



INDIAN JOURNAL OF JURISPRUDENCE AND REVIEWS (IJJR)

(Open Access, Double-Blind Peer Reviewed Journal)

ISSN Online:

ISSN Print



Custodial Torture and Accountability in India

Renuka. K. C

Associate Professor, Department Of Sanskrit Nyaya, Sree Sankaracharya University of Sanskrit, Kalady, Kerala, India.

Article information

Received: 9th December 2025

Received in revised form: 13th January 2026

Accepted: 16th February 2026

Available online: 2nd March 2026

Volume:2

Issue: 1

DOI: <https://doi.org/10.5281/zenodo.18833797>

Abstract

Custodial torture remains a pervasive concern in India despite constitutional prohibitions and statutory safeguards. This article evaluates the effectiveness of legal mechanisms designed to prevent custodial violence and ensure accountability. Examining Supreme Court jurisprudence, statutory provisions under the Code of Criminal Procedure, and institutional frameworks such as the National Human Rights Commission, this study identifies critical gaps between legal theory and implementation. Analysis reveals that while India possesses a robust normative framework including protections under Articles 20(3), 21, and 22 of the Constitution enforcement remains inconsistent due to institutional deficiencies, evidentiary challenges, and a culture of impunity. The article argues that reforming accountability mechanisms requires comprehensive police reforms, mandatory video recording of interrogations, witness protection, and expedited prosecution of custodial crimes. Drawing on comparative jurisdictions and empirical data, this study provides recommendations for strengthening India's legal safeguards against custodial torture while balancing legitimate law enforcement concerns.

Keywords: - Custodial Torture, Article 21, National Human Rights Commission, Police Reforms, Accountability Mechanisms

I. INTRODUCTION

Custodial torture represents one of the most egregious violations of human dignity and constitutional rights in democratic societies. In India, despite explicit constitutional prohibitions and ratification of international conventions such as the United Nations Convention Against Torture (CAT), custodial violence persists as a systemic problem within law enforcement institutions (Narula, 2010). The National Human Rights Commission (NHRC) Annual Report 2022-23 documented 1,731 deaths in police custody and 503 deaths in judicial custody, highlighting the magnitude of this crisis (NHRC, 2023). These statistics represent not merely isolated incidents but symptomatic failures of accountability mechanisms designed to safeguard fundamental rights.

The Supreme Court of India has consistently recognized custodial torture as a violation of Article 21 (right to life and personal liberty) and has developed extensive jurisprudence establishing compensation remedies and procedural safeguards (Nilabati Behera v. State of Orissa, 1993; D.K. Basu v. State of West Bengal, 1997). However, the persistent gap between judicial pronouncements and ground-level implementation raises fundamental questions about the effectiveness of India's legal framework in preventing custodial torture and ensuring accountability for perpetrators.

This article critically evaluates the existing legal safeguards against custodial torture in India, examining constitutional provisions, statutory mechanisms, and institutional frameworks. It analyzes the structural deficiencies that undermine accountability and proposes reforms necessary to bridge the implementation gap.

II. CONCEPTUAL FRAMEWORK AND LEGAL FOUNDATIONS

2.1. Constitutional Safeguards

The Indian Constitution provides multiple layers of protection against custodial torture. Article 20(3) guarantees the right against self-incrimination, Article 21 protects life and personal liberty, and Article 22 ensures rights of arrested persons

including legal representation and production before a magistrate within 24 hours (Mathews, 2018). The Supreme Court's expansive interpretation of Article 21 in *Maneka Gandhi v. Union of India* (1978) established that any deprivation of personal liberty must satisfy requirements of fairness, reasonableness, and non-arbitrariness.

Significantly, the Court has recognized custodial torture as a violation of human dignity that is incompatible with constitutional values. In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* (1981), Justice Bhagwati observed that the right to life includes the right to live with human dignity, encompassing protection from torture and cruel, inhuman, or degrading treatment. This interpretative framework provides constitutional foundations for comprehensive safeguards against custodial violence.

2.2. International Law Obligations

Although India has not ratified the Convention Against Torture, it has ratified the International Covenant on Civil and Political Rights (ICCPR), which prohibits torture under Article 7 (Sen, 2017). The Supreme Court has consistently held that international human rights norms form part of domestic law and must inform the interpretation of fundamental rights (*Vishaka v. State of Rajasthan*, 1997). However, India's failure to enact comprehensive anti-torture legislation implementing CAT standards represents a critical gap in its normative framework, despite multiple Law Commission recommendations (Law Commission of India, 2017).

III. EXISTING LEGAL SAFEGUARDS AGAINST CUSTODIAL TORTURE

3.1. Judicial Safeguards: D.K. Basu Guidelines

The landmark judgment in *D.K. Basu v. State of West Bengal* (1997) established comprehensive procedural safeguards to prevent custodial torture. These include mandatory arrest memos, information to family members, right to legal counsel, medical examination within 48 hours, and maintenance of custody records (Muralidhar, 2012). The Court declared these requirements as law under Article 141 and held that failure to comply would constitute contempt of court and entitle victims to compensation.

