
BREAKING THE SILENCE: CUSTODIAL TORTURE AND VICTIM REHABILITATION MEASURES IN INDIA

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ABSTRACT

Custodial torture in India continues to be a persistent human rights issue, evincing deep-seated systemic inadequacies, failures of institutional framework, and the history of impunity deeply ingrained in the criminal justice system. There is indiscriminate torture, inhuman treatment and custodial death, especially of marginalized communities, despite constitutional guarantees under Articles 21 and 22 and international obligations under various instruments (e.g. United Nations Convention against Torture, UNCAT). Judicial deliberations, by way of public interest litigations (PILs) such as *D.K. Basu v. State of West Bengal* (1997) and *Nilabati Behera v. State of Orissa* (1993), have established the constitutional entitlement for victims to adequate compensation and therefore have delineated procedural mechanisms for a sound punitive response and compensation to victims. There have been statutory initiatives to support effective rehabilitation of torture victims under Section 396 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) and National Legal Services Authority (NALSA) schemes which provide monetary, medical, psychological and socio-economic support towards comprehensive rehabilitation. However, mechanisms towards rehabilitation have been deficient. Compensation has not acted as a spur to effectively rehabilitate and give a sense of agency to victims, delayed payments, a manual process, and a non-existent comprehensive rehabilitation mechanism have added to the inadequacies. This study aims to critically assess constitutional provisions, judicial trends, statutory provisions and mechanisms towards institutions to assess their overall efficacy towards rehabilitation after custodial torture. It emphasizes the necessity for legislative clarity, an independent investigation body, open oversight, and combined victim-centered rehabilitation programs to restore dignity, ensure justice, and promote accountability. Strengthening these measures is especially important to disrupt the cycle of trauma, and to uphold the rule of law in India.

Keywords: Custodial Torture, Victim Rehabilitation, Human Rights, Section 396 BNSS.

1. INTRODUCTION:

Custodial torture is one of the most serious human rights violations in India, exposing the inherent flaws that exist within the criminal justice system. Notwithstanding constitutional guarantees under Articles 20, 21, and 22 and India's international obligations under treaties like the International Covenant on Civil and Political Rights (ICCPR), reports of custodial violence, inhuman treatment and custodial deaths continue to emerge. Such practice not only delegitimizes law enforcement agencies, undermining the foundation of democracy and rule of law, but also throws the constitution into a hypothetical domain. The Supreme Court has condemned torture outright in cases like *D.K. Basu v. State of West Bengal* (1997) and has attempted to establish procedural safeguards, yet, the continued practice of torture illustrates a grave disconnection between the courts' intentions and our lived reality. The issue is further complicated by weak accountability mechanisms, a lack of transparency in investigations, and the culture of impunity for offenders. Victims of custodial torture face double trauma, firstly in relation to the trauma they face through physical and psychological abuse and secondly in their inability to rehabilitate and find redress. Rehabilitation cannot simply mean financial compensation: rehabilitation must consist of medical, psychological, and social rehabilitative support that allows for victims and their families to regain their dignity. While the National Human Rights Commission (NHRC) and the courts have attempted to address custodial torture and provide redress through their respective interventions, their efforts are uncoordinated and incomplete because there is no overarching anti-torture law.

This paper will critically consider custodial torture in India, its systemic causes, and what is necessary for victim rehabilitation, through examples of constitutional safeguards, judicial trends, and international standards. More importantly, this paper is meant to draw attention to the law's systemic failures that keep custodial torture entrenched within society, as well as to highlight the need for structural change whereby punishing offenders does not take precedence over victim centered rehabilitation and developing holistic ways to tackle custodial torture and break the silence regarding this serious abuse of power.

1.1.Statement of the Problem:

Existing victim redressal mechanisms such as the Victim Compensation Scheme under Section 357A of CrPC (now Section 396 of BNSS, 2023) and NALSA guidelines lack effective implementation and fail to ensure comprehensive rehabilitation, including psychological,

medical, and socio-economic support, leaving survivors of custodial torture without meaningful justice or reintegration assistance.

Custodial torture persists in India despite constitutional protections under Article 21 and Article 22 of the Indian Constitution, which guarantee the right to life, personal liberty, and safeguards against arbitrary arrest and detention. The absence of a dedicated anti-torture legislation, even after signing the United Nations Convention Against Torture (UNCAT), has left a critical legal vacuum, enabling continued abuse without adequate statutory deterrence.

While legal frameworks like Article 21 of the Indian Constitution (Right to Life and Personal Liberty) and directives from the Supreme Court (*D.K. Basu v. State of West Bengal*) aim to prevent custodial abuse, reports from the National Human Rights Commission (NHRC) and civil society organizations indicate continued incidents of torture, deaths in custody, and systemic impunity. The lack of a standalone anti-torture law further weakens accountability mechanisms.

