
CUSTODIAL VIOLENCE IN INDIA: JUDICIAL TRENDS IN CONSTITUTIONAL PROTECTION AND STATE LIABILITY

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Introduction

Custodial violence is a grave affront to human dignity and personal liberties, and strikes at the very heart of constitutionalism in India. It involves instances of torture, assault and even murder of persons in police and judicial custody. Despite the constitution's strong commitment to the protection of fundamental rights, instances of custodial violence continue to occur, reflecting the need for enhanced accountability of state actors. Thus, the judiciary has played a vital role in interpreting constitutional rights and developing doctrines to prevent such abuses and uphold the rights of the victims.

The starting point to combat custodial violence is the constitutional protections provided under Articles 20, 21 and 22 of the Constitution of India. In particular, the right to life and personal liberty under Article 21 of the Constitution has been broadly construed by the courts to encompass the right against torture and inhuman and degrading treatment. The landmark case of *Maneka Gandhi v. Union of India* turned Article 21 into a storehouse of substantive due process, allowing courts to more closely scrutinise arbitrary state conduct. The analysis paved the way for courts to intervene against custodial violence.

Through judicial activism, custodial torture has been recognised as a fundamental rights violation. In *D.K. Basu v. State of West Bengal*¹, the Supreme Court outlined a list of safeguards to be observed while making arrests and custodial interrogations to avoid custodial torture. These protocols, such as the right to notify a family member, medical check-up and recording of arrests, are now standard procedures. The Court stressed that custodial torture and cruel, inhuman or degrading treatment is an affront to human dignity and must be avoided.

A further advancement in this field is the liability of the state for custodial violence. In *Nilabati*

¹ AIR 1997 SC 610.

*Behera v. State of Orissa*², the Supreme Court confirmed that the state is liable to compensate for breach of fundamental rights by its officials. This signalled a departure from the older notion of sovereign immunity to a more contemporary, rights-focused approach, in which the state is liable for its agents' actions. The Court established that compensation is a public law remedy, rather than a private law claim for damages.

The courts have also highlighted the difficulties in obtaining evidence in cases of custodial violence, in which the victim is at the mercy of the police and the evidence is in the hands of the police. In *State of M.P. v. Shyamsunder Trivedi*³, the Supreme Court recognised the challenges of direct evidence, and the importance of circumstantial evidence and sensitivity in such cases. This approach demonstrates the Court's recognition of the challenges faced in obtaining justice for victims of custodial violence.

Moreover, the judiciary is not only concerned with the administration of justice, but also with preventive and remedial measures. In *Joginder Kumar v. State of U.P.*, the Supreme Court noted that arrest should not be a matter of course, and must be justified, thus emphasising that liberty is not an absolute right. These judgements reflect the Court's role in striking a balance between law enforcement and personal liberty.

In recent years, courts have continued to prioritise accountability and transparency in policing. Judicial statements have emphasised the need for independent inquiries, the setting up of CCTV cameras in police stations and adherence to the procedural safeguards. The aim is to establish a balance of power to discourage police abuse of power, and to build public trust in the criminal justice system.

To sum up, custodial violence is a significant human rights issue in India, even with the development of a robust judicial approach to prevent and redress it. Judicial trend has been to expand constitutional protections and doctrines of state liability to combat such abuse. Yet, the ongoing incidences of custodial violence indicate the need for better enforcement of judicial guidelines, reforms in law enforcement and accountability of police personnel. This research aims to explore these judicial developments in depth and how constitutional safeguards and state liability have emerged as important mechanisms to tackle custodial violence in India.

² 1993) 2 SCC 746.

³ 1995) 4 SCC 262.

1. Constitutional Protection from Custodial Violence

Custodial violence is an infringement on fundamental rights enshrined in the Constitution of India under Articles 20, 21 and 22. These articles provide for safeguards against arbitrary arrest, self-incrimination and deprivation of life and liberty without due process of law. The courts have consistently interpreted these rights in a purposive manner to include the protection against torture, cruel and/or inhuman treatment and custodial violence. The constitutional goal is not just procedural but also substantive, and seeks to uphold human dignity even in the coercive setting of criminal justice.

