
A STUDY ON CONSTITUTIONAL SAFEGUARDS AGAINST CUSTODIAL VIOLENCE IN INDIA

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ABSTRACT

Custodial violence is one of the worst human rights abuses in India, a denial of constitutional values of dignity, freedom, and justice. In the face of a grand plan of constitutional provisions, statute laws, and historical judicial dicta to avoid such abuse, custodial murders and torture are all too common in the land. The present study attempts to investigate constitutional protection against custodial violence in India with specific reference to the guarantees under Articles 20, 21, and 22 of the Constitution and their judicial interpretation. The study also investigates statutory protection under the Code of Criminal Procedure, Indian Penal Code, and Indian Evidence Act, and also path-breaking judgments like *D.K. Basu v. State of West Bengal*, *Nilabati Behera v. State of Orissa*, and *Paramvir Singh Saini v. Baljit Singh*. With a multi-method research that combines legal analysis, empirical evidence, and qualitative studies of stakeholders, the study diagnoses the continued mismatch between legal protection and practical enforcement. It places the focus on institutional failures of non-accountability, inefficiencies in police procedures, and institutional indifference. The paper states that although constitutional and legal protection is a good beginning, their effectiveness is contingent upon efficient implementation, police reform, and respect for human rights. Structural, legal, and cultural modifications are needed in haste to close the gap between the promise of justice and the reality of custodial abuse in India.

Keywords: Custodial death, Human Rights, Constitution, Violence, Police custody

Introduction:

Custodial death in the widest interpretation is any death that befalls a person during detention by police authorities or judicial agencies. This varies from persons who are held in police cells, interrogation centers, and prisons to persons who die shortly after release due to injuries sustained during detention. The term is also applied to deaths in "encounters" or purported shootouts, which, far from official accounts, are commonly suspected of being extrajudicial murders. The range of causes is equally broad, varying from sheer physical torture, gross negligence and consequent attendant medical complications, induced suicide, to deaths by natural causes that are oftentimes not established in court or a clean rationale for foul play. Regardless of whether it is because of the immediate reason or otherwise, the substantive foundation is the positive obligation of the state for the life and well-being of the person at the time of death¹. Even the arrest of an individual creates a binding obligation upon the state to secure his safety, and any failure to do so in resulting in death is a gross violation of human rights and constitutional guarantee.

The scale of the Indian custodial deaths problem is profoundly alarming but habitually obscured from view by under-reporting and secrecy. Official statistics furnished by bodies such as the National Human Rights Commission (NHRC) and the National Crime Records Bureau (NCRB) give some indication of the scale, but human rights groups and lawyers commonly claim that the statistics are merely the tip of an infinitely greater iceberg. Most of these are unreported, misclassified, or recorded as natural causes with no investigation. The reported number is so large, however, that it suggests a systemic crisis. Hundreds of people are murdered every year in police and judicial custody all over the country, a morbid fact that suggests India's law enforcement and carceral system has endemic problems. These numbers, in contrast to the constitutional promise of life and liberty, present a bleak scenario of a nation that is unable to uphold the very principles it professes. This such widespread problem subverts the very pillars of a democratic nation, wherein the state's power can never be utilized beyond the limits of law and respect for people's rights.²

¹ K.G. Kannabiran, *The Wages of Impunity: Power, Justice and Human Rights* (New Delhi: Orient Longman, 2004), p. 115.

² *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610; see also *Nandini Satpathy v. P.L. Dani*, AIR 1978 SC 1025.

The research design to be employed for this study would be multi-faceted including qualitative and quantitative study design in order to conduct a broad-based coverage. Quantitative study would entail the collection of data and statistical analysis of custodial deaths data from government documents, human rights bodies, and media, to establish trends and patterns. These will be supported with qualitative analysis by way of in-depth interviews of jurists, human rights activists, retired police officers, judicial officers, and most importantly, custodial death victims' families. Case studies will be tailor-made to explore the nuances and problems at the back of each case, well-contextualized conclusions.³ Legal analysis would entail a thorough review of applicable statutes, judicial decisions, and international human rights standards for purposes of viewing them with a perspective to finding lacunae and redesigning areas. The inter-disciplinary approach would lead to an integrated understanding of the issue, with inputs being given based on recourse to law, sociology, criminology, and human rights scholarship.