1.2. Research question:

1. How effective are India's existing legal and institutional mechanisms in preventing custodial torture and ensuring accountability?
2. What are the key factors contributing to the persistence of custodial torture in India despite constitutional and legal safeguards?
3. What are the major challenges faced by victims of custodial torture in accessing justice and rehabilitation?
4. How does the absence of a standalone anti-torture law impact the prosecution of perpetrators and victim compensation?

1.3. Research Objectives:

1. To analyse the constitutional provisions, safeguard against custodial torture with respect to Article 21, 22
2. To study the challenges faced by victims of custodial torture in seeking legal redress and compensation.

3. To identify the existing legal mechanisms for victim compensation and rehabilitation in cases of custodial violence, with reference to Section 396 of BNSS, relevant schemes like the Victim Compensation Scheme under the National Legal Services Authority (NALSA), and judicial guidelines issued by the Supreme Court in cases such as *D.K. Basu v. State of West Bengal*.
4. To trace the role of judiciary and human rights institutions such as the National Human Rights Commission (NHRC), State Human Rights Commission (SHRC) in safeguarding the rights of detainees and ensuring post custodial remedies and rehabilitation.

2. LITRATURE REVIEW:

Partha Pratim Mitra work on custodial torture in India highlights the intersection of human rights violations, judicial interventions, and the urgent need for victim centered rehabilitation. Partha Pratim Mitra, in his study on *Victim Compensations against Torture in India*, underscores the paradox between India's proactive judiciary and its legislative inertia. While cases such as *Nilabati Behera v. State of Orissa* and *Bhim Singh v. State of J&K* expanded compensatory jurisprudence, Mitra emphasizes that judicially crafted remedies remain symbolic without legislative backing, particularly given India's failure to ratify the UN Convention Against Torture (UNCAT).¹ Kashish Gupta similarly observes in her analysis of custodial deaths that the absence of enforceable anti-torture legislation, despite repeated attempts through the Prevention Against Torture Bill, perpetuates impunity. She notes that judicial compensation functions as a stopgap but fails to provide comprehensive victim rehabilitation or systemic reform.²

Expanding on this, Vijay Kumar Beniwal situates custodial torture within a broader legislative vacuum, arguing that fragmented protections under the IPC, CrPC, and constitutional provisions are insufficient. His comparative analysis with BRICS nations reveals India's inadequacy in harmonizing domestic law with international commitments, thus limiting both prevention and victim redress.³ Complementing this legal perspective, Neha Bharti critiques

¹ Partha Pratim Mitra, *Victim Compensations against Torture in India: Judicial Approach vis-a-vis International Conventions*, 50 Indian J. Criminology 33, 38–41 (2022).

² Kashish Gupta, *Custodial Deaths with Reference to Prevention against Torture Bill, 2017*, 3 Int'l J. L. Mgmt. & Human. 2287, 2290–92 (2020).

³ Vijay Kumar Beniwal, *Custodial Torture and India: Legislative and Judicial Approach*, 5 Int'l J. L. Mgmt. &

custodial torture as a gross human rights violation, particularly emphasizing the plight of vulnerable groups such as women and undertrials. Author stresses the importance of structural reforms, including training, forensic safeguards, and human rights education, to ensure not merely compensation but long-term rehabilitation and dignity restoration for victims.⁴ Together, these works reveal a consistent research gap: while judicial pronouncements provide symbolic relief, there is inadequate focus on rehabilitation frameworks, victim participation, and institutional accountability an area where this dissertation seeks to contribute.

3. CONSTITUTIONAL AND LEGAL SAFEGUARDS AGAINST CUSTODIAL TORTURE IN INDIA

The protective constitutional and legal frameworks of custodial torture in India demonstrate a commitment towards dignity as well as the evolving case law of the Supreme Court. Article 21 of the Constitution of India, as judicially interpreted, extends well beyond a lifeless and mechanistic notion of life and liberty to encompass the right to life including dignity, torture-free treatment, and humane care within detention facilities. Along with Articles 14, 20, and 22, the jurisprudence has also provided a constitutional umbrella to shield against arbitrary arrest, enforcement of coercive confessions, as well as unjust punishment.⁵ This constitutional mandate has been operationalized through statutory measures under the Bharatiya Nyaya Sanhita (BNS, 2023), Bharatiya Nagarik Suraksha Sanhita (BNSS, 2023), and the Bharatiya Sakshya Adhinyam (BSA, 2023), which criminalize custodial violence, regulate arrests, and make void any confession which has been coerced.⁶ India has developed a strong framework of judicially evolved safeguards that function as bulwarks against custodial torture. The Supreme Court, through landmark decisions such as *D.K. Basu v. State of West Bengal*,⁷ laid down detailed guidelines to regulate arrest and detention, mandating procedures such as preparing an arrest memo, informing relatives of the arrestee, medical examination at regular intervals, and production before a magistrate within twenty-four hours. These guidelines, later codified in statutes, reflect the judiciary's proactive role in embedding human rights into the criminal justice system. Furthermore, in *Nilabati Behera v. State of Orissa*⁸, the Court

Human. 1869, 1875–78 (2022).

