
CUSTODIAL DEATHS IN INDIA: LEGAL FRAMEWORK AND THE NEED FOR REFORM

Devendra Singh, B.A.LL.B., Army Institute of Law, Mohali

ABSTRACT

India's system's shortcomings in terms of accountability, supervision, and the application of the law are demonstrated by the significant human rights problem of custodial deaths. Torture, extrajudicial killings, and avoidable deaths in police and judicial custody persist despite the legal protections offered by the Indian Constitution, the criminal law (both statutory and procedural), and numerous human rights statutes.

With an emphasis on significant court rulings pertaining to custodial deaths, this article critically examines the legal framework surrounding these deaths and highlights the discrepancy between the framework and its implementation. Important court rulings like *D.K. Basu v. State of West Bengal*¹, which established rules for arrest and detention which dealt with police reforms, are discussed to point to the importance of judicial intervention.

In order to propose changes that can stop abuse and increase accountability, the paper also highlights international human rights standards. This article discusses the need for structural and policy reforms to protect the rights and dignity of people in custody by utilizing a doctrinal approach, judicial pronouncement analysis, and empirical data.

Keywords: Custodial deaths, human rights, police accountability, torture, judicial oversight, International human rights standards.

¹ D.K Basu Vs State of West Bengal (1997) 1 SCC 416

INTRODUCTION

B. Ajith Kumar allegedly suffered torture during an unlawful detention and died in police custody in June 2025. Referring the case to the Central Bureau of Investigation (CBI), the Madras High Court demanded a final report by August 2025 and denounced the police force's procedural shortcomings. Ten police officers were charge sheeted by Central Bureau of Investigation (CBI), he was temple guard who suffered 44 injuries. Public outcry over this case has brought attention to how urgently India needs a legal framework that forbids torture in detention.

Article 21 of the Indian Constitution guarantees everyone the right to life and liberty. By forbidding arbitrary arrest and offering procedural protections, Article 22 further protects people during arrest and detention. Custodial deaths are still occurring at a noticeable rate in spite of these constitutional protections.

The rising incidence of custodial deaths, coupled with the institution's passive response, signals a significant crisis of accountability. Incidents once regarded as rare of violence have now become a persistent aspect of the Indian justice system.

CONSTITUTIONAL FRAMEWORK

Custodial death oversteps the statutory criminal law and tramples the rights guaranteed by the Indian Constitution, particularly Articles 21 and 22. Custodial death also oversteps Article 20(3), which prohibits forcing a person to testify against himself. In the current reality, this guarantee is often undermined, as confessions are sometimes extracted through force, violence, or torture.

The Indian Constitution protects citizens from torture, cruel treatment, and other serious violations of basic rights. At the heart of this is Article 21², which provides for the right to life and liberty, and its expansive interpretation includes protecting citizens from torture and cruel treatment.

While Article 20(3)³ guarantees the prevention of the use of force to obtain confessions and

² The Constitution of India, art. 21

³ The Constitution of India, art. 20(3).

statements, Article 22⁴ provides procedural guarantees, such as the right to counsel and the provision that an arrestee must be produced before a magistrate within 24 hours of arrest. Article 14 guarantees the equality before the law, which safeguards everyone regardless of their background. To make it easier to enforce, Articles 32⁵ and Article 226⁶ provide citizens with the right to approach the Supreme Court or High Courts for redressal of grievances. However, the effectiveness of this constitutional framework is contingent upon its strict enforcement.

Articles 32 and 226 provide crucial safeguards against custodial violence and deaths. Article 32⁷ allows a person affected by the violation of their basic right to life to move the Supreme Court directly, as seen in the case of *Nilabati Behera v. State of Orissa (1993)*⁸, where compensation was granted in a custodial death case. Article 226 of the Indian Constitution empowers the High Courts to issue writs not only to enforce basic rights but also “for any other purpose.”

Right to life and human dignity: Article 21 and its expansive interpretation

Article 21 of the Indian Constitution provides for Right to life and personal liberty. It puts a duty on the state to protect that “**life and liberty**” of the citizens from arbitrary actions and also from the unnecessary violation of Fundamental Rights. The earlier interpretation of article 21 was given by Supreme Court in the case of *A.K. Gopalan Vs State of Madras (1950)*⁹ where the court held that the procedure established by law was sufficient and was supposed to be followed, no matter if the method of following it was arbitrary, unfair or unjust.

