



## **LEGISLATIVE REFORMS TO CURB CUSTODIAL TORTURE: A REVIEW OF INDIAN LEGAL SYSTEM**

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### **ABSTRACT**

The fact that constitutional safeguards and judicial intervention have not eradicated custodial torture is a grave human rights violation in India. Critical gaps in the Indian legal system are the non-existence of a dedicated anti torture law and failure to ratify the United Nations Convention Against Torture (UNCAT). This is research that looks at the legislative framework that governs custodial violence, drawing from constitutional provisions, statutory laws and a blow by a judicial pronouncement. It specifies key challenges of the lack of police impunity, ineffective enforcement mechanisms, and the procedural hurdles to prove custodial torture. The research highlights the absolute need for broad-reaching legislative reforms including the introduction of a strict anti-torture law, enhanced accountability mechanisms, enhanced oversight over the law enforcement authorities. This research draws comparisons from international best practices and advocates for a victim centric approach, based on which the custodial violence would be ensured, justice would be obtained, and the victim would be rehabilitated. Indefatigable efforts are necessary to upgrade the legal framework and institutions to enforce the human rights and to promote the rule of law in India.

*Keywords: Custodial Torture, Human Rights Violations, Police Brutality, Indian Legal System, Constitutional Safeguards, Preventive Mechanisms, United Nations Convention Against Torture*

### **INTRODUCTION**

Broadly, it was defined as custodial torture, that is, the infliction of physical or psychological pain, coercion or inhumane treatment of individuals in state custody, but principally by law enforcement authorities. The abuses covered span from physical assault, psychological intimidation, sexual violence to deprivation of basic human rights. Torture, as it is under international human rights law, is categorically rejected and is fully prohibited by instruments like UNCAT. Despite its illegality under several domestic and international legal frameworks, custodial torture persists as a systemic problem in many jurisdictions including India where, amongst other things, police brutality, coercive interrogation techniques and extrajudicial violence persist. Lacking an anti-torture law and procedural inefficiencies in the Indian legal system, practices of this kind remain unchecked in an environment where such laws and procedures are essential.<sup>1</sup>

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<sup>1</sup> United Nations. Committee against Torture., *Selected decisions of the Committee against Torture*. (United Nations 2008).



Custodial torture is regarded as a grave violation of human rights, a breach of democratic values and the rule of law, at both global and national levels. The search for human rights has been considered a state affair, and due to this, international organizations like the UN Human Rights Council (UNHRC) and Amnesty International flag state-sanctioned violence more often than one would expect — specifically in developing countries where institutional safeguards against the abuse of human rights are minimal or non-existent. Reports of custodial deaths, police excesses and inhumane treatment by the police in India have been made by the National Human Rights Commission (NHRC) and civil society organizations. The judiciary, through landmark judgments like *D.K. Basu v. State of West Bengal*,<sup>2</sup> reiterated that procedural safeguards are necessary during detention and interrogation. Despite these preventative measures, however, they are insufficient to implement due to systemic corruption, lack of political will and police impunity, which are all impediments to the protection of individual liberties, therefore, legislative reforms are necessary.

Since the existing legal framework is lacking in sufficient deterrence or accountability mechanisms, what is needed is legal reforms to prevent custodial torture. Provisions against acts of violence by public servants are found in the Indian Penal Code, 1860 (substituted by Bharatiya Nyaya Sanhita (BNS), 2023) and Code of Criminal Procedure (CrPC), 1973 (substituted by Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023) but these laws are not effective because of evidentiary difficulties and poor enforcement. Additionally, the fact that India is a signatory to the UNCAT but has failed to ratify it, indicates a failure of India to live up to global human rights standards. To end custodial torture, it thus becomes critical to strengthen oversight mechanisms and set up independent investigative bodies and a strong anti-torture law with stiff penalties. Legislative reforms must also be directed to lay emphasis on compliance with constitutional mandates under Articles 21 (Right to Life and Personal Liberty) and 22 (Protection against Arbitrary Detention) which are an expression of the rule that no one may be subjected to cruel, inhuman or degrading treatment under state custody.<sup>3</sup>