In short, custodial deaths are one of the most abhorrent violations of human rights, contravening the very spirit of justice and the rule of law. That this goes on in India in the face of constitutional guarantees and legal protections highlights a wantonly systemic failure which must be dealt with on an ongoing and emergent basis. This study attempts to critically examine this negative aspect of India's criminal justice system on the assumption that identifying the phenomenon as such is the first significant step towards its eradication. In its disclosure of the intricacy, arduousness, and human toll of custodial murders, this research would seek to be helpful to existing debate, invoking an era where each woman and man, regardless of their position or assumed transgression, shall be treated in a spirit of regard and their life preserved, even while in state custody. The quest for justice to the dead in police custody is not merely a legal issue but also an ethical obligation to serve the democratic principles and norms of human rights on which the Indian state was established.

Research Methodology

The research methodology outlined below will primarily be conducted based on an analysis of current literature, laws, policies, and actual cases of crimes against children. The research study employs a qualitative approach, incorporating both desk research and case studies, and also draws on international human rights conventions and best practices to gain a holistic

³ Robert K. Yin, *Case Study Research: Design and Methods* (5th edn., SAGE Publications, 2014), p. 13.

understanding of the problem. This approach involves gathering and interpreting secondary information, which is already available, from various sources, including books, articles, journals, websites, newspapers, magazines, and other relevant publications.

Constitutional Foundations of Safeguards Against Custodial Violence in India

The Indian Constitution is the pivot on which all legislation that protects against custodial violence and abuse of state power revolves. Basically, it protects the principles of human dignity, freedom, and equality. The right to life and liberty contained under **Article 21** is paramount. It ensures that no individual will be deprived of life or personal liberty except in accordance with a procedure laid down in the law. Indian Supreme Court has interpreted this right broadly to encompass protection from torture, cruel, inhuman or degrading treatment, and arbitrary detention. In the past cases like *Maneka Gandhi v. Union of India* (1978), the Court has ruled that the procedure under Article 21 should be "just, fair and reasonable" and thus established the basis for constitutional review of state action, including police action.⁴

Besides, **Article 20(3)** provides a specific protection during custodial interrogation. According to this article, no individual suspected of an offence shall be required to provide evidence against himself, thus providing protection against coercion, unjustified confessions, and physical or mental torture during interrogation. This piece of legislation is a counterweight to abuse of power by law enforcement authorities as it captures the essence of protection against self-incrimination and aligns with international norms regarding fair trial and due process. **Article 22** is also a significant constitutional provision that addresses protection of an individual upon arrest or detention.⁵

It requires that every person arrested be informed immediately the grounds for arrest and be allowed to consult, and to be assisted by, a lawyer of his choice.

More fundamentally, **Article 22(2)** requires that the arrested individual be brought before a magistrate within 24 hours of arrest and not be detained thereafter without the sanction of the magistrate. These are specially designed to ensure against custodial torture, judicial disappearance, and illegal detentions. They enforce a procedural regime that ensures court oversight of the actions of the police. Apart from these early pieces, the more general

⁴ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

⁵ M.P. Jain, *Indian Constitutional Law*, 8th edn., (LexisNexis, Gurugram, 2018) p. 1083.

constitutional plan—most particularly the Preamble—is resolute upon justice, freedom, equality, and respect for dignity. These values are themselves opposed to all custodial cruelty and arbitrary exercise of power. Besides, Articles 14 and 15 for ensuring equality before the law and freedom from discrimination also indirectly help in combating custodial violence, most importantly in instances of abuse such as victimization of weaker or marginalized classes. Second, the state directive principles, being non-justiciable, bind the state to ensure human dignity and advance public institution conditions. Article 39A, for instance, commands the state to provide free legal assistance to citizens illegally detained or under custodial violation so that no citizen shall be denied justice due to economic or other incapacities.

Overall, the Indian Constitution is abundantly endowed with moral and legal norms against custodial violence. However, despite the high theoretical potential of such constitutional safeguards, effectiveness relies on enforceable implementation, enforcement by courts, and an engaged civil society. The existing gap between guarantee in the Constitution and the reality of ground remains a serious challenge that has to be addressed by reforms and system accountability.