⁴ Neha Bharti, *Custodial Torture: Gross Human Right Violation*, 20 *Supremo Amicus* 356, 360–64 (2020).

⁵ India Const. art. 21; India Const. arts. 14, 20, 22.

⁶ Bharatiya Nyaya Sanhita, No. 44 of 2023; Bharatiya Nagarik Suraksha Sanhita, No. 45 of 2023; Bharatiya Sakshya Adhinyam, No. 46 of 2023.

⁷ (1997) 1 S.C.C. 416 (India).

⁸ 2 S.C.C. 746 (India).

recognized the right to compensation for custodial deaths, underscoring the principle that fundamental rights are not only enforceable through declaratory relief but also through remedial and compensatory measures. The incorporation of Section 357A of the Code of Criminal Procedure, now mirrored in the BNSS, institutionalizes victim compensation schemes at the state level, thereby reinforcing accountability of the state in cases of custodial violence.⁹

Equally important are the preventive mechanisms such as the establishment of the National Human Rights Commission (NHRC) under the Protection of Human Rights Act, 1993, which has the mandate to monitor detention facilities, issue guidelines, and recommend compensation in cases of custodial torture and death.¹⁰ State Human Rights Commissions and Non Official Visitors' Committees supplement this oversight, ensuring checks on abuse of power by law enforcement agencies.¹¹ International obligations also play a persuasive role: though India has not yet ratified the UN Convention against Torture (CAT), its principles have influenced judicial reasoning and policy debates, keeping pressure on the state to align domestic practices with global human rights standards.¹² Thus, through a combination of constitutional protections, statutory enactments, judicial pronouncements, institutional oversight, and international influence, India has evolved a multilayered legal framework designed to minimize custodial torture and uphold the dignity of individuals in state custody. Another important obstacle is the lack of a comprehensive rehabilitation framework, a right that the UNCAT clearly articulates as immediate under Article 14.¹³ The idea of "rehabilitation" occurs within the context of a holistic, victim-centered process, integrating a medical, psychological, legal and social framework that is contextually sensitive to gender and/or culture.¹⁴ Many states do not fully fund rehabilitation programs, preferring to view rehabilitation as secondary to punitive measures against perpetrators.¹⁵ The lack of supporting rehabilitation contravenes the state's international obligations while also perpetuating continued suffering – untreated or poorly managed chronic pain, psychiatric disorders, or prolonged social marginalization has

⁹ Code of Criminal Procedure, No. 2 of 1974, § 357A (India); Bharatiya Nagarik Suraksha Sanhita, No. 45 of 2023, § 396 (India).

¹⁰ Protection of Human Rights Act, No. 10 of 1993, §§ 12–15 (India).

¹¹ Id. § 13; see also Ministry of Home Affairs, *Non-Official Visitors' Committees Guidelines*, <https://mha.gov.in>

¹² United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85

¹³ CAT, General Comment No. 3, *Implementation of Article 14 by the States parties*, U.N. Doc. CAT/C/GC/3 (Nov. 19, 2012).

¹⁴ Nimisha Patel, Therese Rytter & Elna Søndergaard, *Good Practices and Current Challenges in the Rehabilitation of Torture Survivors* (Convention Against Torture Initiative/DIGNITY Discussion Paper, June 2016).

¹⁵ Id.

devastating implications for quality of life. Survivors are often unaware of available services, particularly among marginalized communities like Dalits, Adivasis, Muslims, refugees, or political dissenters, which are directly susceptible to custodial violence in India, for example.¹⁶ Even when rehabilitation services do exist, its accessibility can be limited by distance from services, language issues, and mistrust of professionals because they are believed to have relationships with state institutions.¹⁷ The inability to provide timely interventions also poses challenges for long term outcomes, as the absence of treatment for the trauma ultimately becomes consolidated into a chronic condition which may be less resistant to therapy.

