



Prevention Of Custodial Violence In India And The Role Of The Supreme Court

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ABSTRACT

Custodial violence remains a critical issue in India, undermining the integrity of the criminal justice system and violating human rights. This study investigates the prevalence and patterns of custodial deaths, evaluates the existing legal frameworks, and assesses the impact of custodial violence on both victims and society. The research adopts a doctrinal methodology, analyzing statutes, case law, judicial pronouncements, and national and international human rights frameworks to provide a comprehensive understanding of the issue. The study aims to examine the legal provisions in India, such as the BNS, BNSS, and guidelines issued by the Supreme Court, alongside international human rights conventions, to determine their effectiveness in preventing custodial torture and deaths. The objectives of this research include analyzing the prevalence and patterns of custodial deaths, examining the existing legal mechanisms, and exploring the broader implications of custodial violence as a violation of fundamental human rights. Additionally, the study seeks to propose reforms for addressing the gaps in law enforcement practices, judicial oversight, and institutional safeguards. In conclusion, the study underscores the necessity for stronger legal provisions, effective enforcement mechanisms, and institutional accountability to prevent custodial violence. It further emphasizes the critical role of the Supreme Court in shaping judicial directives and ensuring the protection of human rights in custodial settings.

Keywords: Custodial Violence, Human Rights, Supreme Court, Legal Framework, Custodial Deaths

1. INTRODUCTION

Custodial death refers to the death of an individual while in the custody of law enforcement authorities, such as the police or prison officials. This phenomenon raises significant human rights concerns and has become a pressing issue within the Indian legal system. The occurrence of custodial deaths often reflects systemic failures in the criminal justice system, including abuses of power, lack of accountability, inadequate training of law enforcement personnel, and a culture of impunity. Understanding custodial death requires a comprehensive examination of its legal framework, underlying causes, and broader implications for society.¹

The Constitution of India provides a robust legal framework intended to protect individuals from arbitrary state action, particularly in the context of arrest and detention. Article 21 guarantees the right to life and personal liberty, asserting that no person shall be deprived of these rights except according to the procedure established by law. Furthermore, Article 22 stipulates certain safeguards for individuals who are arrested, including the right to be informed of the grounds of arrest, the right to consult a legal practitioner, and the right to be produced before a magistrate within 24 hours. However, the reality of custodial deaths often starkly contrasts with these constitutional protections, revealing significant gaps in implementation and enforcement.

The Bharatiya Nyaya Sanhita 2023 (BNS) contains several provisions that can be relevant in cases of custodial death. Section 101 of BNS of the IPC, which deals with murder, can be invoked in cases where a death occurs due to excessive force or torture by law enforcement officials. Similarly, Section 103 of BNS, which addresses culpable homicide not amounting to murder, can apply in situations where the death results from negligent or reckless conduct. However, the lack of specific legislation that explicitly addresses custodial deaths complicates the prosecution of such cases and often leads to inadequate punishment for those responsible.

Custodial deaths often arise from a combination of physical and psychological torture, neglect, and inadequate medical care. Law enforcement authorities may resort to torture as a means of extracting confessions or punishing individuals, leading to severe physical injuries and, in some cases, death. Additionally, individuals in custody may face harsh conditions, including overcrowding, lack of sanitation, inadequate food and water, and limited access to medical care. These factors contribute to a dangerous

¹ Sneha Mahawar, "Custodial deaths" iPleaders, 2022 *available at*: <https://blog.iplayers.in/custodial-deaths/> (last visited May 10, 2025).

environment where the health and safety of detainees are severely compromised, increasing the risk of preventable deaths.²

Furthermore, the socio-economic status of individuals can significantly influence their experiences in custody. Marginalized communities, including those from lower socio-economic backgrounds, often face greater risks of custodial violence and death. Discrimination based on caste, religion, or ethnicity can exacerbate these risks, leading to targeted abuses by law enforcement personnel. This intersectionality highlights the systemic inequalities present within the criminal justice system and raises important questions about the treatment of vulnerable populations.

International human rights standards provide important context for understanding custodial deaths in India. Various international treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture, emphasize the prohibition of torture and inhumane treatment, particularly in the context of detention. These treaties obligate state parties to take effective measures to prevent torture and to ensure accountability for any violations that occur. However, the implementation of these standards in India has been inconsistent, with a significant gap between international commitments and domestic realities.

One of the most concerning aspects of custodial deaths in India is the culture of impunity that often surrounds law enforcement personnel. Reports indicate that police officers frequently operate without fear of accountability, leading to a cycle of violence and abuse. Victims and their families often face numerous obstacles when seeking justice, including intimidation, harassment, and a lack of trust in the judicial system. This pervasive culture of impunity undermines the rule of law and perpetuates a sense of helplessness among individuals subjected to state violence.³

The response of the Indian judiciary to custodial deaths has been mixed. While the Supreme Court has issued several landmark judgments emphasizing the need for accountability and the protection of individual rights, the enforcement of these

² Bhumika Indulia, "Custodial Torture in India: Intersection of Criminal Law and Constitutional Rights" SCC Times, 2024 *available at*: <https://www.sconline.com/blog/post/2024/03/23/custodial-torture-in-india-intersection-of-criminal-law-and-constitutional-rights/> (last visited May 10, 2025). ³ Watch the State, "Impunity And Complicity: The Role Of The State And Non-state Institutions In Cases Of Custodial Deaths In India - 4" The Polis Project *available at*: <https://www.thepolisproject.com/research/impunity-and-complicity-the-role-of-the-state-and-non-state-institutions-in-cases-of-custodial-deaths-in-india-4/> (last visited May 10, 2025).

directives remains a challenge. The judiciary has often relied on the executive to implement its rulings, raising concerns about the effectiveness of judicial interventions in addressing systemic abuses. Furthermore, the slow pace of legal proceedings in cases of custodial death exacerbates the suffering of

victims' families, who are left waiting for justice while grappling with the trauma of loss.

Civil society organizations and human rights activists have played a crucial role in bringing attention to the issue of custodial deaths in India. Numerous reports and studies have documented the prevalence of custodial violence and its impact on marginalized communities. These organizations have advocated for legal reforms, increased accountability for law enforcement personnel, and greater public awareness of human rights issues. Their efforts have been instrumental in initiating public discourse and pushing for systemic change within the criminal justice system.

The need for comprehensive reforms to address custodial deaths in India cannot be overstated. Advocacy for the enactment of a specific anti-torture law is essential to criminalize torture explicitly, define custodial death, and establish mechanisms for accountability and redress for victims. Such legislation would align with international human rights standards and demonstrate a commitment to upholding the dignity and rights of all individuals, regardless of their circumstances. It would also provide clarity for law enforcement personnel regarding the legal limits of their authority and the consequences of exceeding those limits.

Training programs for law enforcement personnel on human rights standards, ethical conduct, and appropriate interrogation techniques are crucial to shifting the prevailing culture within police forces. These programs can help cultivate an understanding of the importance of protecting human rights and adhering to legal standards, thereby reducing the incidence of custodial violence and deaths. Additionally, establishing independent oversight bodies to investigate allegations of custodial death and torture can enhance accountability and transparency within law enforcement agencies.⁴

⁴ Walter Suntinger, "Police Training and International Human Rights Standards" unknown, 2018 *available at*: https://www.researchgate.net/publication/341726633_Police_Training_and_International_Human_Rights_Standards (last visited May 10, 2025).

Public awareness and community engagement are also vital components of addressing custodial deaths in India. Increasing awareness of individuals' rights in custody, the procedures to report abuse, and the mechanisms for seeking justice can empower victims and their families to take action. Civil society organizations, educational institutions, and media outlets can play a pivotal role in disseminating information and promoting a culture of accountability and respect for human rights.

Custodial death is a critical issue that underscores the broader challenges facing the Indian criminal justice system. Despite constitutional guarantees and international commitments to protect individuals from arbitrary state action, custodial deaths persist as a stark reality. The lack of specific legislation addressing custodial death, combined with a culture of impunity and systemic inequalities, creates an environment where abuses are tolerated and victims are left without recourse. Addressing this issue requires comprehensive legal reforms, enhanced accountability mechanisms, and sustained public engagement to ensure that the rights of individuals in custody are protected and upheld. Ultimately, the fight against custodial death is not only a matter of legal necessity but also a moral imperative that speaks to the core values of justice, dignity, and human rights.

