single officer, but rather a structural and institutional issue that needs a systemic change. This theoretical basis is discussed in the following sections in understanding the particular causes of custodial violence.

1.5 Political Influence

Another significant reason of custodial violence and police brutality in India is political influence. Political authorities usually touch on the police system in India and this influences the independence and performance of the police officers. Political pressure may affect arrests, investigations and even custodial treatment of accused individuals. Political leaders in most instances pressurize the police to arrest some people, crack down on demonstrations, attack political rivals or defend political figures. Police can employ use of illegal detention, torture or violence to accused persons when acting under political pressure, so as to appease political government. This results in abuse of the police power and infringement of human rights.

Custodial death investigation is also influenced by politics. In cases of custodial death, in some instances police officers involved are shielded by political forces or their seniors and there is no adequate investigation carried out. This contributes to absence of accountability and promotion of police impunity.

In other instances, custodial violence is employed to oppress marginalized groups and political activists, journalists or protestors. Police can also employ excessive force during protests, arrests, and interrogations based on political

²⁴⁷ *D K Basu v State of West Bengal* (1997) 1 SCC 416 (SC).

pressure to preserve law and order or keep opponents down.

Police transfers, promotions and posting is also influenced politically and this minimises the police independence. Police officers can also seek to please the political figures in order to be promoted or assigned to desirable positions and this influences fair investigation and accountability. Custodial violence should be minimized by making sure that the police is independent, reform the police, and have independent agencies to investigate their cases. The police must serve the law and not the political pressure.

Political influence therefore is a significant institutional cause of custodial violence since it influences the independence of the police, accountability, and rule of law.

1.6 Lack of Training

Another significant cause of custodial violence and police brutality is the absence of the proper training of the police officers. Most police lack proper training in scientific investigation, laws pertaining to human rights, investigative techniques, coping with stress, as well as approaches to handling suspects without use of violence. There is a lot of force and torture applied by the police officers during interrogation due to lack of training. The conventional policing in India is sometimes based on confession investigation as opposed to evidence investigation. Police might not be trained on forensic science, cyber investigations, digital evidence gathering as well as current technology of investigation. This has led them to employ physical force to obtain information out of the suspects. Another stressing factor among police officers is the working understaffed, long hours, political pressure, and public pressure to get the case solved in a hurry. Police officers can, in case of a lack of adequate training on stress control and professional behavior, become aggressive and resort to violence during the interrogation.

It also has unawareness of human rights, constitutional rights and rights of arrested persons. The police officers need to learn that there are basic rights that an accused person must enjoy too and he or she needs to be treated with dignity. The appropriate form of training programs must consist of:

- Human rights training
- Scientific interrogation techniques
- Forensic investigation
- Cyber investigation
- Stress management
- Communication skills

Legal procedures and guidelines on arrests. Provided that police officers are well-trained, the use of torture and violence when making arrests may be decreased. Evidence-based, technology-based, and professional policing rather than violence and coercive confessions should form the modern content component of policing.

Therefore, lack of training is an important structural cause of custodial violence in India.

1.7 Societal Bias

Another factor contributing to custodial violence and police brutality is social prejudice. Sometimes, society believes that police cannot arrest an "innocent" man or woman, and physical force on an arrested person is defended. This supports custodial violence and decreases sympathies towards the victim of custodial torture.

Police officers, too, are members of society and may have social prejudices on the basis of their caste, class, religion, gender, economic background, etc. Higher numbers of custodial violence cases are reported against poor people, migrant labourers, minorities and marginalised groups because they may lack legal or political representation.

At times, society may support police encounters and custodial violence in the name of "justice". They may think law breakers must be punished

on the spot. This leads to fabricated encounters and custodial torture.

The media may also refer to an accused as a criminal before the trial, which puts pressure on police to deal with crime quickly. This results in breaches of due process and human rights. Socio-economic bias also occurs in cases of custodial violence. Indigent families may not file police complaints of custodial deaths for fear, poverty, or ignorance of the law. This results in underreporting of custodial violence. In order to prevent custodial violence, we need:

- Social awareness about human rights
- Legal awareness programs
- Police accountability
- Independent investigation agencies
- Strong judicial oversight

Custodial violence is a legal as well as social problem because it is impacted by society's view on punishment, crime and police power.

So social prejudice is a social factor of custodial violence and police brutality in India.

