

## 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 serious human rights violations within the Indian criminal justice system. Despite constitutional guarantees and judicial safeguards, instances of torture, abuse, and custodial deaths persist. This paper critically examines the legal framework governing custodial conduct in India, evaluates its effectiveness, and identifies structural gaps in enforcement. It argues that the absence of a dedicated anti-torture law, weak accountability mechanisms, and institutional culture contribute significantly to the persistence of custodial violence. The study concludes by recommending comprehensive legal and institutional reforms to ensure accountability and protection of detainees' rights.

Keywords: Custodial violence, human rights, police brutality, legal safeguards, India, torture

### 1. Introduction

Custodial violence refers to physical, psychological, or sexual abuse inflicted on individuals under the custody of state authorities. It includes acts such as torture, illegal detention, coercion, and custodial deaths. As highlighted in the study, such violence undermines constitutional democracy by violating the fundamental rights to life and dignity. ☒

Historically, custodial violence in India can be traced back to colonial policing systems that prioritized control over citizen welfare. Post-independence, these structures continued with minimal reform, allowing coercive practices to persist. ☒

Despite legal safeguards, data from agencies such as the National Crime Records Bureau (NCRB) and National Human Rights Commission

(NHRC) show alarming trends of custodial deaths and abuse. The study notes that between 2010 and 2020, over 1,700 custodial deaths were recorded, with many more cases going unreported. ☒

### 2. Forms and Causes of Custodial Violence

#### 2.1 Forms

Custodial violence manifests in several forms:

Physical torture: Beatings, electric shocks, deprivation of food or sleep

Psychological abuse: Threats, humiliation, coercion

Sexual violence: Assault, harassment, gender-based abuse

Custodial deaths: Resulting from torture or neglect

Illegal detention: Unlawful confinement without due process ☒

## 2.2 Causes

The persistence of custodial violence is rooted in multiple factors:

Institutional: Colonial policing culture and lack of accountability

Legal: Absence of a standalone anti-torture law

Administrative: Pressure to solve cases quickly

Socio-political: Targeting marginalized communities

Individual: Abuse of authority and impunity mindset ☒

Marginalized groups such as Dalits, minorities, and economically weaker sections are disproportionately affected due to systemic inequalities. ☒

## 3. Legal and Constitutional Framework

### 3.1 Constitutional Safeguards

The Constitution of India provides several protections:

Article 21: Right to life and personal liberty

Article 20(3): Protection against self-incrimination

Article 22: Safeguards against arbitrary arrest

Article 14: Equality before law ☒

Judicial interpretation has expanded these rights to include protection from torture and custodial abuse.

### 3.2 Statutory Provisions

Various laws address custodial violence:

Indian Penal Code (IPC): Sections 330, 331 (torture), 348 (wrongful confinement)

Code of Criminal Procedure (CrPC): Safeguards relating to arrest and detention

Indian Evidence Act: Confessions obtained through coercion are inadmissible

Protection of Human Rights Act, 1993: Establishes NHRC ☒

The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 introduces procedural safeguards but does not fundamentally address custodial violence. ☒

### 3.3 Judicial Interventions

Landmark judgments have strengthened protections:

D.K. Basu v. State of West Bengal – Guidelines on arrest and detention

Nilabati Behera v. State of Orissa – Compensation for custodial deaths

Joginder Kumar v. State of UP – Limits on arbitrary arrest

Selvi v. State of Karnataka – Protection against coercive interrogation techniques ☒

## 4. Gap Between Law and Reality

Despite extensive legal provisions, enforcement remains weak. The study identifies several gaps:

Lack of independent investigation (police investigating police)

Requirement of prior sanction for prosecution

Weak implementation of NHRC recommendations

Underreporting due to fear and social vulnerability

Low conviction rates (less than 5% in custodial death cases) ☒

Structural issues such as overcrowded prisons, reliance on confession-based investigation, and political interference further aggravate the problem.

## 5. Case Studies

Notable cases illustrate the severity of custodial violence:

Tuticorin Custodial Deaths (2020): Highlighted police brutality and led to judicial intervention

Mathura Rape Case (1972): Led to reforms in custodial rape laws

Fake encounter cases: Demonstrate extrajudicial killings ☒

These cases reflect systemic failures and the need for stronger accountability mechanisms.

#### 6. Conclusion and Recommendations

Custodial violence in India is not merely a legal issue but a systemic failure rooted in institutional culture and weak enforcement. While the legal framework appears comprehensive, its implementation is inadequate.

#### Recommendations

Enact a standalone anti-torture law

Ratify the UN Convention Against Torture (UNCAT)

Establish independent investigative agencies

Ensure mandatory CCTV surveillance in custody areas

Strengthen witness protection mechanisms

Promote police reforms and training

#### Conclusion

Custodial violence represents a grave violation of human dignity and constitutional rights. Addressing this issue requires not only legal reform but also a transformation in institutional culture and accountability mechanisms. Without such reforms, the gap between law and reality will continue to undermine justice and public trust in the legal system.