1.1. OBJECTIVES OF THE STUDY

1. To Analyze the Prevalence and Patterns of Custodial Deaths.
2. To Examine Legal Frameworks.
3. To Assess the Impact of Custodial Violence.
4. To Explore Human Rights Violations.
5. To Propose Recommendations for Reform.

1.2. RESEARCH METHODOLOGY

This study employs a doctrinal research methodology to examine the phenomenon of custodial violence in India and the role of the Supreme Court in its prevention. Doctrinal research involves the analysis and interpretation of legal principles, statutes, judicial decisions, and other legal materials to understand the existing legal framework and its application in practice.

The research methodology relies on a comprehensive review of primary and secondary legal sources, including constitutional provisions, statutes, case law, scholarly articles, and official reports. Primary legal sources, such as landmark judgments of the Supreme Court and relevant legislative enactments, provide the foundational framework for analyzing the legal principles and doctrines governing custodial violence in India. Secondary legal sources, including academic commentaries, empirical studies, and policy documents, offer critical insights and perspectives on the efficacy of legal provisions and judicial interventions in addressing custodial violence.

The doctrinal research methodology involves systematic analysis and synthesis of legal materials to identify key themes, trends, and patterns related to custodial violence and the Supreme Court's role in prevention. By examining legal principles, judicial pronouncements, and legislative provisions, the study seeks to elucidate the legal framework governing custodial violence in India and assess its adequacy in protecting the rights of individuals in custody.

1.3. REVIEW OF LITERATURE

Baxi, U. (2007)⁵ Baxi's article explores the role of social action litigation (SAL) in addressing human rights violations in India, particularly within the context of custodial torture and deaths. The Supreme Court's proactive role in enforcing fundamental rights through PILs (Public Interest Litigations) is analyzed, showcasing how SAL has been instrumental in shaping the discourse on custodial violence and other abuses.

Bhat, A. R. (2018)⁶ Bhat's study highlights the pervasive issue of custodial torture in Jammu and Kashmir, focusing on police atrocities. It critically examines the patterns of violence inflicted during detention, the lack of accountability, and the implications for human rights. The article emphasizes the regional challenges in combating custodial torture and the legal responses within the context of conflict zones.

Choudhary, S. K. (2016)⁷ Choudhary's work investigates custodial torture in Uttar Pradesh, focusing on the intersection of police brutality and human rights violations. It

⁵ Baxi, U. (2007). "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India". *Harvard Human Rights Journal*, 20, 149-166.

⁶ Bhat, A. R. (2018). "Custodial Torture: A Study of Police Atrocities in Jammu and Kashmir". *The Indian Journal of Criminology & Criminalistics*, 39(2), 137-151.

⁷ Choudhary, S. K. (2016). "Custodial Torture and Human Rights: A Study with Special Reference to Uttar Pradesh". *International Journal of Humanities and Social Science Invention*, 5(6), 38-43.

evaluates the effectiveness of legal safeguards and the role of the judiciary in curbing custodial violence. The study also highlights the lack of reforms and the need for systemic changes in the law enforcement agencies.

Gopalan, A. (2019)⁸ Gopalan's article offers a socio-legal analysis of custodial deaths in India, exploring the legal, social, and ethical aspects of the issue. It examines the failure of the Indian justice system in providing adequate remedies for victims and the institutional mechanisms that perpetuate custodial deaths. The paper calls for a stronger legal framework to prevent such occurrences and protect fundamental rights.

Hegde, S. (2015)⁹ Hegde's study focuses on custodial deaths in Karnataka, analyzing the causes, patterns, and legal consequences of such deaths. It delves into the failure of law enforcement agencies to prevent custodial torture and deaths, despite the existence of legal provisions. The study suggests a need for police reforms, judicial oversight, and the establishment of more robust safeguards to protect detainees.

2. CAUSES AND FACTORS CONTRIBUTING TO CUSTODIAL ATROCITIES

1. Abuse of Power and Authority

The abuse of power and authority by law enforcement officials is a significant factor contributing to custodial atrocities in India. This section explores the various manifestations of abuse of power and authority within the criminal justice system, including arbitrary arrests, excessive use of force, and impunity for perpetrators. Additionally, it examines the legal framework governing the conduct of law enforcement officials and the challenges in holding them accountable for abuses of power.¹⁰

Arbitrary Arrests and Detention

Arbitrary arrests and detention by law enforcement officials are pervasive issues in India, often leading to instances of custodial violence and abuse. Section 35 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) empowers police officers to arrest

⁸ Gopalan, A. (2019). "Custodial Deaths and Human Rights in India: A Socio-Legal Analysis". *Journal of Legal Studies and Research*, 5(1), 46-61.

⁹ Hegde, S. (2015). "Custodial Deaths in India: A Study with Special Reference to Karnataka". *International Journal of Social Science and Humanities Research*, 3(3), 237-249.

¹⁰ Rachit Garg, "Custodial violence" iPleaders, 2022 *available at*: <https://blog.iplayers.in/custodial-violence/> (last visited May 10, 2025).

individuals without a warrant under certain circumstances, such as when there is a reasonable suspicion of the commission of a cognizable offense. However, this power is frequently abused by police personnel, who resort to arbitrary arrests as a means of intimidation or harassment, particularly targeting marginalized and vulnerable communities.¹¹

The lack of procedural safeguards and oversight mechanisms exacerbates the problem of arbitrary arrests, allowing law enforcement officials to act with impunity. Despite constitutional guarantees of the right to liberty and due process, individuals are often detained for extended periods without being produced before a magistrate or informed of the charges against them. This practice not only violates fundamental rights but also creates opportunities for abuse and mistreatment in custody, as detainees are subjected to coercion and pressure to confess to crimes they may not have committed.

The Prevention of Torture Bill, 2017, seeks to address the issue of arbitrary arrests and custodial violence by criminalizing torture and establishing mechanisms for redressal and compensation for victims. However, the bill has yet to be passed by Parliament, leaving a legislative gap in addressing custodial abuses arising from arbitrary arrests and detention.¹²

2. Lack of accountability and impunity

The lack of accountability and impunity within law enforcement agencies is a critical factor contributing to custodial atrocities in India. This section explores the various dimensions of accountability deficits and impunity, including inadequate oversight mechanisms, systemic barriers to accountability, and the failure to prosecute perpetrators of custodial violence. Additionally, it examines the legal framework governing accountability for law enforcement officials and the challenges in holding them accountable for abuses of power.

¹¹ Bhumika Indulia, "Custodial Torture in India: Intersection of Criminal Law and Constitutional Rights" *SCC Times*, 2024 *available at*: <https://www.sconline.com/blog/post/2024/03/23/custodial-torture-in-india-intersection-of-criminal-law-and-constitutional-rights/> (last visited May 10, 2025). ¹² Jayshree Bajoria, "Bound by Brotherhood" *Human Rights Watch* (2016).

Inadequate Oversight Mechanisms

One of the primary factors contributing to custodial atrocities is the lack of effective oversight mechanisms to monitor the conduct of law enforcement officials and hold them accountable for abuses of power. While the Constitution of India guarantees fundamental rights and freedoms, including the right to life and liberty, the implementation of these rights is often hampered by systemic deficiencies in accountability mechanisms.

The National Human Rights Commission (NHRC) and State Human Rights Commissions (SHRCs) are statutory bodies tasked with investigating complaints of human rights violations, including custodial violence. However, these bodies face several challenges in fulfilling their mandate, including limited resources, bureaucratic hurdles, and political interference. As a result, many cases of custodial violence go unreported or inadequately investigated, perpetuating a culture of impunity within law enforcement agencies.¹³

Additionally, internal oversight mechanisms within law enforcement agencies, such as police complaints authorities and internal disciplinary committees, often lack independence and transparency. Internal inquiries into allegations of custodial violence are frequently marred by bias, conflicts of interest, and a lack of accountability, leading to impunity for perpetrators and further eroding public trust in the criminal justice system.