Expanding Article 21 has been a crucial strategy in combating custodial violence. In *Maneka Gandhi v. Union of India*, the Supreme Court interpreted the "procedure established by law" as being just, fair and reasonable. This meant that due process was now a part of the Indian Constitution, and courts could scrutinise custodial practices. It provided the doctrinal basis for later decisions where custodial torture was considered to be an infringement on the right to life and liberty.

The judiciary also reinforced these rights in *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*,⁴ by recognising that the right to life extends to the right to live with human dignity. The Court stressed that any cruel, inhuman or degrading treatment, such as custodial torture, is prohibited. This ruling extended the ambit of Article 21 to include decent conditions of detention, and therefore, took on the issue of custodial violence.

Article 22 protects individuals against arbitrary arrest and detention by ensuring certain procedural safeguards, including the right to be informed of the grounds of arrest and to legal advice. But these protections are not always effective due to systemic deficiencies. The courts have stepped in to ensure that these safeguards are not rendered hollow, but duly enforced - especially in criminal cases of vulnerable persons in custody.

The constitution also gives expression to India's adherence to international human rights standards, such as the ban on torture under international treaties. While India is not a party to the UN Convention Against Torture, the Supreme Court has invoked international law to interpret Indian law in a progressive sense. This supports the constitutional imperative to

⁴ (1981) 1 SCC 608.

safeguard against custodial torture.

However, custodial violence continues to occur because of the absence of accountability, lack of training of police officers and inefficiencies in the system. There is a wide gap between theory and practice, requiring judicial vigilance. The courts have consistently reiterated that constitutional rights do not end with arrest and continue to apply in custodial environments.

Consequently, constitutional provisions constitute the mainstay of custodial violence in India. The courts have applied a liberal interpretation and judicial activism to transform these provisions into effective protections for human dignity. But their efficacy rests on their enforcement and adherence to the rule of law.

2. Guidelines and Preventive Measures

The Indian judiciary has been active in formulating guidelines to prevent custodial torture and promote transparency in the process of arrest and detention. The Supreme Court has issued binding guidelines to supplement the statutory framework and protect individual rights, considering the deficiency of the laws in this regard. These guidelines are aimed at preventing custodial torture and abuse.

One such landmark case is *D.K. Basu v. State of West Bengal*⁵ in which the Court issued detailed guidelines to be observed during arrests and detention. These guidelines include the preparation of arrest memos, informing families, medical checks and record keeping. It stated that if the guidelines are not followed, the officials will be guilty of contempt of court and departmental punishment.

Likewise, in *Joginder Kumar v. State of U.P.*⁶, the Supreme Court stressed that an arrest should not be done as a routine practice and must be necessary. It acknowledged that the unnecessary arrests are a major cause of custodial torture. It argued that the police need to be mindful of the rights of individuals and thus enforce accountability.

The Court's guidelines have had a profound impact on police practices and have been adopted in statutory laws like the Code of Criminal Procedure. But there are issues of non-compliance with these guidelines, as highlighted in many cases throughout the country. This raises

⁵ AIR 1997 SC 610.

⁶ (1994) 4 SCC 260.

questions on the need for more effective compliance and oversight.

The judiciary has also called for the use technology for prevention. Instructions for placing CCTV cameras in police stations and interrogation centres seek to make law enforcement transparent and uncoerced. These steps are a step forward in implementing contemporary, evidence-based strategies to deal with custodial violence.

Another crucial component of judicial reform is the focus on sensitisation and training of police officers. Judicial pronouncements have emphasised the importance of human rights training and awareness among police personnel to curb police abuses. This acknowledges that legal reforms need to be complemented by institutional and mindset change.

To sum up, judicial guidelines have been instrumental in preventing custodial violence through the provision of guidelines for police conduct. These have improved procedural protections but need to be administered, monitored and made compliant through accountability measures.