The interpretations later on changed with the time, In the case of *Maneka Gandhi Vs Union of India (1978)*¹⁰, Supreme Court overruled its own judgement in which Supreme Court held that the law imposing restrictions must be just, fair and reasonable and can't be unjust, unfair or unreasonable. Followed by Judgements like *Francis Coralie Mullin Vs Union Territory of Delhi (1981)*¹¹, The court took it further and held that “**Right to life**” includes right to live with

⁴ The Constitution of India, art. 22

⁵ The Constitution of India, art. 32

⁶ The Constitution of India, art. 226

⁷ *Ibid*; 5

⁸ *Nilabati Behera Vs State of Orissa (1993) 2 SCC 746*

⁹ *A.K Gopalan Vs State of Madras (1950) SC 27*

¹⁰ *Maneka Gandhi Vs Union of India (1978) 1 SCC 248*

¹¹ *Francis Coralie Mullin Vs Union Territory of Delhi (1981) SC 746*

human dignity- not just to exist.

A person in custody of the state is at the complete mercy of the state, because when state takes away the right to liberty or the life of the person also has a duty to protect it from anything arbitrary. A Custodial or judicial death is therefore the cruelest violation of Article 21 because the very authority entrusted to protect the right is the one extinguishing it. In the case of ***D.K. Basu Vs State of West Bengal (1997)***¹², The supreme court laid down 11 guidelines in case the custodial death. Supreme Court in the same case also held that such death in police or judicial custody is an “**attack on human dignity**” under article 21 of the Indian Constitution.

GLOBAL CONVENTIONS

The problem of custodial death is a human rights issue that is not limited to India, but occurs globally. To deal with it, the United Nations introduced the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) in 1984, which requires countries to criminalize, prevent, and punish torture.

India signed UNCAT¹³ in 1997 but has not ratified it, making it non-binding in the country and its provisions unenforceable under law.

The Optional Protocol to UNCAT (OPCAT, 2002) established independent monitoring mechanisms designed to assist in preventing torture. Furthermore, Article 7 of the International Covenant on Civil and Political Rights (ICCPR, 1966)¹⁴ prohibits torture, and the Convention on Enforced Disappearances (2006) prohibits secret detention.

Regional frameworks further enhance these safeguards: the European Convention on Human Rights (Article 3), the African Charter on Human and Peoples’ Rights (1981, Article 5), and the ASEAN Human Rights Declaration (2012) all prohibit torture. Conversely, the Asia-Pacific region does not have a binding treaty against torture and uses United Nations mechanisms instead.

¹² D.K Basu Vs State of West Bengal (1997) 1 SCC 416

¹³ United Nations Convention Against Torture and other Cruel, Inhuman or degrading treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85

¹⁴ International Covenant on Civil and Political Rights, (adopted Dec. 16, 1966, entered into force 23 March 1976), 999 UNTS 171 (ICCPR)

LEGAL FRAMEWORK IN INDIA

The anti-torture bill has been repeatedly advocated by India to be passed. The bill was first tabled in Parliament in 2010. It was tabled, passed in the lower house, but failed in the Rajya Sabha. It was then referred to a Rajya Sabha Select Committee for recommendations. Even after that, the bill did not smoothly pass through the Rajya Sabha. In 2017, the Law Commission stated that they seriously considered the bill, as it would require “substantial changes to all three major criminal laws” if it were to be introduced.

The international movement to limit torture began in 1984 with the United Nations Convention Against Torture (UNCAT). For any bill based on this convention to be implemented in India, an act has to be passed by Parliament.

The Prevention of Torture Bill, 2010

In 2010, the Lok Sabha witnessed the entry of the Prevention of Torture Bill¹⁵. The proposed legislation specified punishments for public servants who torture, in case such incidents happen. It defines torture as: “when a public servant, acting at the request of an individual or another person, with the intention of extracting a confession or information, causes grievous hurt or endangers life, health, or limbs, or mentally or physically tortures someone—that this constitutes torture.”

In 2010, the Bill easily passed the Lok Sabha and was tabled in the Rajya Sabha. Before it could be passed in the Rajya Sabha, a Select Committee of the Rajya Sabha was formed to review it and make some suggestions, which included:

- Widening the scope of the definition of torture
- Increasing penalties for torturing women and children
- Establishing an independent body to provide compensation to victims

The call to reinstate the Anti-Torture Bill in 2020-21 gained renewed momentum following the deaths of *P. Jayaraj and J. Bennix*. These two were arrested for running their mobile shop during the lockdown imposed due to the COVID-19 pandemic. They were brutally beaten by

¹⁵ The Prevention of Torture Bill, 2010, Bill No. 58 of 2010 (as introduced in Lok Sabha)

the police. This case brought back the need for greater protection against torture. Madras High Court intervened in this matter and held;

“Even assuming that the victims had violated lockdown norms, there is no law that authorises police to inflict punishment or torture... This court will not remain a mute spectator to state sponsored violence.”