3. Inadequate training and resources

Inadequate training and resources within law enforcement agencies are significant contributing factors to custodial atrocities in India. The lack of proper training programs, insufficient resources, and limited capacity hinder the ability of law enforcement personnel to effectively perform their duties while respecting human

¹³ “NHRC’s recommendations on Custodial Justice,” National Human Rights Commission India *available at*: <https://nhrc.nic.in/press-release/nhrccs-recommendations-custodial-justice> (last visited May 10, 2025).

rights. This section will explore the impact of inadequate training and resources on custodial atrocities and examine relevant acts and laws that can address these issues¹⁴.

Training plays a crucial role in shaping the behavior and conduct of law enforcement personnel. It equips them with the necessary knowledge, skills, and ethical frameworks to carry out their duties while upholding human rights standards. However, in India, the training provided to law enforcement agencies often falls short in addressing the complexities and challenges of modern policing, leading to a lack of awareness and understanding of human rights principles.

The Bureau of Police Research and Development (BPR&D) is responsible for formulating training policies and programs for law enforcement agencies in India. However, there is a need to assess the effectiveness and relevance of these training initiatives. Training programs should prioritize topics such as human rights, non-violent methods of law enforcement, de-escalation techniques, and the prevention of custodial abuse. Regular and comprehensive training, along with ongoing professional development programs, can enhance the capacity of law enforcement personnel to prevent custodial atrocities¹⁵.

In addition to training, the availability of adequate resources is crucial for ensuring effective and humane law enforcement practices. Many law enforcement agencies in India suffer from a lack of resources, including personnel, infrastructure, equipment, and budgetary allocations. This scarcity limits their ability to provide appropriate care, ensure the safety of detainees, and maintain a secure and conducive environment within custodial facilities¹⁶.

The prison system in India faces severe resource constraints. Overcrowded prisons, dilapidated infrastructure, and a shortage of staff exacerbate the risk of custodial abuse. The inadequate allocation of funds for prison reforms and rehabilitation programs perpetuates the cycle of violence and human rights

violations within custodial settings.

¹⁴ “Custodial Violence in India.” *available at*: <https://www.legalservicesindia.com/article/1893/Custodial-Violence-in-India.html>. (Last visited May 10, 2025).

¹⁵ “Concept and Objectives: Bureau Of Police Research And Development, Government of India.” *available at*: https://bprd.nic.in/content/43_1_Concept.aspx. (Last visited May 10, 2025).

¹⁶ Sane, Renuka. “Budgeting for the Police.” *Mint*, April 10, 2017. *available at*: <https://www.livemint.com/Opinion/DR8kPY8VKUDyMlR2OHUfM/Budgeting-for-the-police.html>. (Last visited May 10, 2025).

It is crucial to prioritize the allocation of sufficient resources to improve prison infrastructure, enhance staff recruitment and training, and provide necessary amenities for the welfare of inmates¹⁷.

The Model Prison Manual, formulated by the BPR&D, provides guidelines for the management and administration of prisons. However, the effective implementation of these guidelines requires adequate resources and infrastructure. To address the issue of inadequate resources, the government should allocate appropriate funding for prison reforms, infrastructure development, and staff recruitment. Moreover, collaboration with international organizations, non-governmental organizations (NGOs), and other stakeholders can help mobilize resources and expertise to support the improvement of custodial facilities and practices.

Another area that requires attention is the provision of mental health services within custodial settings. Many individuals in custody experience mental health issues, and the lack of trained personnel and resources to address these needs further compounds their vulnerability to abuse. It is crucial to ensure the availability of mental health professionals, establish proper protocols for mental health assessments, and provide necessary treatment and support for individuals in custody. The Mental Healthcare Act, 2017, which aims to protect and promote the rights of persons with mental illness, can serve as a foundation for developing comprehensive mental health services within custodial settings¹⁸.

Technology can also play a vital role in improving custodial practices and addressing resource constraints. The use of digital systems for record-keeping, case management, and communication can enhance efficiency, transparency, and accountability within law enforcement agencies. Additionally, the deployment of modern surveillance systems, such as CCTV cameras, can serve as a deterrent against custodial abuse and provide valuable evidence in case of misconduct. It is crucial to adopt technology and

¹⁷ Times of India Blog. “Major Problems of Prison System in India,” January 1, 2022. *available at*: <https://timesofindia.indiatimes.com/readersblog/shubham-kashyap/major-problems-of-prison-system-in-india-40079/>. (Last visited May 10, 2025).

¹⁸ Gonzalez, Jennifer M. Reingle, and Nadine M. Connell. “Mental Health of Prisoners: Identifying Barriers to Mental Health Treatment and Medication Continuity.” *American Journal of Public Health* 104, no. 12 (December 1, 2014). *available at*: <https://doi.org/10.2105/AJPH.2014.302043>.

develop relevant protocols and guidelines to harness its potential for improving custodial practices¹⁹.

Legislation and policy frameworks need to address the issue of inadequate training and resources within law enforcement agencies. The Police Act of 1861, which governs the functioning of the police force in India, requires comprehensive reform to address the training needs and resource constraints of law enforcement agencies. Revisiting and updating this legislation should focus on incorporating provisions for adequate training, professional development, and resource allocation within law enforcement agencies²⁰.

The National Policy on Prison Reforms and Correctional Administration, formulated by the Ministry of Home Affairs, provides a framework for prison reforms in India. However, its effective implementation requires adequate funding, coordination among different stakeholders, and a commitment to addressing the issue of inadequate resources within the prison system.

3. HUMAN RIGHTS PERSPECTIVE

1. right to life and physical integrity

The right to life and physical integrity is a fundamental human right enshrined in various international treaties, including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), to which India is a signatory. This section explores the importance of the right to life and physical integrity from a human rights perspective and examines how custodial atrocities violate this fundamental right. Additionally, it analyzes the legal framework governing the right to life and physical integrity in India and the challenges in ensuring its protection in the context of custodial violence.²¹

¹⁹ "How Can Technology Be Used in Law Enforcement?" ClearIAS, September 19, 2022. *available at:* <https://www.clearias.com/technology-law-enforcement/>.

²⁰ PWOnlyIAS. "Police Reforms In India," January 22, 2021. *available at:* <https://pwonlyias.com/upscnotes/police-reforms-in-india/>. (Last visited May 10, 2025). ²¹ "International Covenant on Civil and Political Rights," OHCHR *available at:* <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (last visited May 10, 2025).

Importance of the Right to Life and Physical Integrity

The right to life and physical integrity is universally recognized as a cornerstone of human dignity and individual autonomy. Article 3 of the UDHR proclaims that "everyone has the right to life, liberty, and security of person," affirming the inherent value and inviolability of human life. This right encompasses not only the absence of arbitrary deprivation of life but also the protection of individuals from physical harm, torture, and other forms of ill-treatment.

The right to life and physical integrity is essential for the realization of other human rights, including the right to liberty, security, and equality before the law. Without adequate protection of this right, individuals are vulnerable to abuse, exploitation, and arbitrary deprivation of their fundamental freedoms, undermining the rule of law and eroding trust in the state's ability to uphold human rights.

Custodial atrocities, including torture, extrajudicial killings, and enforced disappearances, represent egregious violations of the right to life and physical integrity. These abuses not only inflict physical and psychological harm on victims but also undermine the rule of law and democratic principles, perpetuating a culture of impunity and eroding public trust in state institutions.

2. Right to a fair trial and due process

The right to a fair trial and due process is a cornerstone of justice systems globally, ensuring that individuals are treated fairly, impartially, and in accordance with the law. In India, these rights are enshrined in various legal instruments, including the Constitution, statutes, and international treaties. Article 14 of the Constitution guarantees the right to equality before the law and equal protection of laws, ensuring that all individuals are treated equally by the legal system. Article 21 guarantees the right to life and personal liberty, interpreted expansively by the judiciary to include the right to a fair trial and due process. Additionally, Article 22 provides safeguards against arbitrary arrest and detention, emphasizing the importance of procedural fairness in criminal proceedings.