## **FRAMEWORK OF CUSTODIAL TORTURE**

Custodial torture, broadly defined, encompasses any act inflicted by public officials that causes physical, psychological, or sexual harm to individuals under their control. While physical torture, such as beatings, electric shocks, and deprivation of basic necessities, is the most overt form, psychological and sexual torture are equally insidious. Threats, isolation, coercion and humiliation, which can often be psychological torture, are used to weaken the detainee's will without leaving physical scars. Sexual violence in custody includes sexual molestation and rape, which are among the gravest violations of human dignity and are often not

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<sup>2</sup> AIR 1997 SUPREME COURT 610.

<sup>3</sup> Meduri Aparna, 'Article 21 of Indian Constitution - Mandate for Life Saving' [2006] SSRN Electronic Journal <<http://dx.doi.org/10.2139/ssrn.906704>> accessed 19 February 2025.



reported because of stigma in society and cover ups by institutions. Because such practices exist, in violation of constitutional and statutory protection, it goes to show that the legal system in general suffers from deep flaws in its enforcement and such practices must be urgently fixed in order to prevent abuse of authority and the protection of fundamental human rights.

Systemic failures and socio-political attitudes that allow impunity are to blame for the persistence of custodial torture. A major reason is the absence of accountability among law enforcement agencies, and, in particular, structures making it difficult to dismiss errant officers within the agency and within its hierarchical legacy. Lacking severe law strict legal provisions that specifically criminalize torture and procedural loopholes in BNSS, 2023 or (CrPC, 1973) & BNS, 2023 (or IPC, 1860) the custodial violence continues to go uncontrolled. Oversight mechanisms, such as the NHRC & State Human Rights Commissions (SHRCs), while empowered to investigate complaints, often lack enforcement powers, leading to ineffective deterrence.<sup>4</sup> Additionally, societal attitudes that justify coercion in policing, often under the pretext of crime control, further embolden law enforcement officials to act beyond legal limits. Without a cultural shift in how policing is perceived and practiced, legislative interventions alone will be insufficient to eradicate custodial torture.

The impact of custodial torture extends beyond the immediate victim, undermining the very fabric of a democratic society. At a fundamental level, such practices violate constitutional guarantees under Articles 20, 21, and 22, eroding the right to life, dignity, and protection against self-incrimination. The normalization of police brutality fosters a climate of fear, diminishing public confidence in law enforcement agencies and the judiciary, ultimately weakening the rule of law. Furthermore, the psychological consequences for survivors, ranging from post-traumatic stress disorder to social alienation, exacerbate the marginalization of vulnerable communities, disproportionately affecting individuals from lower socio-economic backgrounds and minority groups.<sup>5</sup>

## **CONSTITUTIONAL AND LEGAL PROVISIONS IN INDIA: A CRITICAL ANALYSIS**

Articles 21, 20 (3) and 22, together, constitute a robust legal framework to guard against custodial torture, which is provided under the Indian Constitution. The Supreme Court has extensively interpreted Article 21 to include the right to live with dignity and to be free from torture, inhuman treatment and degrading punishment.<sup>6</sup> The jurisprudence regarding Article 21 indicates that custodial torture is a contravention of human dignity and

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<sup>4</sup> Nehru and Hitesh Manglani, 'Human Rights Protection at State Level: A Critique of the Functioning of SHRCs in India' (2024) V(I) Shimla Law Review 253, <<http://dx.doi.org/10.70556/hpnlslr-v5-i1-2022-12>> accessed 19 February 2025.