As per the latest report by the National Human Rights Commission (NHRC) released in 2024, the total number of deaths was around 2,739, of which 155 were directly reported to be in police custody. In the financial year 2022-23, 1,995 deaths were recorded in judicial custody.

SUPREME COURT PRECEDENTS:

The Supreme Court judgments have played an important role in shaping the Indian constitution's response to custodial deaths by extending the remedial powers of constitutional courts and making the states answerable for the violation of fundamental rights. The journey began with the case of *Rudal Shah v. State of Bihar in 1983*¹⁶, where the petitioner was detained illegally for over fourteen years after he had been acquitted. The Supreme Court, while exercising powers under Article 32, observed, "If compensation is not awarded to a person whose fundamental right to freedom has been clearly violated by the State, it would be a travesty of justice."

This ruling on compensation has been expanded in subsequent judgments.

In *Saheli v. Commissioner of Police, Delhi (1990)*¹⁷, a police officer and a tenant killed a nine-year-old child. The Supreme Court awarded damages to the child's mother in the amount of Rs.

75,000 and held the state liable for the acts of its officers while they were performing their duties.

The Court also held that the Delhi Administration could recover the compensation money from the officer who was at fault. This establishes a system of individual liability as well as state liability, which will be built on further. *Saheli* is significant because it holds that the state is

¹⁶ Rudal Shah Vs State of Bihar (1983) 4 SCC 141, AIR 1983 SC 1086

¹⁷ Saheli Vs Commissioner of Police (1990) SCC (1) 422, AIR 1990 SC 513

responsible for violence while in custody, not only when a person is formally detained, but even when the police exercise their power to the extent of causing death or injury.

The most significant case that synthesized compensation law relating to custodial death cases is *Nilabati Behera v. State of Orissa (1993)*¹⁸. The police arrested a young man named Suman Behera. The following morning, they found his body on the train tracks with many cuts and bruises. Under Article 32, his mother went to the Supreme Court. The Court awarded Rs. 1,55,000 as damages. More significantly, it held that "the remedy available under public law for enforcing fundamental rights is distinct from and not superseded by the private law remedy of a tort action."

D.K. Basu Vs State of West Bengal (1997)

The Supreme Court's engagement with the structural conditions enabling custodial violence reached its most comprehensive height in the regulation of arrest and detention. In the landmark case of *Joginder Kumar v. State of Uttar Pradesh (1994)*¹⁹, the Court drew a clear distinction between the existence of a power of arrest and the justification for its exercise, holding that a police officer must have specific and credible grounds to believe that arrest is necessary, rather than merely permissible.

The significance of this holding lie in its preventive logic: custodial violence most frequently occurs in the window immediately following arrest, when the detainee is isolated from family, counsel, and judicial oversight.

That architecture was constructed in *D.K. Basu v. State of West Bengal (1997)*²⁰, which arose from a letter addressed to the Supreme Court documenting the persistent and widespread occurrence of custodial deaths across India. The Court issued eleven binding guidelines governing arrest and detention, applicable uniformly to all police officers. These required, among other things, that *arresting officers carry visible identification and maintain a register of their names and designations; that an arrest memo be prepared at the time of arrest, attested by a witness and countersigned by the arrestee; that a relative or nominated person of the arrestee be informed of the arrest and place of detention without delay; that all injuries on the*

¹⁸ Nilabati Behera, *Supra* Note 7

¹⁹ Joginder Kumar Vs State of Uttar Pradesh (1994) 4 SCC 260

²⁰ D.K Basu, *Supra* note 12

arrestee's body be recorded in a signed inspection memo; that the arrested person undergo medical examination every fortyeight hours in detention; and that the arrestee be informed of the right to legal counsel. Noncompliance, the Court held, would expose the concerned officer to proceedings for contempt of court.

The D.K. Basu guidelines represent a remarkable exercise of judicial creativity where an attempt is made by the Court to construct, through constitutional adjudication, the minimum procedural framework that Parliament had failed to enact.