3. State Liability and Compensation Law

A major contribution of the courts to tackling custodial violence is the doctrine of state liability. Under the doctrine of sovereign immunity, the state was immune from liability for wrongful acts of state officials. This has been gradually eroded by the Supreme Court in cases of infringement of fundamental rights.

In *Nilabati Behera v. State of Orissa*⁷, the Court ruled that the state is liable to compensate for custodial death caused by the negligence or misconduct of the police. It highlighted that compensation is a public law remedy rather than private law damages. This was a landmark case that recognised the state's inability to shy away from responsibility for infringement of fundamental rights.

Likewise, in *Rudul Sah v. State of Bihar*⁸, the Supreme Court granted compensation to a person who was illegally arrested even after being acquitted. The Court stressed that mere release from unlawful detention is not enough and monetary compensation must be awarded for the infringement of fundamental rights. This laid down the foundation for the award of

⁷ (1993) 2 SCC 746.

⁸ (1983) 4 SCC 141.

compensation in India.

Strict liability has also been employed in custodial violence cases, where the onus is on the state to provide satisfactory reasons for the injuries or death in custody. This takes into account the unequal power dynamics between the state and the custodians and ensures accountability.

Compensation not only compensates the victims but also acts as a deterrent. The judiciary aims to bring about systemic change by holding the state financially accountable, thereby driving organisational change. But compensation is not sufficient to redress the harms suffered by victims and their families.

The judiciary has also stated the need for the criminal prosecution of the erring officers along with compensation. This not only guarantees accountability and justice but upholds the rule of law. The courts have continually made clear that custodial violence is not just a civil wrong, but a crime.

However, there are still problems in enforcing state liability. Compensation processes remain delayed, standards are not standardised, and there is reluctance from authorities. A legal framework is needed to facilitate compensation and ensure prompt redress for victims.

Hence, the development of state liability law is an example of the judiciary upholding fundamental rights and holding the state accountable for custodial violence. It marks a progressive move towards a more compassionate and rights-friendly legal framework.

4. Evidence and Court's Approach

Evidence in custodial violence cases can be particularly difficult to obtain due to the confidentiality of custodial institutions and control over the evidence by custodial authorities. It is often difficult for victims to provide direct evidence, making it hard to prove guilt beyond reasonable doubt. Courts have acknowledged these factors, and taken a more lenient approach to such cases.

In *State of M.P. v. Shyamsunder Trivedi*⁹, the Supreme Court recognised the infrequency of direct evidence in custodial violence cases. It highlighted the importance of considering

⁹ (1995) 4 SCC 262.

circumstantial evidence and drawing inferences against the police in these cases. This was a departure from the traditional approach and a victim-focused approach emerged in custodial violence cases.

Likewise, in *People's Union for Civil Liberties v. State of Maharashtra*, the Court provided guidelines for investigation of encounter killings, stressing the need for transparency and impartial investigation. While this case was related to encounter killings, the guidelines provide a framework that is applicable to custodial violence cases, especially in holding authorities accountable and ensuring thorough investigation.

The courts have also acknowledged the role of medical evidence in proving custodial abuse. Autopsy reports, medical records of injuries, and forensic evidence is essential to establish the cause of injury or death. Jurisdictions have emphasised the importance of independent and objective medical evidence to prevent fiddling of evidence.

The other important consideration is the reversal of the burden of proof in some cases. Where someone is killed or injured in custody, it is incumbent on the state to offer an explanation. This is based on the doctrine of "custodial responsibility" - that while a person is in custody, he or she is in the sole custody of the state.

The courts have also placed an emphasis on the need for custodial violence to be investigated by independent agencies. The orders for investigation transfers to bodies like the CBI are made to maintain impartiality and legitimacy. This is in an attempt to alleviate the inherent bias in police investigations of their own misconduct.

Notwithstanding these judicial initiatives, issues like witness intimidation, absence of evidence and bias still hinder the pursuit of justice. Improving investigative processes and safeguarding witnesses are crucial for efficient adjudication of custodial violence.