<sup>5</sup> *Ibid.*

<sup>6</sup> Vijay Kumar Vohra and others, 'Custodial Torture: A Two Years Prospective Study' (2019) 19(2) Medico-Legal Update 307, <<http://dx.doi.org/10.5958/0974-1283.2019.00193.2>> accessed 19 February 2025.



an infringement of the rule of law. Still, Article 20(3) reinforces protections further by ensuring that no one accused of an offence should be compelled to be a witness against themselves, and hence, no coerced confessions, a consequence of custodial violence.<sup>7</sup> Article 22 supplements these rights by prescribing procedural safeguards, such as informing detainees of the grounds of their arrest and ensuring their right to legal counsel. However, despite these constitutional guarantees, the enforcement mechanisms remain weak, and the procedural safeguards are frequently circumvented, leading to systemic violations. The lack of judicial oversight in the initial stages of detention and the limited accessibility of legal aid exacerbate the risk of custodial torture, highlighting the gap between constitutional ideals and on-ground realities.

Beyond constitutional protections, statutory provisions under IPC, 1860 & newly enacted BNS, 2023 attempt to address custodial violence through penal sanctions against public servants who inflict harm on detainees. Sections 330 and 331 of the IPC criminalize the voluntary causing of hurt or grievous hurt for obtaining confession, a provision retained in the BNS with harsher penalties. Procedural safeguards like medical examination of arrested person and production before a magistrate within 24 hours are introduced in CrPC, 1973 and the newly enacted BNSS, 2023.<sup>8</sup> But these provisions have been undermined to date by police impunity, lack of independent investigation, procedural loopholes, and other factors. However, the Indian Evidence Act gives further governing power to the admissibility of confessions, and any confession obtained by coercion is inadmissible. Yet in the lack of adequate safeguards of the kind that ensure compliance, confessions obtained under torture continue to be used in trials, indicating the judiciary's mixed record in implementing the statutory protections. These legislative frameworks are meant to deter custodial torture, yet they are carried out in an institutionalized resistance, lack of transparency and culture of protecting law enforcement officials from accountability.<sup>9</sup>

However, a landmark formulation of custodial torture occurred through judicial interventions that have made the development of procedural norms and state liability for human rights violations and held the state responsible for custodial torture. The Supreme Court's decision as to comprehensive guidelines for arrest and detention were laid down in *D.K. Basu v. State of West Bengal*,<sup>10</sup> mandatory medical examination, recording of arrest details, legal representation for the accused. Nevertheless, the ineffectiveness in implementing these guidelines has made them for the most part a symbol. Similarly, in *Nilabati Behera v. State of Orissa*,<sup>11</sup> the

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<sup>7</sup> Nikhil Malik, 'Constitutional Provisions Regarding Custodial Torture in India' (2024) 5(5) International Journal of Research Publication and Reviews 7879, <<http://dx.doi.org/10.55248/gengpi.5.0524.1323>> accessed 19 February 2025.

<sup>8</sup> Kanishka Rao, 'Punishment in Indian Penal Code' (2023) 12(12) International Journal of Science and Research (IJSR) 136, <<http://dx.doi.org/10.21275/mr231129085725>> accessed 19 February 2025.

<sup>9</sup> *Supra* note 5.

<sup>10</sup> AIR 1997 SUPREME COURT 610.

<sup>11</sup> 1993 (2) SCC 746.



Court recognized the state's liability in cases of custodial violence and emphasized the right to compensation for victims. Despite these judicial pronouncements, the conviction rates for custodial violence remain abysmally low due to lack of evidence, procedural delays, and reluctance of law enforcement agencies to prosecute their own personnel. Recent Supreme Court and High Court rulings have reiterated the necessity of stricter safeguards, but the absence of a dedicated anti-torture law continues to impede meaningful reform. The judicial system's failure to enforce strict punitive measures against perpetrators perpetuates a culture of impunity, necessitating urgent legislative intervention to translate constitutional and statutory protections into effective safeguards against custodial torture.<sup>12</sup>