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) lays down the procedural framework for criminal trials in India. Sections 173-196 detail the procedures for the investigation of cognizable and non-cognizable offenses, including the registration of FIRs, arrest, and search and seizure. Section 180 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) grants police officers the power to examine witnesses during the investigation, subject to certain restrictions. Furthermore, Section 167 delineates the procedure for the remand of accused persons in custody pending investigation.

Bharatiya Sakshya Adhinyam, 2023 (BSA), governs the admissibility and relevancy of evidence in court proceedings. Sections 2 to 12 define various types of evidence, including oral, documentary, and circumstantial evidence. Section 22 prohibits the use of confessions obtained by inducement, threat, or promise of favor, emphasizing the need for voluntariness in admissions made by accused persons.

Additionally, Section 39 lays down rules for the evaluation of expert opinion evidence, ensuring that expert testimony is subject to scrutiny and cross-examination.²²

The Right to Information Act, 2005, plays a crucial role in promoting transparency and accountability in the administration of justice. It grants citizens the right to access information held by public authorities, including courts and tribunals. By enhancing transparency in the judicial process, the RTI Act empowers citizens to hold public authorities accountable for their actions and decisions.

The Legal Services Authorities Act, 1987, aims to provide free legal aid and assistance to marginalized and disadvantaged sections of society. It establishes legal services authorities at the national, state, and district levels, tasked with providing legal aid, advice, and representation to eligible individuals. By ensuring access to justice for all, regardless of socio-economic status, the Legal Services Authorities Act promotes the principles of fairness and equality in the legal system.

The Juvenile Justice (Care and Protection of Children) Act, 2015, governs the juvenile justice system in India, emphasizing the rights and rehabilitation of children in conflict with the law. It provides procedural safeguards for juvenile offenders, including the right to legal representation, fair treatment, and protection from harm. By prioritizing the best interests of the child and promoting rehabilitation over punitive measures, the JJ Act upholds the principles of fairness and due process in juvenile justice proceedings.

²² Rachit Garg, "All you need to know about Section 3 of the Indian Evidence Act, 1872" iPleaders, 2022 available at: <https://blog.iplayers.in/all-you-need-to-know-about-section-3-of-the-indian-evidence-act-1872/> (last visited May 10, 2025).

International human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC), impose obligations on states to uphold the right to a fair trial and due process. India is a party to these treaties and is bound by their provisions, including the rights to equality before the law, access to justice, and procedural fairness. By adhering to its international obligations, India reaffirms its commitment to promoting and protecting human rights within its jurisdiction.

3. Protection against arbitrary arrest and detention

Protection against arbitrary arrest and detention is a fundamental human right aimed at safeguarding individual liberty and preventing abuse of state power. In India, this right is enshrined in various legal provisions, including the Constitution, statutes, and international treaties. Article 22 of the Constitution provides safeguards against arbitrary arrest and detention, emphasizing the principles of procedural fairness and due process. Additionally, the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) lays down detailed procedures governing the arrest and detention of individuals, ensuring that these actions are carried out in accordance with the law.

The right to protection against arbitrary arrest and detention is guaranteed under Article 22 of the Indian Constitution. This provision mandates that no person shall be arrested or detained except in accordance with the procedure established by law. It also stipulates certain safeguards for arrested persons, including the right to be informed of the grounds of arrest, the right to consult a legal practitioner, and the right to be produced before a magistrate within 24 hours of arrest.

Section 35 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) grants police officers the authority to arrest individuals without a warrant under certain circumstances. However, this power is subject to specific conditions, including reasonable suspicion of the commission of a cognizable offense, the necessity of arrest for the purpose of investigation, and the existence of credible information or evidence implicating the accused. Furthermore, Section 41A requires police officers to issue a notice to appear before them instead of making an arrest in cases involving non-serious offenses punishable with imprisonment up to seven years.

Section 43 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) lays down the procedure for the arrest of individuals by private persons. It mandates that any person making an arrest must immediately deliver the arrested person to a police officer or take the arrested person to the nearest police station. This provision aims to prevent arbitrary detention and ensure that arrests are made in accordance with the law.

Section 47 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) outlines the manner in which an arrest is to be made. It requires the arresting officer to inform the person being arrested of the grounds for arrest, the right to bail, and the right to legal representation. Additionally, the arresting officer must prepare a memorandum of arrest, including details such as the time and place of arrest, and provide a copy of the memorandum to the arrested person.

Section 58 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) imposes limitations on the duration of detention without a warrant. It stipulates that no person arrested without a warrant shall be detained for more than 24 hours, excluding the time necessary for travel from the place of arrest to the nearest magistrate's court. If the investigation cannot be completed within 24 hours, the arrested person must be produced before a magistrate, who may authorize further detention for a specified period, not exceeding 15 days in total.

Section 187 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) provides for the remand of arrested persons in custody pending investigation. It allows a magistrate to authorize the detention of the accused for a period of up to 15 days on the first remand and up to 90 days on subsequent remands, subject to certain conditions. However, the total period of detention cannot exceed 60 days in cases triable by a magistrate and 90 days in cases triable by a sessions court, without the filing of a charge sheet.

The Right to Information Act, 2005, plays a crucial role in promoting transparency and accountability in the administration of justice. It grants citizens the right to access information held by public authorities, including details of arrests and detentions. By enhancing transparency in the arrest and detention process, the RTI Act empowers citizens to hold public authorities accountable for their actions and decisions.

The Legal Services Authorities Act, 1987, aims to provide free legal aid and assistance to marginalized and disadvantaged sections of society. It establishes legal services authorities at the national, state, and district levels, tasked with providing legal aid, advice, and representation to eligible individuals. By ensuring access to justice for all, regardless of socio-economic status, the Legal Services Authorities Act promotes the principles of fairness and equality in the legal system.²³

The Juvenile Justice (Care and Protection of Children) Act, 2015, governs the juvenile justice system in India, emphasizing the rights and rehabilitation of children in conflict with the law. It provides procedural safeguards for juvenile offenders, including the right to legal representation, fair treatment, and protection from harm. By prioritizing the best interests of the child and promoting rehabilitation over punitive measures, the JJ Act upholds the principles of fairness and due process in juvenile justice proceedings.

International human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC), impose obligations on states to uphold the right to protection against arbitrary arrest and detention. India is a party to these treaties and is bound by their provisions, including the rights to equality before the law, access to justice, and procedural fairness. By adhering to its international obligations, India reaffirms its commitment to promoting and protecting human rights within its jurisdiction.

4. LEGAL FRAMEWORK

1. Constitutional provisions and Fundamental Rights

1. Constitutional Provisions:

a. **Article 12: Definition of "State":** Article 12 of the Indian Constitution defines the term "State," extending the applicability of fundamental rights to the actions of the government and its instrumentalities. It includes the government, Parliament, state legislatures, and all local or other authorities within the territory of India or under the control of the Government of India.²⁴

b. **Article 13: Laws inconsistent with or in derogation of fundamental rights:** This article ensures the supremacy of fundamental rights by declaring that any law

²³ Sneha Mahawar, “Legal Services Authority Act, 1987” iLeaders, 2022 *available at*: <https://blog.iplayers.in/legal-services-authority-act-1987/> (last visited May 10, 2025).

²⁴ Krishnendra Joshi, “‘State’ under Article 12 of the Constitution of India” iLeaders, 2023 *available at*: <https://blog.iplayers.in/state-article-12-constitution-india/> (last visited May 10, 2025).

inconsistent with or in derogation of fundamental rights shall be void. It empowers the judiciary to strike down laws that violate fundamental rights.²⁵

c. **Articles 14-18: Right to Equality:** These articles guarantee the right to equality before the law and equal protection of the laws. They prohibit discrimination on grounds of religion, race, caste, sex, or place of birth. Article 15 provides for special provisions for women and children and enables the state to make special provisions for the advancement of socially and educationally backward classes.

d. **Articles 19-22: Right to Freedom:** Articles 19 to 22 enumerate various freedoms, including the freedom of speech and expression, assembly, association, movement, residence, and profession. They also guarantee the right to form unions or associations, the right to protection of life and personal liberty, and safeguards against arbitrary arrest and detention.

e. **Articles 23-24: Right against Exploitation:** These articles prohibit trafficking in human beings and forced labor. They also prohibit the employment of children in hazardous industries or factories.²⁶

f. **Articles 25-28: Right to Freedom of Religion:** Articles 25 to 28 guarantee the freedom of conscience and the right to freely profess, practice, and propagate religion. They also protect the rights of religious denominations to manage their affairs and promote religious and charitable institutions.

g. **Articles 29-30: Cultural and Educational Rights:** Articles 29 and 30 provide for the protection of the interests of minorities and the right of minorities to establish and administer educational institutions of their choice.

h. **Articles 32-35: Right to Constitutional Remedies:** Article 32 confers the right to move the Supreme Court for the enforcement of fundamental rights. Articles 33 to 35 provide for the suspension of certain fundamental rights during emergencies and the protection of armed forces and public servants acting in the discharge of official duties.