Statutory Legal Safeguards Related to Custodial Death in India

The Indian custodial violence is confronted with a combination of statutory legal provisions designed to safeguard the fundamental rights of the citizens and impose accountability on the criminal justice system. The major provisions in law are contained under Code of Criminal Procedure (CrPC), 1973, Indian Penal Code (IPC), 1860, and Indian Evidence Act, 1872.

Section 41 of the CrPC inhibits warrantless arrest and requires reasonable suspicion, and Section 41B of the CrPC requires police officers to be in identifiable identification and to produce an arrest memorandum signed by a relative or responsible person. Section 46 of the CrPC prohibits the application of force during arrest, except for the occasion of causing death in case of extreme necessity. Section 50 also provides that the arrested person should be informed of the cause of arrest and the right to bail. Section 54 provides for medical examination of the accused by a registered medical practitioner at the point of arrest with the intention to record any injury already sustained. Section 176(1) empowers judicial magistrates to inquire into custodial deaths, with the support of Section 176(1A), brought in by the Code of Criminal Procedure (Amendment) Act, 2005, requiring magistrates to hold enquiry into death, disappearance, or rape in custody. Indian Evidence Act, sections 24 to 27, limits the

admissibility of such confessions made under duress, thereby a safeguard against torture and confessional torture. The IPC provides a criminalization of voluntarily causing hurt or grievous hurt to obtain a confession by Sections 330 and 331, the punishment of which is up to imprisonment. Such parliamentary protection is supported by constitutional guarantees in Articles 20, 21, and 22 of the Indian Constitution and sustained by such sage landmark decisions as *D.K. Basu v. State of West Bengal*⁶. Despite these, loopholes at the time of implementation and absence of independent verification always have a tendency to render the effectiveness of such protection nugatory, rendering custodial reform an ongoing Indian human rights issue.⁷

Judicial Intervention and Landmark Judgments on Custodial Death in India

The Indian courts have been pioneers in dealing with custodial death and defining legal milestones on accountability, transparency, and human dignity. Succession of landmark judgments over the years is a watershed moment in developing the law when it comes to custodial violence and fighting legislative-executive vacuum.

Among the most landmark cases is ***D.K. Basu v. State of West Bengal (1997)***, wherein the Supreme Court, recognizing the widespread problem of custodial torture and deaths, evolved a complete set of guidelines to be adhered to in the arrest and detention process.⁸ These were the compulsory preparation of arrest memos, intimation of a friend or relative of the arrested individual, medical examination within 48 hours, and production of the arrested individual before a magistrate within 24 hours. These directions were enforced through Articles 21 and 22 of the Constitution, reiterating the reality that custodial violence is a gross violation of the right to life and liberty.

Another significant intervention was in ***Nilabati Behera v. State of Orissa (1993)***, where the Court held the state liable for a custodial death and granted compensation to the mother of the victim and thereby established the doctrine that public functionaries could be held responsible in person for the violation of fundamental rights⁹. The case imposed the vicarious liability of the state and gave to the notion of monetary compensation a constitutional as opposed to a civil

⁶ *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610.

⁷ Justice V.S. Malimath Committee Report on Reforms of Criminal Justice System (2003), Government of India.

⁸ *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610.

⁹ *Nilabati Behera v. State of Orissa*, AIR 1993 SC 1960.

hue. This was a departure from the pre-existing jurisprudence where victims of custodial deaths were required to go through long-drawn civil or criminal trials to secure justice.

The courts have also responded to changing issues through the latest judgments. In **Paramvir Singh Saini v. Baljit Singh (2020)**, the Supreme Court ordered the installation of CCTV cameras in all police stations and interrogation centers in the country, including the recording of the footage for a specified period of time.¹⁰ The order was for the imposition of technological monitoring to prevent torture and to bring transparency to custodial practice.

In **Arnesh Kumar v. State of Bihar (2014)**, although not directly relating to custodial deaths, the Court institutionalized stringent procedure under Sections 41 and 41A of the CrPC for prevention of unnecessary arrests, which in general are the root of custodial violence¹¹. The Court also directed magistrates not to issue detention orders mechanically.