### **GAPS AND CHALLENGES IN THE EXISTING LEGAL FRAMEWORK**

The absence of a dedicated anti-torture legislation in India constitutes a profound lacuna in the legal framework governing custodial violence, perpetuating a state of legal ambiguity that shields perpetrators from accountability. While IPC, 1860, criminalizes grievous hurt under Section 320 and wrongful confinement under Sections 339 to 348, these provisions fail to categorize torture as a distinct and aggravated offense when committed by public officials against individuals in custody. The lack of express statutory recognition of custodial torture as a severe transgression of human rights fundamentally weakens the prosecutorial mechanism, allowing law enforcement agencies to function with near-total impunity.<sup>13</sup> Despite repeated judicial pronouncements by the Supreme Court emphasizing the urgent necessity of a robust legislative framework to curb custodial violence, successive governments have failed to enact comprehensive anti-torture laws that align with international human rights obligations. This legislative vacuum is further exacerbated by India's continued failure to ratify UNCAT, despite being a signatory since 1997, thereby placing the country in a position of non-compliance with global human rights norms. Although the Prevention of Torture Act, 2017, aimed at defining and criminalizing acts of torture by public officials, was introduced, it ultimately failed to materialize into enforceable law, leaving India bereft of a specific statutory framework to address this grave violation.<sup>14</sup> The absence of a standalone law not only weakens the institutional mechanisms available for redress but also emboldens state actors to commit acts of custodial violence with little fear of legal repercussions, further entrenching a culture of impunity within the law enforcement apparatus.<sup>15</sup>

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<sup>12</sup> *Supra* note 7.

<sup>13</sup> AJ Patowary, 'Autopsy in Cases of Custodial Torture: Indian Perspective' (2017) 39(2) *Journal of Indian Academy of Forensic Medicine* 190, <<http://dx.doi.org/10.5958/0974-0848.2017.00038.0>> accessed 19 February 2025.

<sup>14</sup> *Ibid.*

<sup>15</sup> 'Anti-Torture Laws in India' (*ProBono India*) <<http://probono-india.in/blog-detail.php?id=103>> accessed 19 February 2025.



The systemic prevalence of custodial torture in India is inextricably linked to the structural deficiencies within law enforcement agencies, where institutionalized practices, coupled with a lack of stringent oversight, have fostered an environment conducive to human rights violations. Police brutality, often rationalized under the pretext of maintaining public order, extracting confessions, or expediting criminal investigations, continues to be a deeply entrenched practice, exacerbated by the absence of an independent and credible mechanism to investigate allegations of custodial abuse. NHRC & SHRCs have the power to investigate the complaints of human rights violations, however, their recommendations are advisory in nature and are not enforceable in nature, and hence, the recommendations of NHRC & SHRCs are not very effective in ensuring accountability. In addition, there is an inherent conflict of interest of any internal police discipline mechanism due to the fact that if officers are accused of acts of torture they tend to be protected in an institutional hierarchy from legal consequences. The problem is made worse by the fact that law enforcement agencies are reluctant to cooperate with independent inquiries, and there are no specialized investigative bodies specifically for cases of custodial torture and deaths. While the judiciary has been proactive in landmark cases, it has not established a consistent framework to hold persons to account on account of, among other things, evidentiary hurdles, witness intimidation, and bureaucratic inertia. The continued reliance on custodial statements extracted through coercion, in contravention of constitutional safeguards under Articles 20(3) and 21, further reinforces the systemic deficiencies in holding perpetrators accountable. Without comprehensive structural reforms that ensure independent oversight, rigorous investigation, and stringent prosecution of custodial violence, law enforcement agencies will continue to operate with unchecked authority, perpetuating a legal landscape where custodial torture remains an endemic and unpunished reality.<sup>16</sup>

The lack of an effective judicial and procedural framework to address custodial torture significantly impedes access to justice, further marginalizing victims who seek legal redress. The adjudication of cases involving custodial violence is fraught with procedural delays, prolonged trials, and alarmingly low conviction rates, which collectively act as deterrents for victims and their families from pursuing legal action. The evidentiary burden in such cases is disproportionately high, as prosecution often relies on testimonies from fellow law enforcement officials rather than independent medical and forensic evidence, thereby skewing the judicial process in favor of the accused. The absence of a mandated protocol for independent medical examination of detainees further complicates the evidentiary process, allowing instances of torture to be concealed or misrepresented through falsified medical reports. In addition, victims of custodial torture do not have adequate remedies for the physical and psychological trauma suffered in custody due to the absence of a structured compensation and rehabilitation framework. Courts have made awards for flagrant human rights violations,