CONCLUSION

This Research Paper has presented a holistic conceptual and theoretical framework of the comprehension of custodial violence in India. The thoughtful analysis of police custody and judicial custody meanings, the Research Paper then defines that the two types of detention present the circumstances of vulnerability where the State turns into an even more responsible institution concerning the safety and dignity of someone detained. This duty, however, is very often in practice abused.

The typology of custodial violence, explained in the Research Paper, namely physical assault, psychological torture, fake encounters, custodial rape, and denial of medical treatment, indicates that custodial violence is never limited to any one type of abuse but rather comes as a spectrum of abuse. There are different legal implications to each form but they are all united

by the common denominator of abuse of power by people who are tasked to enforce the law.

The cause analysis, such as pressure into confessions, political influence, and training failures and societal prejudices, demonstrates that custody violence is the result of both dysfunction of the structure and cultural tolerance. The current performance-oriented assessment of policing with case resolution being a priority over due process encourages coercion. Institutional independence and accountability is also weakened by political influence on the activities of the police.

The conceptual unities of state responsibility and the misuse of institutionalized power offer a prism of perspective that enables individual act of custodial violence to be interpreted as failures of the system instead of instances of ill-doing. This view plays a vital role in shaping effective reforms, as it focuses the efforts on the problem beyond bad actors and on the institutional circumstances, which allow abuse and continue it.

Together, this Research Paper highlights that the fight against custodial violence should not merely focus on legal reform but also on the institutionalization of police institutions, professional training, and raise the policing culture to a new level. The results of this Research Paper constitute the analytical foundation, on which the following Research Papers investigate the legal protection and judicial reaction.

BLENDED PEDAGOGY AND REFLEXIVE LEARNING: RE-IMAGINING THE LECTURE AND DISCUSSION METHODS IN LEGAL EDUCATION

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BEST CITATION – GOKULRAJ A, BLENDED PEDAGOGY AND REFLEXIVE LEARNING: RE-IMAGINING THE LECTURE AND DISCUSSION METHODS IN LEGAL EDUCATION, INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 6 (8) OF 2026, PG. 253-261, APIS – 3920 – 0001 & ISSN – 2583-2344.

Abstract

“Education must begin with the solution of the teacher-student contradiction, by reconciling the poles of the contradiction so that both are simultaneously teachers and students.”

Paulo Freire²⁴⁸

Legal education has traditionally oscillated between the lecture method, which emphasizes structured doctrinal delivery, and the discussion method, which fosters dialogical engagement and critical reasoning. While each approach offers distinct pedagogical strengths, their exclusive use often results in either passive absorption of knowledge or fragmented debate lacking coherence. This article explores the concept of blended pedagogy as a means of integrating lectures and discussions to cultivate reflexive learning, a process through which students critically reconstruct legal knowledge within broader social and professional contexts.

Drawing on historical developments, comparative practices in leading law schools, and theoretical insights from educational thinkers, the study examines the suitability, scope, and impact of blended pedagogy in legal education. It highlights how this integrative model enhances doctrinal clarity, analytical skills, and adaptability, while also overlapping with and extending beyond the case study method. The article argues that blended pedagogy provides a more inclusive and transformative framework for legal teaching, capable of addressing contemporary challenges in professional training.

By re-imagining lecture and discussion in tandem, the study proposes a reflexive model of legal education that balances precision with critical engagement, thereby preparing students for the complexities of modern legal practice.

Key words: Blended Pedagogy, Reflexive Learning, Legal Education, Lecture vs. Discussion, Case Method Evolution

1. Introduction

Legal education has historically oscillated between two dominant pedagogical approaches, the lecture method and the discussion method. The lecture method, rooted in medieval universities and reinforced through doctrinal teaching, emphasizes structured

delivery and systematic exposition of complex legal principles. While it ensures clarity and coherence, it often reduces students to passive recipients of knowledge.²⁴⁹ In contrast, the discussion method, associated with the Socratic tradition, encourages active participation, critical questioning, and interpretive diversity.²⁵⁰

²⁴⁸ Paulo Freire, *Pedagogy of the Oppressed*, Continuum, New York, 1970, p. 72.

²⁴⁹ Rashdall, H., *The Universities of Europe in the Middle Ages*, Vol. I, Oxford University Press, Oxford, 1895, pp. 78-102.

²⁵⁰ Socrates, quoted in Guthrie, W.K.C., *The Sophists*, Cambridge University Press, Cambridge, 1971, p. 62.



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ISSN 2583-2344



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