To sum up, the judiciary has taken a more flexible and progressive stand to address the evidentiary issues in custodial violence cases.

Through a liberal approach to evidence and by highlighting accountability, the judiciary has aimed to prevent justice being thwarted by technicalities. This attitude reflects the importance of promoting human rights and the rule of law in custody.

Conclusion and Suggestions

Custodial violence remains a major threat to the constitutional values of dignity, liberty and the rule of law in India. Despite the presence of a robust jurisprudence under Articles 20, 21 and 22 and numerous judicial pronouncements, custodial torture and deaths continue to plague society. There is no doubt that the judiciary has had a transformative impact on the law in terms of expanding the ambit of fundamental rights, establishing custodial violence as an affront to human dignity, and developing the law of accountability and compensation. Yet, implementation of its pronouncements is a significant issue.

In *D.K. Basu v. State of West Bengal*, the Supreme Court made it unequivocally clear that custodial torture is a bare-faced assault on human dignity, and provided guidelines to prevent it. However, the continued breaches of the guidelines suggest deficiencies in implementation. Likewise, in *Nilabati Behera v. State of Orissa*, the Court stressed the accountability of the state by awarding compensation for custodial death, and thus reiterated that the state cannot escape accountability for misuse of power. These decisions demonstrate a robust approach by the judiciary, but also underline the need for more than judicial exhortations.

A key take-out is that custodial violence is not only a legal challenge but also a systemic one, relating to practices, accountability, and training of police forces. The continued existence of violence erodes the trust in the criminal justice system and undermines democracy. While judicial activism is important, it cannot be a substitute for executive measures and legislative reforms.

Another critical insight in this regard is the development of doctrine of state liability, which has enhanced the rights of victims by offering compensation and recognising the denial of fundamental rights as a public law wrong. But compensation cannot be a sole remedy. It's imperative that the police (or other security personnel) who err are brought to trial, the police department is held responsible, and policing is reformed to avoid such abuses in future.

In terms of evidence, the courts have taken a liberal approach in permitting the use of circumstantial evidence and reversal of the burden of proof in custodial death cases. This is essential in light of the challenges in establishing custodial violence. But in the absence of effective investigatory processes and oversight, even these judicial reforms may not have the desired impact.

Suggestions

Firstly, there is a need to stringently follow and implement judicial guidelines as laid down in D.K. Basu. There should be strict compliance through monitoring by independent commissions, including human rights commissions and judicial magistrates. Failure to comply should be met with severe penalty, both criminal and departmental, for the concerned officers.

Secondly, India should have an anti-torture law in accordance with international norms. While India has constitutional safeguards, a specific legislation defining and criminalising torture is lacking. Adopting international anti-torture conventions would also bolster India's human rights regime.

Thirdly, there is a need for police reforms. This involves human rights training, application of scientific investigative methods and use of non-violent interrogation methods. Training initiatives can help shift the culture of police officers and foster accountability and humanity towards the arrested.

Fourthly, technology-driven measures like mandatory use of CCTV cameras for all police stations, electronic arrest records and body cameras must be used. Such strategies can be deterrents and play an important role in establishing the truth in cases of custodial violence. Judge's directives in this regard need to be implemented in all states.

Fifth, there must be an improvement in victim compensation schemes and speedy payment of compensation. This should be complemented with rehabilitation for victims and/or their kin. Further, access to legal advice should be improved to enable victims to seek justice.

Finally, independent investigation of cases of custodial violence should be provided. Investigations should be conducted by the authorities other than the local police to remove any possibility of bias and conflict of interest. Investigations may also be supervised by the judiciary for greater credibility.

Finally, although the Indian judiciary has shown remarkable progress in dealing with custodial violence through its interpretation of the Constitution and the liability of the state, the challenge remains with proper implementation and reform. A tri-pronged approach by the judiciary, legislature and executive is needed to eliminate custodial violence and ensure constitutional guarantees of justice, dignity and human rights.

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