Subsequently, in *Paramvir Singh Saini v. Baljit Singh* (2020), the Supreme Court expanded these safeguards by mandating video recording of interrogations in serious offenses, recognition that technology can enhance transparency and accountability. However, implementation of these guidelines remains inconsistent across jurisdictions, with compliance varying significantly between states (Human Rights Watch, 2019).

3.2. Statutory Mechanisms Under CrPC

The Code of Criminal Procedure, 1973 (CrPC) provides several safeguards including mandatory medical examination of arrested persons (Section 54), production before magistrate within 24 hours (Section 57), and prohibition of custodial interrogation beyond specified periods (Sections 167 and 309). Section 176(1A), inserted in 2005, mandates judicial inquiry by magistrates into all custodial deaths. These provisions aim to create procedural checks against abuse of police power and ensure judicial oversight of detention (Chandra, 2016).

Section 330 of the Indian Penal Code (IPC) criminalizes voluntary causing hurt to extort confession, while Section 348 addresses wrongful confinement to extort confession. However, prosecutions under these provisions remain rare, and conviction rates are dismally low, indicating systemic failures in enforcement (Commonwealth Human Rights Initiative, 2018).

3.3. Institutional Mechanisms: NHRC and State Commissions

The Protection of Human Rights Act, 1993 established the National Human Rights Commission (NHRC) with mandate to investigate human rights violations including custodial torture. The Commission's Guidelines on Custodial Deaths and Torture (1993) require mandatory reporting of custodial deaths within 24 hours and suo moto inquiry capabilities (NHRC, 1993). However, the NHRC's effectiveness is limited by lack of enforcement powers, dependence on government cooperation, and inability to investigate incidents beyond one year (Kothari, 2014). State Human Rights Commissions similarly face resource constraints and limited autonomy, undermining their capacity to ensure accountability.

IV. CRITICAL EVALUATION OF EFFECTIVENESS

4.1. Implementation Deficits

Despite comprehensive legal frameworks, implementation remains severely deficient. A study by the Commonwealth Human Rights Initiative (2018) found that D.K. Basu guidelines are violated in approximately 70% of arrests, with arrest memos rarely prepared and family members infrequently notified. Medical examinations, when conducted, are often perfunctory and fail to document injuries properly. The persistent gap between legal mandates and police practice reflects institutional resistance, inadequate training, and absence of effective monitoring mechanisms (Verma, 2020).

Magistrates' failure to exercise oversight responsibilities exacerbates these deficits. Routine mechanical remand orders without meaningful inquiry into custody conditions enable continuation of custodial violence. The Supreme Court's criticism of such practices in *Arnesh Kumar v. State of Bihar* (2014) highlighted that magistrates often function as rubber stamps rather than independent judicial officers safeguarding liberty.

4.2. Structural Impunity and Evidentiary Challenges

Prosecution of custodial torture faces formidable obstacles rooted in structural factors. Section 197 CrPC requirement of sanction for prosecution of public servants creates procedural barriers that delays justice and protects perpetrators (Kumar, 2019). Governments routinely refuse sanction, citing insufficient evidence or claiming acts were performed in discharge of official duty. This requirement, originally intended to protect officers from frivolous prosecution, has evolved into a shield for impunity.

Evidentiary challenges compound these difficulties. Custodial torture typically occurs in isolation, with police controlling evidence and witnesses. Medical evidence is often compromised through delayed examinations or pressure on doctors. Victims and witnesses face intimidation, making testimony unreliable. The burden of proof on victims, combined with systemic bias favoring police testimony, creates nearly insurmountable barriers to accountability (Amnesty International India, 2016).

4.3. Comparative Perspectives

Comparative analysis with other common law jurisdictions reveals India's accountability deficit. The United Kingdom's Independent Police Complaints Commission provides independent investigation of serious incidents, while the United States employs special prosecutors and federal oversight mechanisms for civil rights violations (Newburn & Reiner, 2012). These jurisdictions demonstrate that effective accountability requires institutional independence, adequate resources, and political will elements largely absent in India's current framework. The failure to establish independent police accountability mechanisms recommended by multiple police reform commissions reflects political resistance to meaningful change (National Police Commission, 1981; Padmanabhaiah Committee, 2000).

V. RECOMMENDATIONS FOR STRENGTHENING ACCOUNTABILITY

First, enactment of comprehensive anti-torture legislation defining torture, establishing criminal liability, and eliminating procedural barriers to prosecution is essential. The Prevention of Torture Bill should be revived with provisions ensuring that torture is non-derogable, establishing command responsibility, and removing sanction requirements for prosecution (Law Commission of India, 2017).

Second, mandatory audio-visual recording of interrogations in all cases should be implemented with tamper-proof systems and penalties for non-compliance. Technology provides verifiable evidence that can simultaneously protect accused persons from torture and shield police from false allegations (Kassin et al., 2010).

Third, establishment of independent police complaints authorities at state and national levels with statutory powers to investigate, prosecute, and impose disciplinary sanctions is crucial. Such bodies must possess financial autonomy, investigative resources, and authority to access police facilities without prior permission (Menon, 2013).