STATISTICS:

Custodial deaths in India constitute a major human rights concern, as evidenced by data from the National Crime Records Bureau (NCRB)²¹ and the National Human Rights Commission (NHRC)²². According to the NCRB's Crime in India report for 2023, several states reported elevated numbers of custodial deaths, with Maharashtra recording 17 cases, one of the highest figures nationally.

Between 2000 and 2020, NCRB data show that 1,888 custodial deaths were reported nationwide. Of these, First Information Reports (FIRs) were filed against police personnel in 893 cases, and 358 officers were charge-sheeted.

However, only 26 convictions were obtained in custodial death cases over the past twenty years. These data point to the existence of a reporting, prosecution, and accountability deficit in custodial deaths.

The low conviction rate also points to the inefficacy of the legal system and the possibility of institutional resistance to holding the police accountable for custodial deaths. The data also points to a lack of transparency and the need for a complete overhaul of the custodial system.

The NHRC data also paints a grim picture of the situation. Between 2016 and 2022, more than 11,650 custodial deaths were reported across India, including both police and judicial custody.

In 2024, the NHRC reported 2,739 custodial deaths, including 155 in police custody. The

²¹ National Crime Records Bureau, Crime in India 2023 (Ministry of Home Affairs, Government of India, 2025).

²² National Human Rights Commission, Annual Report 2023-24 (NHRC, 2024).

conviction rate is extremely low, pointing to systemic failures in enforcement, accountability, and oversight.

The data from both the NCRB and the NHRC indicates that custodial deaths occur every year, and there is also a possibility of underreporting of the actual number of cases.

CHALLENGES IN ENFORCING ANTI-TORTURE BILL

In India's Prevention of Torture Bill, 2010, "torture" was defined, "*If any public servant, at the instance of an individual or third person, with the intent to extract a confession or information, inflicts grievous harm or damages their life, health, or limbs, or tortures mentally or physically, then it will be considered torture.*"

Essential key components of the definition are:

Public Servant, on behalf of an individual or a third person, with the intent to extract confession or information, causes any harm or damage to life, health or limbs, then it will be considered torture.

The factors contributing to the failure to formulate this law reflect deeper institutional and systemic challenges, which not only hinder legislative progress but also perpetuate existing gaps in the protection of human rights and the rule of law in India.

These challenges undermine public trust in justice institutions, create barriers to accountability for state actions, and allow widespread abuses to continue with limited oversight or redress. Consequently, the persistent lack of comprehensive anti-torture legislation signals broader deficiencies within governance and legal frameworks, potentially eroding both domestic and international confidence in India's commitment to upholding human rights standards.

Resistance from Police and Bureaucracy: There is significant resistance emerging from the state and the forces of the state like police. They believe that if stricter laws are imposed, it may hamper their efficiency in carrying out their operations, especially in regions that are sensitive or have been affected by insurgency.

- ***Fear of False Cases:*** The government is apprehension in the mind of the government that if such law is enacted then there are high chances that such law would be misused

against the government officials arbitrarily, but still there are lot of people out there who face unnecessary custodial torture even when they're innocent sometimes just vent out the hatred towards someone or some community.

- ***Sovereign Immunity Concerns:*** Certain critics have argued that the passage of an anti-torture law would result in the erosion of the age-old concept of sovereign immunity, which has been a part of British jurisprudence for centuries. But, the criminal laws do protect the officials who cause death by their actions while acting within their limits, but for someone who commits such death outside the extend of their duty, they shall be punished.

Issues with previous bill drafts and legislative hurdles.

- ***Inadequate Definition of Torture:*** Earlier drafts of the Anti-torture Bill failed to align with the definition of torture with UNCAT. This act needs categorical classification as to what classifies as torture because there would be a lot of ambiguity among the people once this act is enacted.

A distinction has to be made where it classifies as to what constitutes torture. For example, Criminal law gives the power to police to use force to take confession from the accused, if court grants police custody, also if a police officer is doing some work where he's assigned where law and order are disturbed, the public officer may use force and he won't be held liable if in that course, some person is killed in action because there the police or the public officer would be assumed to be on duty and here they have immunity from prosecution.

- ***Lack of Independent Investigation Mechanism:*** The cases of officers prosecuted under this act shall be investigated independently by independent authority / Agency.

If the trial of a person prosecuted is hampered or it gets partial or faces partiality and it would be natural where justice won't be delivered properly and would possibly hamper the Investigation and justice which would also violate the principles of Natural Justice.