²⁵ “Article 13: Laws inconsistent with or in derogation of the fundamental rights,” Constitution of India, 2022 *available at*: <https://www.constitutionofindia.net/articles/article-13-laws-inconsistent-with-or-in-derogation-of-the-fundamental-rights/> (last visited May 10, 2025).

²⁶ “Rights Against Exploitation (Article 23-24) under Indian Constitution,” *available at*: <https://legalserviceindia.com/legal/article-6682-rights-against-exploitation-article-23-24-under-indian-constitution.html> (last visited May 10, 2025).

2. Criminal law and procedural safeguards

The legal framework governing criminal law and procedural safeguards in India is crucial for maintaining law and order, ensuring justice, and protecting the rights of individuals accused of crimes. This section explores the specific sections of laws related to criminal law and procedural safeguards, highlighting their significance and implications within the Indian legal system.

1. Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS):

a. **Investigation (Sections 173-196):** Sections 173-196 of the 1. Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) lay down the procedures for the investigation of cognizable and non-cognizable offenses. Section 173 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) mandates the registration of First Information Reports (FIRs) for cognizable offenses, while Section 174 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) deals with information in non-cognizable cases. Sections 175 to 178 empower police officers to investigate offenses, including the power to search, arrest, and examine witnesses. Sections 179 to 196 delineate various aspects of investigation, such as searches, seizure of property, and examination of witnesses.

- b. **Arrest and Detention (Sections 35-61):** Sections 35-61 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) provide for the arrest and detention of accused persons. Section 41 grants police officers the authority to arrest individuals without a warrant under certain circumstances. Sections 35 to 61 detail the procedure for arrest, including the manner of arrest, issuance of notices, and preparation of arrest memos. Section 57 imposes limitations on the duration of detention without a warrant and requires the production of arrested persons before a magistrate within 24 hours.
- c. **Bail and Bonds (Sections 480-450):** Sections 480 to 498 of the BNSS deal with bail and bonds. Section 480 provides for the release on bail of persons accused of bailable offenses, while Section 482 deals with bail in non-bailable offenses. Section 438 empowers the High Court and Court of Sessions to grant anticipatory bail to persons apprehending arrest. Section 485 to 498 lay down the procedure for granting bail, conditions for release, and forfeiture of bail bonds.
- d. **Trial (Sections 148-366):** Sections 148-366 of the BNSS govern the trial of cases in courts. Section 248 provides for the joint trial of accused persons, while Section 301 deals with the power of the court to separate trials. Sections 250 to 260 outline the procedure for framing charges, taking cognizance of offenses, and conducting trials. Sections 261 to 273 deal with the trial of summons cases, warrant cases, and summary trials.
- e. **Evidence (Sections 42-95):** Sections 42-95 of the BNSS govern the admissibility and relevancy of evidence in court proceedings. Section 42 lays down rules for the evaluation of expert opinion evidence, while Sections 43 to 61 deals with oral and documentary evidence. Sections 63 to 95 detail the procedures for the examination and cross-examination of witnesses, the production of documents, and the recording of evidence.
- f. **Judgment and Sentences (Sections 392-406):** Sections 392 to 406 of the CrPC deal with judgments and sentences. Section 392 requires courts to deliver judgments in open court and pronounce the substance of the judgment. Sections 354 to 406 outline the various types of sentences that may be imposed, including death sentences, imprisonment, and fines.

2. **Bharatiya Nyaya Sanhita 2023 (BNS):**

- a. **Offenses Against the Person (Sections 71-98):** Sections 71-98 of the BNS define various offenses against the person, including homicide, hurt, abduction, and rape. Section 299 defines culpable homicide, while Sections 103 to 108 deal with murder and culpable homicide not amounting to murder. Sections 113(2) define offenses related to hurt and grievous hurt, while Sections 64 to 135 deal with abduction, kidnapping, and offenses against women.
- b. **Offenses Against Property (Sections 301-332):** Sections 301 to 332 of the BNS define offenses against property, including theft, robbery, dacoity, criminal trespass, and mischief. Section 301 defines theft, while Sections 379 to 382 deal with various forms of theft and robbery. Sections 327 to 332 deal with criminal trespass, mischief, and other offenses against property.
- c. **Offenses Against the State (Sections 145-156):** Sections 145 to 156 of the BNS define offenses against the state, including waging war against the government, sedition, and promoting enmity between different groups. Section 145 defines offenses related to waging war against the government, while Sections 150 to 156 deal with sedition, promoting enmity between different groups, and other offenses against the state.²⁷
- d. **General Exceptions (Sections 14-44):** Sections 14 to 44 of the BNS provide for general exceptions to criminal liability. Section 14 exempts acts done by a person who is incapable of committing an offense by reason of infancy or unsoundness of mind. Sections 25 to 30 provide for the defense of necessity, mistake of fact, and accident, among others.

3. Other Relevant Laws:

- a. **Bharatiya Sakshya Adhiniyam, 2023:** Bharatiya Sakshya Adhiniyam, 2023 (BSA), governs the admissibility and relevancy of evidence in court proceedings. It defines various types of evidence, including oral, documentary, and circumstantial evidence, and lays down rules for their examination and cross-examination.
- b. **The Narcotic Drugs and Psychotropic Substances Act, 1985:** This act provides for the control and regulation of narcotic drugs and psychotropic substances and the prevention of their abuse. It defines various offenses related to the production, manufacture, possession, and trafficking of narcotic drugs and psychotropic substances.
- c. **The Prevention of Corruption Act, 1988:** This act provides for the prevention of corruption and the prosecution of public servants involved in corrupt practices. It defines various offenses related to bribery, abuse of official position, and possession of disproportionate assets.
- d. **The Juvenile Justice (Care and Protection of Children) Act, 2015:** This act governs the juvenile justice system in India and aims to protect the rights and welfare of children in conflict with the law. It provides for the rehabilitation and reintegration of juvenile offenders and prohibits the use of corporal punishment and other forms of violence against children.
- e. **The Protection of Children from Sexual Offences (POCSO) Act, 2012:** This act provides for the protection of children from sexual offenses and the establishment of

²⁷ LawBhoomi, "Offences Against The State under Indian Penal Code" LawBhoomi, 2020 *available at:* <https://lawbhoomi.com/offences-against-the-state-under-indian-penal-code/> (last visited May 10, 2025).

special courts for their speedy trial. It defines various sexual offenses against children and prescribes stringent penalties for offenders.

- f. **The Prevention of Terrorism Act, 2002 (POTA):** This act provides for the prevention of terrorism and the prosecution of individuals involved in terrorist activities. It defines various offenses related to terrorism, including conspiracy, membership of terrorist organizations, and support to terrorist activities.

4. International Conventions and Treaties:

- a. **International Covenant on Civil and Political Rights (ICCPR):** India is a signatory to the ICCPR, which guarantees various civil and political rights, including the right to a fair trial, the presumption of innocence, and the prohibition of arbitrary arrest and detention.
- b. **United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT):** India ratified the UNCAT in 1997, committing to prevent and prohibit torture and other forms of ill-treatment. The convention prohibits the use of evidence obtained through torture and requires states to ensure accountability for acts of torture.
- c. **Convention on the Rights of the Child (CRC):** India ratified the CRC in 1992, which provides for the protection and welfare of children. The convention prohibits the use of capital punishment for offenses committed by individuals under the age of 18 and emphasizes the importance of rehabilitation and reintegration for juvenile offenders.

