

CUSTODIAL VIOLENCE IN INDIA: A CRITICAL ANALYSIS OF LEGAL SAFEGUARDS AND ENFORCEMENT MECHANISMS

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Abstract

Custodial violence remains one of the most pressing human rights challenges within the Indian criminal justice system. Despite a robust constitutional framework and multiple statutory safeguards, incidents of torture, abuse, and custodial deaths continue to occur with alarming frequency. This paper critically examines the legal and institutional mechanisms designed to prevent custodial violence in India and evaluates their effectiveness. It explores the historical roots of custodial abuse, analyzes constitutional protections, statutory provisions, and judicial interventions, and identifies structural deficiencies that perpetuate impunity. The study argues that while India possesses a strong normative legal framework, enforcement remains weak due to systemic issues such as lack of accountability, colonial policing structures, and absence of specific anti-torture legislation. The paper concludes with recommendations for legislative reforms, institutional restructuring, and technological interventions to ensure accountability and protection of human dignity.

1. Introduction

Custodial violence refers to any form of physical or mental abuse inflicted upon individuals who are under the custody of law enforcement or other state authorities. It includes torture, sexual abuse, illegal detention, coercion, and custodial deaths. This issue strikes at the core of constitutional democracy, as it involves the violation of rights by the very institutions responsible for protecting them.

In India, custodial violence is not merely an aberration but a systemic issue rooted in historical, institutional, and socio-political factors. The persistence of such violence reflects a gap between constitutional ideals and ground realities. Individuals in custody are particularly vulnerable due to their complete dependence on authorities, lack of external oversight, and

limited access to legal assistance during initial stages of detention.

Although India has enacted various laws and safeguards, enforcement remains inconsistent. The continuation of custodial abuse highlights the urgent need for reform in both legal frameworks and institutional practices.

2. Historical Background of Custodial Violence

The origins of custodial violence in India can be traced back to ancient and medieval periods, where harsh punishments were often justified as necessary for maintaining order. Ancient texts like Kautilya's Arthashastra described methods of torture used to extract information.

During the medieval period, particularly under certain regimes, corporal punishments and

coercive interrogations were common. However, the colonial era marked a turning point in institutionalizing custodial violence. The British administration introduced laws such as the Police Act of 1861, which prioritized control and suppression over public service.

Post-independence, India retained much of this colonial policing structure. Despite constitutional guarantees, the legacy of coercive policing continues to influence law enforcement practices today.

3. Constitutional and Legal Framework

3.1 Constitutional Safeguards

The Constitution of India provides several protections against custodial violence:

* Article 21 guarantees the right to life and personal liberty, which includes protection from torture and degrading treatment.

* Article 20(3) protects individuals from self-incrimination, thereby discouraging coercive interrogation.

* Article 22 ensures safeguards against arbitrary arrest, including the right to be informed of grounds of arrest and access to legal counsel.

* Article 14 ensures equality before law, prohibiting discriminatory treatment in custody. These provisions collectively form the foundation of legal protection against custodial abuse.

3.2 Statutory Provisions

Several laws address custodial violence indirectly:

* Indian Penal Code (IPC): Sections 330 and 331 criminalize causing harm to extract confessions.

* Code of Criminal Procedure (CrPC): Provides safeguards such as medical examination and mandatory production before a magistrate within 24 hours.

* Indian Evidence Act, 1872: Sections 25 and 26 render confessions made in police custody

inadmissible.

* Protection of Human Rights Act, 1993: Establishes the National Human Rights Commission (NHRC).

The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 has introduced additional procedural safeguards, including stricter arrest protocols and mandatory medical examinations.

3.3 International Obligations

India is a signatory to international human rights instruments such as:

* International Covenant on Civil and Political Rights (ICCPR)

* Universal Declaration of Human Rights (UDHR)

However, India has not ratified the United Nations Convention Against Torture (UNCAT), which weakens its commitment to international anti-torture standards.