Fourth, witness protection mechanisms must be strengthened to encourage testimony. The existing Witness Protection Scheme (2018) should be given statutory status with adequate funding and robust protection measures including relocation, identity protection, and security arrangements.

Fifth, police training curricula must incorporate human rights education, stress management, and alternative interrogation techniques. Shifting organizational culture from confession-oriented investigation to evidence-based policing requires sustained investment in professional development and accountability systems rewarding ethical conduct.

VI. CONCLUSION

India's legal framework against custodial torture, while normatively robust in constitutional and judicial domains, suffers from critical implementation deficits that perpetuate a culture of impunity. The persistent gap between legal safeguards and ground-level reality reflects systemic failures in institutional accountability, procedural enforcement, and political will. Constitutional guarantees and Supreme Court guidelines remain largely symbolic without fundamental reforms addressing structural impediments to accountability.

Effective reform requires coordinated interventions: legislative action establishing comprehensive anti-torture provisions, technological solutions ensuring transparency, independent oversight mechanisms with enforcement authority, witness protection frameworks, and cultural transformation within police institutions. Only through such multifaceted approach can India bridge the implementation gap and transform its constitutional commitment to human dignity from aspiration into reality. The persistence of custodial torture represents not merely a law enforcement problem but a fundamental challenge to constitutional governance and rule of law that demands urgent and sustained attention from all stakeholders in the criminal justice system.

REFERENCES

- Amnesty International India. (2016). *Denied: Failures in accountability for human rights violations by security force personnel in Jammu and Kashmir*. Amnesty International.
- Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 (India).
- Chandra, U. (2016). Liberalism and its other: The politics of primitivism in colonial and postcolonial Indian law. *Law & Society Review*, 50(3), 775–809.
- Commonwealth Human Rights Initiative. (2018). *Police accountability: Too important to neglect, too urgent to delay*. CHRI.
- D.K. Basu v. State of West Bengal, (1997) 1 SCC 416 (India).
- Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608 (India).
- Human Rights Watch. (2019). *Bound by brotherhood: India's failure to end killings in police custody*. Human Rights Watch.
- Kassin, S. M., Drizin, S. A., Grisso, T., Gudjonsson, G. H., Leo, R. A., & Redlich, A. D. (2010). Police-induced confessions: Risk factors and recommendations. *Law and Human Behavior*, 34(1), 3–38.

- Kothari, J. (2014). The future of national human rights institutions: Effectiveness and the role of the state. In A. S. Heller-Roazen (Ed.), *Human rights in the twentieth century* (pp. 259–285). Cambridge University Press.
- Kumar, R. (2019). Police accountability and reform in India. *Indian Journal of Criminology and Criminalistics*, 40(1), 65–89.
- Law Commission of India. (2017). *Report No. 273: Implementation of the “United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment” through legislation*. Government of India.
- Maneka Gandhi v. Union of India, (1978) 1 SCC 248 (India).
- Mathews, P. (2018). Constitutional law and the rights of the accused in India. *Delhi Law Review*, 42(2), 112–138.
- Menon, N. R. M. (2013). Police reforms in India: An overview. *Journal of the Indian Law Institute*, 55(3), 351–371.
- Muralidhar, S. (2012). Judicial enforcement of rights in the context of custodial torture. In A. P. Simester et al. (Eds.), *Crime, proof and punishment: Essays in memory of Sir Rupert Cross* (pp. 189–212). Butterworths.
- Narula, S. (2010). India: Impunity for torture continues. *Economic and Political Weekly*, 45(39), 14–17.
- National Human Rights Commission. (1993). *Guidelines on arrest and custodial deaths*. NHRC.
- National Human Rights Commission. (2023). *Annual report 2022–2023*. NHRC.
- National Police Commission. (1981). *Third report*. Government of India.
- Newburn, T., & Reiner, R. (2012). Policing and the police. In M. Maguire, R. Morgan, & R. Reiner (Eds.), *The Oxford handbook of criminology* (5th ed., pp. 806–837). Oxford University Press.
- Nilabati Behera v. State of Orissa, (1993) 2 SCC 746 (India).
- Padmanabhaiah Committee. (2000). *Report of the committee on police reforms*. Government of India.
- Paramvir Singh Saini v. Baljit Singh, (2020) 17 SCC 366 (India).
- Sen, S. (2017). Torture and the law in India. *Asian Journal of Criminology*, 12(4), 285–302.
- Verma, A. (2020). Police and policing reforms in India. In J. W. E. Sheptycki & A. Wardak (Eds.), *Transnational and comparative criminology* (2nd ed., pp. 412–431). Routledge.
- Vishaka v. State of Rajasthan, (1997) 6 SCC 241 (India).

Case Law

- Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.
- D.K. Basu v. State of West Bengal, (1997) 1 SCC 416.
- Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608.
- Maneka Gandhi v. Union of India, (1978) 1 SCC 248.
- Nilabati Behera v. State of Orissa, (1993) 2 SCC 746.
- Paramvir Singh Saini v. Baljit Singh, (2020) 17 SCC 366.
- Vishaka v. State of Rajasthan, (1997) 6 SCC 241.