This comprehensive legal framework governs criminal law and procedural safeguards in India, ensuring the protection of individual rights, promoting justice, and upholding the rule of law. However, challenges remain in the effective implementation and enforcement of these laws, requiring continuous efforts to strengthen legal mechanisms, enhance accountability, and safeguard the rights of all individuals within the criminal justice system.

5. CHALLENGES AND IMPEDIMENTS IN COMBATING CUSTODIAL ATROCITIES

1. Impunity and lack of accountability

Impunity and lack of accountability are pervasive challenges hindering the effective combat against custodial atrocities in India. Despite existing legal provisions aimed at safeguarding human rights and ensuring accountability for state actors, custodial violence often goes unpunished, perpetuating a culture of impunity within law enforcement agencies.²⁸

The Indian legal framework contains several specific sections and laws that address impunity and lack of accountability in the context of custodial violence. One such crucial provision is Section 218 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which mandates prior sanction from the appropriate government authority for the prosecution of public servants for acts done in the discharge of their official duties. While intended to protect public officials from frivolous or vexatious prosecutions, Section 197 is often misused to shield perpetrators of custodial violence from accountability, as obtaining sanction for prosecution can be a cumbersome process and is subject to bureaucratic delays.

Additionally, Section 196 of the Bharatiya Nagarik Suraksha Sanhita, 2023 requires mandatory judicial inquiry in cases of custodial deaths. However, these inquiries often lack impartiality and thoroughness, leading to inadequate investigations and the failure to hold perpetrators accountable. The absence of stringent mechanisms for ensuring the independence and effectiveness of such inquiries contributes to the perpetuation of impunity.

The lack of comprehensive legislation specifically addressing custodial violence further exacerbates the problem of impunity. While international human rights standards and judicial pronouncements have elucidated the obligations of the state to prevent and prosecute custodial violence, the absence of a dedicated law defining and criminalizing custodial atrocities leaves significant gaps in accountability mechanisms. The absence of a clear legal framework outlining specific offenses, penalties, and procedural safeguards pertaining to custodial violence undermines efforts to hold perpetrators accountable and provide justice to victims.

²⁸ Watch the State, "Impunity and complicity: The role of the State and non-state institutions in cases of custodial deaths in India – 4 – The Polis Project" available at: <https://www.thepolisproject.com/research/impunity-and-complicity-the-role-of-the-state-and-non-state-institutions-in-cases-of-custodial-deaths-in-india-4/> (last visited May 10, 2025).

Moreover, institutional factors such as inadequate training, supervision, and oversight mechanisms within law enforcement agencies contribute to the prevalence of impunity. The failure to enforce existing codes of conduct and disciplinary measures against errant officials emboldens perpetrators and reinforces a culture of impunity within the ranks of law enforcement.²⁹

2. Inadequate legal framework

The inadequacy of the legal framework is a significant challenge in effectively combating custodial atrocities. A robust legal framework is essential to provide clear definitions, establish strong safeguards, and ensure accountability for custodial abuses. This section explores the challenges and impediments related to the inadequate legal framework and relevant acts and laws.

1. **Ambiguities in Laws:** One of the primary challenges is the presence of ambiguities in laws that fail to provide clear definitions of custodial atrocities or establish specific provisions to address such abuses. Ambiguities can lead to varying interpretations and hinder effective prosecution and accountability.

2. **Insufficient Penalties:** Another challenge in the legal framework is the presence of insufficient penalties for custodial atrocities. Inadequate penalties fail to deter such abuses effectively and may not provide a sufficient deterrent effect.

3. **Inadequate Safeguards:** The legal framework may lack sufficient safeguards to prevent custodial atrocities and protect the rights of detainees. Inadequate safeguards can leave individuals vulnerable to abuse and impede accountability.

4. Limited Scope of Application: The limited scope of application of relevant acts and laws can pose challenges in combating custodial atrocities. Some laws may only apply to specific agencies or categories of detainees, leaving others outside the purview of protection.

6. COMPARATIVE ANALYSIS BETWEEN U.K. AND U.S.A

²⁹ katharina.kiener-manu, "Crime Prevention & Criminal Justice Module 5 Key Issues: 2. Key mechanisms and actors in police accountability and oversight" available at: <https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-5/key-issues/2--key-mechanisms-and-actors-in-police-accountability-and-oversight.html> (last visited May 10, 2025).

1. Legal framework and constitutional basis

Comparative analysis of the legal framework and constitutional basis governing custodial torture laws in the United Kingdom (UK), and the United States of America (USA) reveals distinct approaches shaped by historical, cultural, and legal factors. While each country is committed to preventing custodial torture and ensuring respect for human rights, differences in legal traditions, constitutional frameworks, and institutional mechanisms result in variations in the implementation and enforcement of laws addressing custodial torture.³⁰

United Kingdom (UK):

In the UK, the legal framework governing custodial torture is primarily based on common law principles, human rights legislation, and international treaties. The UK does not have a codified constitution but relies on statutes, case law, and constitutional conventions to safeguard individual rights and liberties.³¹

The Human Rights Act (HRA) of 1998 incorporates the European Convention on Human Rights (ECHR) into UK domestic law, including the prohibition of torture and inhuman or degrading treatment under Article 3. The HRA allows individuals to bring claims before domestic courts for violations of their human rights, including cases of custodial torture. Additionally, the Police and Criminal Evidence Act (PACE) of 1984 establishes procedures for police detention and interrogation, including safeguards against ill-treatment and coercion.

UK law also provides for independent oversight mechanisms to investigate allegations of police misconduct and custodial abuse. The Independent Office for Police Conduct (IOPC) conducts investigations into serious complaints and incidents involving the police, while Her Majesty's Inspectorate of Prisons (HMIP) inspects and reports on conditions in prisons and other places of detention.

While the UK has robust legal protections against custodial torture, challenges persist in ensuring accountability and transparency in law enforcement practices. Cases of

³⁰ Joshua N. Aston, "Response of India towards Torture and Custodial Violence" *OUP Academic*, 2020 available at: <https://academic.oup.com/book/36908/chapter/322168065> (last visited May 10, 2025). ³¹ Make Post, "Torture in UK law" JUSTICE, 2008 available at: <https://justice.org.uk/torture-uk-law/> (last visited May 10, 2025).

police misconduct and abuse highlight concerns about institutional culture, training, and oversight, prompting calls for reforms to strengthen accountability mechanisms and uphold human rights standards.

United States of America (USA):

In the USA, the legal framework governing custodial torture is primarily rooted in the Constitution, federal statutes, and judicial precedents. The US Constitution prohibits cruel and unusual punishment under the Eighth Amendment and guarantees due process and equal protection of the law under the Fifth and Fourteenth Amendments.³² Federal laws such as the Torture Victim Protection Act (TVPA) of 1991 and the Federal Tort Claims Act (FTCA) provide avenues for victims of custodial torture to seek civil remedies and hold government officials accountable for violations of their constitutional rights.

Additionally, Section 1983 of the Civil Rights Act of 1871 allows individuals to sue state and local government officials, including law enforcement officers, for violations of their constitutional rights under color of law.³³

The USA also has oversight mechanisms such as the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI), which investigate allegations of police misconduct and civil rights violations. However, challenges remain in holding law enforcement accountable for custodial torture, including issues of qualified immunity, lack of transparency in investigations, and disparities in access to justice.

2. Prohibition and prevention measures

Comparative analysis of the prohibition and prevention measures against custodial torture in the United Kingdom (UK), and the United States of America (USA) reveals diverse legal frameworks and institutional mechanisms aimed at safeguarding human rights and preventing abuses in detention settings. While all three countries have constitutional and statutory provisions prohibiting custodial torture, differences in legal

³² “Furman v. Georgia, 408 U.S. 238 (1972),” Justia Law *available at*:

<https://supreme.justia.com/cases/federal/us/408/238/> (last visited May 10, 2025).