4. Judicial Response to Custodial Violence

The judiciary has played a crucial role in addressing custodial violence through landmark judgments:

* D.K. Basu v. State of West Bengal (1997): Established guidelines for arrest and detention procedures.

* Nilabati Behera v. State of Orissa (1993): Recognized compensation as a remedy for custodial deaths.

* Joginder Kumar v. State of Uttar Pradesh (1994): Emphasized that arrest must be justified and not routine.

* Selvi v. State of Karnataka (2010): Prohibited involuntary scientific interrogation techniques.

* Paramvir Singh Saini v. Baljit Singh (2020): Mandated installation of CCTV cameras in police stations.

These judgments have significantly strengthened legal protections, yet implementation remains inconsistent.

5. Structural Causes of Custodial Violence

5.1 Colonial Policing Legacy

The Indian policing system still reflects colonial values of control and authority rather than service and accountability. This mindset perpetuates the use of force as a tool of investigation.

5.2 Confession-Based Investigation

Despite legal prohibitions, the system continues to rely heavily on confessions rather than scientific evidence. This creates incentives for coercion and torture.

5.3 Lack of Accountability

One of the major issues is the near-total impunity enjoyed by law enforcement officers. Key challenges include:

- * Requirement of prior government sanction for prosecution
- * Police investigating their own colleagues
- * Witness intimidation
- * Political interference

5.4 Prison Overcrowding

Indian prisons are overcrowded, with a high percentage of undertrial prisoners. Poor conditions and lack of oversight contribute to custodial abuse.

5.5 Targeting of Vulnerable Groups

Marginalized communities such as Dalits, minorities, women, and mentally ill individuals are disproportionately affected by custodial violence.

6. Data and Trends

Official statistics indicate a consistent rise in custodial deaths. However, these figures represent only reported cases, with many incidents going unrecorded due to fear and lack of awareness.

Conviction rates in custodial violence cases remain extremely low, highlighting systemic inefficiencies and lack of accountability.

7. Role of Media and Civil Society

Media plays a crucial role in exposing custodial violence and generating public awareness. High-profile cases have often led to judicial intervention and policy changes.

Civil society organizations contribute by:

- * Documenting violations
- * Providing legal aid
- * Advocating reforms
- * Filing public interest litigations

However, their impact is limited without institutional support.

8. Critical Evaluation

India's legal framework against custodial violence is strong in theory but weak in practice. The key issues include:

- * Absence of a specific anti-torture law
- * Weak enforcement mechanisms
- * Lack of independent oversight bodies
- * Inadequate training and sensitization of police

Judicial activism has helped bridge some gaps, but courts alone cannot address systemic issues.

9. Recommendations

9.1 Legislative Reforms

- * Enact a comprehensive anti-torture law aligned with international standards
- * Ratify the UN Convention Against Torture

9.2 Institutional Reforms

- * Establish independent Police Complaints Authorities
- * Ensure mandatory independent investigation of custodial deaths

9.3 Technological Measures

- * Install CCTV cameras and body cameras in all police stations
- * Maintain digital records of arrests and interrogations

9.4 Police Training

- * Promote forensic-based investigation methods
- * Introduce human rights education and stress management training

9.5 Victim Support

- * Ensure timely compensation
- * Establish fast-track courts for custodial violence cases

10. Conclusion

Custodial violence in India is not merely a legal issue but a reflection of deeper structural and institutional failures. While the Constitution and judiciary provide strong safeguards, their effectiveness is undermined by poor enforcement and lack of accountability.

The persistence of custodial violence highlights the urgent need for comprehensive reform. Protecting the rights of individuals in custody is not just a legal obligation but a moral imperative for a democratic society. Ensuring accountability, transparency, and respect for human dignity must be at the core of any meaningful reform.

Only through a combination of legislative action, institutional restructuring, and societal awareness can India effectively address the challenge of custodial violence and uphold the rule of law.