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<sup>16</sup> *Ibid.*



but these are discretionary awards and are not backed by a systematic legislative policy to ensure systematic rehabilitation of victims. If a structured framework for reparation is not established for such grave human rights abuse, it means that there would be no justice for victims and also contributes to a culture whereby state actors would continue to find ways to evade responsibility for human rights abuse. The long-term consequences of custodial torture can only be mitigated by an approach which takes a victim centric view, which integrates immediate medical and legal aid, psychological rehabilitation and institutionalized compensation mechanism. But, lacking an explicit legislative directive that would address these issues, victims are left with no option but to continue to suffer under the power imbalance between the state and the detainees. Without meaningful legislative intervention, procedural reforms, and stringent enforcement mechanisms, custodial torture will remain an unchecked manifestation of state excesses, undermining the fundamental principles of justice, human dignity, and the rule of law.<sup>17</sup>

## CONCLUSION & THE WAY FORWARD

The discourse on custodial torture within the Indian legal system underscores a glaring deficiency in legislative safeguards and institutional accountability. A critical analysis of existing frameworks reveals that, despite constitutional guarantees under Articles 20, 21, and 22, custodial violence persists due to systemic weaknesses, procedural loopholes, and entrenched institutional impunity. The absence of a dedicated anti-torture law, coupled with India's failure to ratify the UNCAT, highlights a significant lacuna in domestic jurisprudence. Judicial interventions, particularly in landmark cases have sought to impose procedural safeguards and provide compensatory remedies, yet these measures remain inadequate in ensuring effective deterrence. This necessitates the immediate establishment of robust legislations infringing custodial torture, which align domestic laws with international human rights standards and punish violators more strongly especially with relation to accountability mechanisms.

To eradicate custodial torture, a legal regime must hinge on accountability and oversight mechanisms in an effort to hinder law enforcement agencies from working with no oversight. Independently investigating allegations of custodial violence are shored up by setting up independent investigative bodies and establishing a mandatory reporting and monitoring framework. Judicial role is of paramount importance in protection of fundamental rights as well as in adjudicating cases of custodial torture: not only of adjudicating the cases of custodial torture but by an active role in ensuring the guidelines to prevent the abuse. When it comes to resolving the issue of the kind of proof that is necessary in a case of this nature, it will be essential for courts to adopt a victim-centric approach, such that the level of proof to be provided by complainants will not be used

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<sup>17</sup> Gautam Biswas, 'Torture and Custodial Deaths', *Review of Forensic Medicine and Toxicology* (Jaypee Brothers Medical Publishers (P) Ltd. 2010) <[http://dx.doi.org/10.5005/jp/books/10737\\_33](http://dx.doi.org/10.5005/jp/books/10737_33)> accessed 19 February 2025.



against them but will hold state actors to a higher standard of accountability. In addition, institutions like NHRC and SHRCs need to be strengthened so that they are able to investigate custodial torture cases without any bureaucratic or political interference.

Legislative and policy level reforms cannot be overstated. A comprehensive anti-torture law which would be in line with the recommendations of the Law Commission and international conventions would act as a deterrent and offer legal recourse to the victims. Considering cases of custodial violence, fast tracking of such cases should be made, and stringent punitive measures be slapped against the perpetrators to ensure swift justice. In addition, the training of law enforcement must incorporate human rights education in order to promote policy of ethical and procedural integrity. Concurrently to these structural reforms, civil society has to take the initiative and demand for victims, raise awareness in the public and send legislative bodies the message that the reforms advanced should be passed. As a watchdog institution, the media is also responsible to expose custodial violence and urge for a system level change.