³³ JACQUES DELISLE, “Damages Remedies for Infringements of Human Rights Under U.S. Law,” 62 *The American Journal of Comparative Law* 457–90 (2014).

traditions, enforcement mechanisms, and oversight structures shape the effectiveness of these measures in practice.³⁴

United Kingdom (UK):

In the UK, the prohibition and prevention of custodial torture are grounded in domestic law, human rights legislation, and international treaties. The Human Rights Act (HRA) of 1998 incorporates the European Convention on Human Rights (ECHR) into UK law, including the prohibition of torture and inhuman or degrading treatment under Article

3. The UK also has specific legislation governing police powers and detention procedures, such as the Police and Criminal Evidence Act (PACE) of 1984, which sets out safeguards against ill-treatment and coercion during police interrogation.³⁵

The UK's legal framework prohibits custodial torture and provides avenues for redress for victims of abuse. Independent oversight mechanisms, such as the Independent Office for Police Conduct (IOPC) and Her Majesty's Inspectorate of Prisons (HMIP), investigate allegations of police misconduct and custodial abuse to ensure compliance with legal standards and human rights norms. Additionally, the UK government has ratified international treaties, such as the UN Convention against Torture, and implemented measures to prevent torture and ill-treatment in detention settings.

United States of America (USA):

In the USA, the prohibition and prevention of custodial torture are rooted in the Constitution, federal statutes, and judicial precedents. The Eighth Amendment to the US Constitution prohibits cruel and unusual punishment, including torture, while federal laws such as the Torture Victim Protection Act (TVPA) of 1991 and the Federal Tort Claims Act (FTCA) provide avenues for victims of custodial torture to seek civil remedies and hold government officials accountable for violations of their constitutional rights.

The USA also has oversight mechanisms, such as the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI), which investigate allegations of police

³⁴ Lutz Oette, “THE PROHIBITION OF TORTURE AND PERSONS LIVING IN POVERTY: FROM THE MARGINS TO THE CENTRE,” 70 *International & Comparative Law Quarterly* 307–41. ³⁵ “The Human Rights Act,”

EHRC available at: <https://www.equalityhumanrights.com/human-rights/human-rights-act> (last visited May 10, 2025).

misconduct and civil rights violations. Additionally, the USA has ratified international treaties, such as the UN Convention against Torture, and implemented measures to prevent torture and ill-treatment in detention settings, including training programs for law enforcement officers and prison staff.³⁶

3. Remedies and redress mechanisms

Comparative analysis of remedies and redress mechanisms for custodial torture in the United Kingdom (UK), and the United States of America (USA) reveals variations in legal frameworks and institutional mechanisms aimed at providing justice and accountability for victims of abuse in detention settings. While all three countries have constitutional and statutory provisions to address custodial torture, differences in legal traditions, enforcement mechanisms, and access to justice shape the effectiveness of remedies and redress mechanisms in each jurisdiction.³⁷

United Kingdom (UK):

In the UK, remedies and redress mechanisms for custodial torture are grounded in domestic law, human rights legislation, and international treaties. The Human Rights Act (HRA) of 1998 incorporates the European Convention on Human Rights (ECHR) into UK law, including the prohibition of torture and inhuman or degrading treatment under Article 3. The UK also has specific legislation governing police powers and detention procedures, such as the Police and Criminal Evidence Act (PACE) of 1984, which sets out safeguards against ill-treatment and coercion during police interrogation.³⁸

Victims of custodial torture in the UK have access to various remedies and redress mechanisms, including filing complaints with the police, seeking civil remedies through the courts, and lodging complaints with independent oversight bodies such as the Independent Office for Police Conduct (IOPC) and Her Majesty's Inspectorate of Prisons (HMIP). Additionally, victims can bring claims before domestic courts for violations of their human rights under the HRA and the ECHR. These mechanisms

³⁶ "University of Minnesota Human Rights Library," available at: <http://hrlibrary.umn.edu/cat/cat-reports2000.html> (last visited May 10, 2025).

³⁷ Joshua N. Aston, "Response of India towards Torture and Custodial Violence" OUP Academic, 2020 available at: <https://academic.oup.com/book/36908/chapter/322168065> (last visited May 10, 2025). ³⁸ "The Human Rights Act," EHRC available at: <https://www.equalityhumanrights.com/human-rights/human-rights-act> (last visited May 10, 2025).

provide avenues for victims to obtain justice, accountability, and compensation for custodial abuse.

United States of America (USA):

In the USA, remedies and redress mechanisms for custodial torture are rooted in the Constitution, federal statutes, and judicial precedents. The Eighth Amendment to the US Constitution prohibits cruel and unusual punishment, including torture, while federal laws such as the Torture Victim Protection Act (TVPA) of 1991 and the Federal Tort Claims Act (FTCA) provide avenues for victims of custodial torture to seek civil remedies and hold government officials accountable for violations of their constitutional rights.

Victims of custodial torture in the USA can bring civil lawsuits against perpetrators of abuse under Section 1983 of the Civil Rights Act of 1871 and other federal statutes. Additionally, victims can file complaints with oversight bodies such as the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) for investigation and prosecution of civil rights violations. While these mechanisms provide avenues for victims to obtain justice and accountability for custodial abuse, challenges such as qualified immunity, limited access to legal representation, and disparities in access to justice persist.³⁹

7. JUDICIAL PRONOUNCEMENTS

Amar Singh v. State of Rajasthan⁴⁰ In this landmark case, the Supreme Court of India addressed the issue of custodial violence and police misconduct. The petitioner, Amar Singh, alleged that he was subjected to torture and abuse while in police custody in Rajasthan. The Court, in its judgment, emphasized the fundamental rights guaranteed under the Constitution and the duty of the state to protect individuals from arbitrary actions by law enforcement agencies. This case laid down important precedents regarding the prohibition of torture and the accountability of state authorities in preventing custodial violence.

³⁹ "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," *OHCHR available at: <https://www.OHCHR.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>* (last visited May 10, 2025).

⁴⁰ *Amar Singh v. State of Rajasthan AIR 1957 SC 369*

Avinash Kumar v. State of Madhya Pradesh⁴¹ The Avinash Kumar case marked a significant development in the jurisprudence surrounding custodial violence. Avinash Kumar, the petitioner, challenged the impunity enjoyed by police officers accused of custodial torture in Madhya Pradesh. The Supreme Court, in its judgment, reiterated the obligation of the state to uphold human rights and ensure accountability for abuses committed by law enforcement personnel. This case underscored the need for effective mechanisms to investigate allegations of custodial violence and prosecute perpetrators, setting a precedent for judicial intervention in cases of police misconduct.

Bhagalpur Blinding Case (Bhagalpur Riot Victims v. State of Bihar)⁴² The Bhagalpur Blinding Case, also known as *Bhagalpur Riot Victims v. State of Bihar*, exposed egregious human rights violations perpetrated by law enforcement officials during the Bhagalpur riots in Bihar. The Supreme Court, in its judgment, condemned the brutal acts of blinding carried out by the police as a form of custodial violence. The case prompted widespread outrage and led to calls for accountability and justice for the victims. The Court's intervention in this case served as a catalyst for reforms in policing practices and underscored the importance of upholding the rule of law even in times of social unrest.

D.K. Basu v. State of West Bengal⁴³ *D.K. Basu v. State of West Bengal* is a landmark case that laid down guidelines to prevent custodial violence and ensure the protection of fundamental rights. The petitioner, D.K. Basu, highlighted instances of custodial torture and deaths in West Bengal, calling for judicial intervention to safeguard the rights of detainees. The Supreme Court, in its historic judgment, issued directives known as the "D.K. Basu guidelines," which mandated various safeguards such as the mandatory recording of arrests, informing relatives of the detainee, and conducting medical examinations. This case set a precedent for judicial activism in safeguarding human rights and preventing custodial abuses across India.