- ***Lack of Independent Scrutiny:*** In parliament, every year, plethora of bills are presented and passed. But a bill with such a content meant to deal with such sensitive issue such as custodial death, it is a must that the bill shall be subjected to legislative scrutiny and parliamentary debates before it is sent to President for assent. Their absence when the

bill is in process of becoming a law can cause inadequacies and inconsistencies in the Bill.

In previous such bills such as Anti Torture Bill (2010)²³, the bill wasn't subjected to any such scrutiny or debates and deliberations when in Lok Sabha, it passed directly without debates and deliberations in Lok Sabha but all such deliberations and debates happened in Rajya Sabha and then the bill was sent to Rajya Sabha Select Committee (RSSC). Despite the debates and deliberations and recommendations from the Select committee of Rajya Sabha, the bill didn't pass and elapsed in Rajya Sabha.

The lack of scrutiny in both houses were there, if there had been rigorous parliamentary scrutiny, the flaws in the bill would have been identified and could have been eliminated, structural flaws could have been removed specifically the provision which required prior sanction before the bill was enacted.

WAY FORWARD

The legislative, executive, and judicial actions that India must take to address the disturbing increase in custodial deaths are:

Legislative reforms: Absence of specific law to address custodial tortures, represents a critical gap in its framework. While the criminal law provides for murder under section 101, 103, 105 BNS. They provided for the liability among individual such as in cases where person 'A' murders person 'B', intentionally or unintentionally and there is no such attempt to prosecute the public officers who commits such death outside their working jurisdiction.

Though a legislative attempt was made for the very first time in 2010 where Anti Torture Bill was introduced, but it failed in Rajya Sabha because the bill required a prior sanction before any public officer could be prosecuted for custodial death.

Independent Oversight: Right to life under article 21 includes not only just mere existence but more than just physical survival. NHRC serves as a primary institutions to address custodial death or any such incident where the human rights are violated, they get complaints but lacks

²³ Prevention of Torture Bill, 2010, Supra Note 13

the power of prosecution.

Every year, the NHRC makes such recommendations to the State governments but these recommendations are ignored. In order to curb this, it's the zenith to now establish a separate institutions and complaints institutions to address such complaints at district and state level which do have powers to investigate and prosecute.

Transparency and Accountability: In most of custodial death cases, state has the power to control information about deaths. In most of the cases of custodial tortures, post mortem of the victim is conducted by doctors in government hospitals, who may or may not be an aide to the police in close proximity creating obvious incentive to misattribute the cause of death. Post mortem should be conducted by the panel of independent medical practitioners in order to find out the cause of death and to make the procedure of post mortem fair.

Mandatory independent post mortem examination by the doctors with no institutional law enforcement authorities. Also, a centralized public data shall be made available to public by the state, audited regularly by an independent body.

CONCLUSION:

The Judicial response to custodial death in India, while normatively significantly has proven structurally insufficient. The one and only relief given to the victim's families is monetary compensation which is enough to support the lives of the dependents of the victims but not sufficient, morally. In the cases such as *Nilabati Behera Vs State of Orrisa*²⁴, a compensation of 75,000 rupees was provided to the mother of the child who was killed, and since then the precedent is set for providing compensation, but the real question arises as to what number of the persons prosecuted of custodial deaths and how many have them been punished.

Under the Indian Criminal law, Custodial tortures fall squarely under the ambit of Murder under section 101 and 103 of the BNS, it has not been classified as a separate crime which is inadequate to address the custodial death cases. As the incidents rise, it's high time for a specific legislation as to address custodial death. In the current time there is no specific law in order to address custodial death and tortures, though the attempts have been made. The Bill was introduced in 2010 was called as Anti Torture Bill in order to prevent custodial tortures

²⁴ Nilabati Behera, (1993) 2 SCC 746

and deaths in Police and Judicial custody. The Bill was fatal in its structure only, because it provided for a prior sanction of the state government before prosecuting an officer and such sanction from the state, which the state would in general practice would never give and which was impractical and impossible. That's why the law was struck down and the wave for reintroduction never rose.

This torture won't be protected under exception 3 of section 101 of the BNS²⁵, exception 3 provides immunity to any government officer having authority to protect the law and order from murder charges in the course of his working. But custodial death doesn't fall under the ambit of exception to murder as no law provides power to commit custodial death.

²⁵ Bhartiya Nyaya Sanhita, 2023, Section 101, Act no. 45 of 2023 (India).