In addition to that, in **Mehmood Nayyar Azam v. State of Chhattisgarh (2012)**, the Supreme Court once again made it clear that torture in custody is violative of the fundamental canons of human dignity and opined that physical or mental cruelty while in custody is violative of Article 21¹². The Court made it clear that even during arrest or under trial, a citizen cannot forfeit his fundamental rights. Likewise, in **State of Andhra Pradesh v. Challa Ramkrishna Reddy (2000)**, the Court made it clear that Article 21 protection applies even to convicts in jail and undertrials.¹³ The courts not only formulated the procedures but intervened to issue orders of compensation, direct independent probes by the CBI, and policy reform directives when state machinery has let them down. In spite of these decisive interventions, the absence of a binding anti-torture law and limp enforcement by law and order machinery continue to slow down the complete installation of these orders. Still, the move by the judiciary is a glimmer of hope for constitutional governance and human rights protection in prisons.

Results and finding:

This research validates that the deaths under custody in India are an intrinsic and entrenched phenomenon, rather than a random sequence of incidents, with thousands occurring every year and another twenty-four going unpunished due to being mislabeled as suicides, not investigated

¹⁰ *Paramvir Singh Saini v. Baljit Singh*, (2021) 1 SCC 184.

¹¹ *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

¹² *Mehmood Nayyar Azam v. State of Chhattisgarh*, (2012) 8 SCC 1.

¹³ *State of A.P. v. Challa Ramkrishna Reddy*, AIR 2000 SC 2083.

at all, or covered up by institutions. There still exists an utter lack of correlation between constitutional safeguard under Articles 14, 20, 21 and 22 of the Indian Constitution and reality on the ground despite this robust assurance extended by this Constitution. Judgements such as *D.K. Basu v. State of West Bengal*, *Nilpati Behera v. State of Orissa*, and *Paramvir Singh Saini v. Baljit Singh* have established robust procedural protection, but custodial torture continues to exist because of non-enforcement, absence of police accountability and political hesitation. Legal provisions under the Indian Evidence Act, IPC and CrPC, although elaborate on paper, are not followed, and preventive provisions such as medical check-ups and production before a judge within 24 hours are violated time and again. Institutional provisions such as the NHRC and state police complaints commissions are under-funded and ineffectual. The consistent inability to enact a particular anti-torture bill and the inability of India to ratify the UN Convention against Torture are a deep statement of unwillingness to harmonize domestic law with international standards on human rights. The word "victims" is pre-emptively qualified to vulnerable and marginalized groups like Dalits, Adivasis and minorities and refers to class-based impunity and structural discrimination. Independent investigation and compensation are occasionally awarded by the courts but symptomatic and not an institutional reform measure. Complicity of officials, complicity and complacency of the media and public legitimize the abuse and violations of the rule of law. The report calls for multidimensional transformation through anti-torture legislation, police sensitivity, technology regulation (e.g., CCTV in lockups), robust oversight institutions, and cultural transformation towards human rights responsibility.

Conclusion:

The custodial violence is the most deplorable human rights abuse, not merely on the score of physical and psychological torture at the hands of government functionaries but also for violating at its very essence the ethos of constitutional democracy. Having a progressive Constitution and a strong body of judicial dicta to protect individual freedom, custodial torture and custodial killing are an albatross to the neck of the Indian criminal justice system. Articles 20, 21, and 22 of the Constitution and guidelines given in path-breaking judgments like *D.K. Basu*, *Nilabati Behera*, and *Paramvir Singh Saini* have provided a robust legal framework to discourage abuse of state power. But the subsequent custodial death cases that followed one after another indicate cruel dis-connect between constitutional promise and reality on ground.

Police officers who are corrupt and are not brought to justice, sustained impunity; the absence of independent investigating agencies; and the ineffectiveness of mechanisms that already exist, such as the National Human Rights Commission (NHRC) and State Police Complaints Authorities (PCA), all work to create a culture of fear and silence. Institutional shortcomings like inadequate training, politicization of the police, custodial operations based on forced confessions, and failure to sensitise the police towards the masses at large have compounded the issue. Further, failure to ratify the United Nations Convention Against Torture (UNCAT) even after signing it is an indicator of not wanting to bring domestic law in accordance with international human rights standards. Failure to enact a special anti-torture bill and the absence of effective measures of accountability enabled custodial violence to become "norm" instead of an exception.

And thus, myopic constitutional protection delivers a wafer-thin shell of law. Detainees require more than legal remedies of human dignity and substantive justice; they require institutional, structural alterations in the country's judiciary and policing. Substantive closure of law and reality requires more than judicial utterances; it requires alteration of the system.