Dilawar v. State of Delhi⁴⁴ *Dilawar v. State of Delhi* brought attention to the issue of custodial violence and deaths in the context of the criminal justice system. The petitioner, Dilawar, was a victim of custodial torture that resulted in his death while in

⁴¹ *Avinash Kumar v. State of Madhya Pradesh (2016) 8 SCC 629*

⁴² *Bhagalpur Blinding Case (Bhagalpur Riot Victims v. State of Bihar) AIR 1984 SC 911*

⁴³ *D.K. Basu v. State of West Bengal (1997) 1 SCC 416*

⁴⁴ *Dilawar v. State of Delhi (2007) 12 SCC 641*

police custody in Delhi. The Supreme Court, in its judgment, emphasized the need for accountability and transparency in cases of custodial deaths, directing stringent measures to prevent such incidents in the future. This case underscored the importance of judicial oversight and the obligation of the state to protect the rights and dignity of individuals in custody.

Francis Coralie Mullin v. Administrator, Union Territory of Delhi⁴⁵ In the Francis Coralie Mullin case, the Supreme Court addressed the issue of custodial violence in the context of the right to life and personal liberty guaranteed under the Constitution. The petitioner, Francis Coralie Mullin, challenged the validity of certain laws that authorized the detention and interrogation of individuals without adequate safeguards. The Court, in its judgment, affirmed the primacy of human dignity and the prohibition of torture, ruling that any form of custodial violence violates fundamental rights. This case reaffirmed the judiciary's role as a guardian of constitutional values and set a precedent for protecting the rights of detainees in India.

8. CONCLUSION

In conclusion, the issue of custodial violence in India is deeply entrenched within the country's socio-political fabric, reflecting systemic flaws in the administration of justice and protection of human rights. Throughout this discussion, we have explored the multifaceted dimensions of custodial violence, including its historical context, legal framework, human rights perspective, causes, and challenges in combating it. Despite efforts at various levels to address this issue, significant gaps and challenges persist, perpetuating a cycle of impunity and injustice.

At its core, custodial violence represents a gross violation of human rights and undermines the principles of justice, dignity, and equality enshrined in the Indian Constitution and international human rights instruments. The use of excessive force, torture, and other forms of abuse by law enforcement officials not only inflicts physical and psychological harm on individuals but also erodes public trust in the justice system and undermines the rule of law. The prevalence of custodial violence reflects broader structural deficiencies within law enforcement agencies, including inadequate training,

⁴⁵ Francis Coralie Mullin v. Administrator, Union Territory of Delhi AIR 1981 SC 746

supervision, and accountability mechanisms, as well as societal attitudes that perpetuate impunity.

While the Indian legal framework provides avenues for redressal and accountability, including constitutional safeguards, statutory provisions, and international human rights conventions, the effective implementation and enforcement of these laws remain elusive. Challenges such as impunity, lack of accountability, political interference, and societal biases impede efforts to combat custodial violence and ensure justice for victims. The absence of comprehensive legislation specifically addressing custodial violence, coupled with systemic weaknesses in investigation, prosecution, and judicial redressal, further exacerbates the problem.

In addressing the scourge of custodial violence, it is imperative to adopt a holistic and multi-dimensional approach encompassing legal reforms, institutional strengthening, awareness-raising, and socio-political initiatives. Legislative measures should focus on enacting comprehensive laws defining and criminalizing custodial violence, with stringent penalties and procedural safeguards to ensure accountability. Moreover, mechanisms for independent and impartial investigation, prosecution, and adjudication of custodial violence cases must be established to uphold the rule of law and protect human rights.

Enhancing the capacity and independence of oversight bodies such as the National Human Rights Commission (NHRC) and State Human Rights Commissions (SHRCs) is essential for effective monitoring and redressal of custodial violence. These bodies should be empowered to conduct prompt, impartial, and thorough investigations, recommend prosecution of perpetrators, and ensure the implementation of their findings. Strengthening partnerships between civil society organizations, legal professionals, law enforcement agencies, and government authorities is crucial for fostering accountability, promoting transparency, and advocating for the rights of victims.

9. SUGGESTIONS

Suggestions for addressing custodial violence in India must be comprehensive, encompassing legal, institutional, and societal dimensions. Here are some recommendations:

1. **Legal Reforms:** Enact dedicated legislation defining and criminalizing custodial violence, with clear definitions, stringent penalties, and procedural safeguards. Close loopholes in existing laws and ensure swift and impartial investigations and prosecutions of custodial violence cases.
2. **Enhanced Oversight Mechanisms:** Strengthen the capacity and independence of oversight bodies such as the National Human Rights Commission (NHRC) and State Human Rights Commissions (SHRCs) to effectively monitor, investigate, and redress instances of custodial violence. Ensure regular inspections of detention facilities and police stations.
3. **Accountability Measures:** Promote accountability within law enforcement agencies by holding perpetrators of custodial violence accountable for their actions. Prosecute and punish offenders, including through disciplinary actions and criminal prosecutions, without impunity or delay.
4. **Training and Sensitization:** Provide comprehensive training programs for law enforcement personnel, judicial officials, and oversight bodies on human rights principles, ethical conduct, and non-coercive interrogation techniques. Sensitize officers to the impact of custodial violence on individuals and communities, emphasizing the importance of respecting human dignity and rights.
5. **Community Engagement:** Foster dialogue and collaboration between law enforcement agencies and local communities to build trust, promote transparency, and address underlying grievances. Encourage community policing initiatives that prioritize engagement, problem-solving, and conflict resolution over coercion and violence.

BIBLIOGRAPHY

Statutes:

1. Bharatiya Nyaya Sanhita, 2023.
2. Bharatiya Nagarik Suraksha Sanhita, 2023.
3. Protection of Human Rights Act, 1993.
4. Protection of Women from Domestic Violence Act, 2005.
5. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
6. Juvenile Justice (Care and Protection of Children) Act, 2015.
7. Right to Information Act, 2005.
8. Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013.
9. Prevention of Corruption Act, 1988.
10. Armed Forces (Special Powers) Act, 1958.

Books:

1. Das, Veena. *Violence and Subjectivity*. University of California Press, 2000.
2. Menon, Ritu, and Kamla Bhasin. *Borders and Boundaries: Women in India's Partition*. Rutgers University Press, 1998.
3. Chakrabarti, Ranabir, and Samir Dasgupta. *Understanding Police in India: Issues and Challenges*. Oxford University Press, 2017.
4. Choudhry, Sujit, et al. *The Oxford Handbook of Indian Constitutional Law*. Oxford University Press, 2016.
5. Pathak, R.S. *The Indian Constitution: Constitutional Principles and Their Application*. Universal Law Publishing, 2021.

Articles:

1. Baxi, U. (2007). "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India". *Harvard Human Rights Journal*, 20, 149-166.
2. Bhat, A. R. (2018). "Custodial Torture: A Study of Police Atrocities in Jammu and Kashmir". *The Indian Journal of Criminology & Criminalistics*, 39(2), 137- 151.
3. Choudhary, S. K. (2016). "Custodial Torture and Human Rights: A Study with Special Reference to Uttar Pradesh". *International Journal of Humanities and Social Science Invention*, 5(6), 38-43.
4. Gopalan, A. (2019). "Custodial Deaths and Human Rights in India: A Socio- Legal Analysis". *Journal of Legal Studies and Research*, 5(1), 46-61.
5. Hegde, S. (2015). "Custodial Deaths in India: A Study with Special Reference to Karnataka". *International Journal of Social Science and Humanities Research*, 3(3), 237-249.
6. Jha, M. K. (2017). "Custodial Deaths in India: An Analysis". *Indian Journal of Forensic Medicine & Toxicology*, 11(1), 82-86.
7. Kannan, R. (2018). "Custodial Torture in India: An Empirical Study". *International Journal of Humanities, Arts, Medicine and Sciences*, 6(1), 1-8.
8. Kaur, A., & Thind, H. S. (2019). "Custodial Torture: An Analysis of Cases in Punjab". *International Journal of Innovative Knowledge Concepts*, 7(4), 66-73.
9. Mehta, S. (2016). "Preventive Measures of Custodial Violence: A Comparative Study of India and UK". *International Journal of Law and Legal Jurisprudence Studies*, 3(1), 151-163.
10. Singh, S. K. (2019). "Custodial Torture: A Case Study Analysis". *Journal of Policing, Intelligence and Counter Terrorism*, 14(1), 47-63