4. CHALLENGES FACED BY VICTIMS OF CUSTODIAL TORTURE

The act of custodial torture represents one of the most serious breaches of human rights, and individuals who survive this abuse will generally deal with a complicated and multifaceted set of difficulties that may persist long after their release, having physical, psychological, social, and legal dimensions. The primary challenge has to do with the physical consequences of torture, which usually can include fractured bones, burns, lacerated skin, and injuries from methods such as beating of the soles of the feet, that can lead to chronic neuropathic pain and mobility issues.¹⁸ Chronic pain is described as a “defining marker” of survivors of torture, with studies showing that even after the torturous episode has ended, there can be long-term sequelae including gastrointestinal disorders (e.g., ulcerative colitis and Crohn’s disease), urogenital complications, and disabilities requiring surgical intervention.¹⁹ The ramifications affect neurobiological damage, too: even methods that are properly called “psychological” or “behavioral,” methods such as sleep deprivation and sensory deprivation, clearly impede neurogenesis, produce peculiar slow-wave activity, and cause loss of brain mass-related changes (in addition to other bodily systems) that could support the view that they have lower potential harm.²⁰ That is, torture survivors carry a body, one that remains mobilized to a site of continuous harm, at the level of organic damage that persists across multiple systems. Alongside physical suffering, the psychological effects of torture are substantial, and often more debilitating than bodily injuries. Survivors often experience complex psychiatric

¹⁶ Abhishek S & Priyanka Gupta, *Systemic Challenges in Preventing Custodial Deaths*, 5 Indian J. Legal Rev. 812 (2025).

¹⁷ Id.

¹⁸ Kirstine Amris & Gunilla Brodda Jansen, *Chronic Pain as Consequence of Torture: Management*, IASP/EFIC Fact Sheet No. 13 (2019).

¹⁹ Id.

²⁰ Claudia Catani et al., *The Tortured Brain*, in *The Trauma of Psychological Torture* 173 (Almarendo E. Ojeda ed., 2008).

symptomatology beyond mere post-traumatic stress disorder (PTSD), including depression, chronic anxiety, dissociation, hypervigilance, emotional numbing, and serious sleep disturbance. Violence and violations in custody especially disrupt survivors' sense of self-continuity and identity, leading to shame, guilt, and social withdrawal.²¹ Studies of Syrian survivors illustrate how trauma causes "hidden scars" in the form of ongoing nightmares, flashbacks, intrusive thoughts, and self-harm.²² The state of unrelenting fear and memories of humiliation and subjugation similarly result in survivors losing their trust in institutions, authority, and sometimes their own families.²³ The psychological outcomes may also include suicidal ideation and a deep feeling of hopelessness, especially when access to trauma-informed mental healthcare before, during, and after custody are limited and often non-existent.²⁴ In societies where mental health disorders are stigmatized, survivors are unable to seek help further compounding their sense of isolation and reinforcing the debilitating long-term effects of psychological torture.

Social and economic ramifications exacerbate these medical and psychological issues. Torture survivors often feel ostracized from communities that either stigmatize them for their victimization or are defensive and reject relationships with those the authorities targeted.²⁵ Isolation may mean that these torture survivors have difficulty maintaining their employment, pursue educational opportunities, or live in stable housing all of which lead them to poverty and social isolation.²⁶ Torture survivors often report a reduced capacity to develop and sustain intimate relationships or professional relationships due to mistrust, anger, and emotional instability, which can consequently reproduce loneliness.²⁷ Economic vulnerabilities exacerbate if survivors have physical limitations that prevent re engagement in the workforce. In addition, political persecution may limit their ability to access welfare or rehabilitation programs.²⁸ In conflict and post conflict situations, displacement can further deprive survivors of their social support system and result in increased vulnerability.¹⁴ Importantly, research has

²¹ Santosh Kumar, *Torture in Lawful Custody in India: Analyzing the Violation of the UN Convention Against Torture (UNCAT) and the Psychological Consequences of Torture*, ILI L. Rev. 283 (Summer 2024).

²² Niveen Rizkalla et al., *Hidden Scars: The Persistent Multifaceted Health and Psychosocial Consequences for Syrian Torture Survivors*, 15 J. Traumatic Stress 2400833 (2024).

²³ Id.

²⁴ Daniel Kramer, *The Effects of Psychological Torture*, Berkeley L. (June 2010)

²⁵ Nimisha Patel, Therese Rytter & Elna Søndergaard, *Good Practices and Current Challenges in the Rehabilitation of Torture Survivors* (Convention Against Torture Initiative/DIGNITY Discussion Paper, June 2016).

²⁶ Id.

²⁷ A. Steptoe et al., *Loneliness and Neuroendocrine, Cardiovascular, and Inflammatory Stress Responses in Middle-Aged Men and Women*, 29 Psychoneuroendocrinology 593 (2004).

²⁸ supra note 12.

shown that integrated livelihood programs (e.g., vocational training incorporated within mental health and psychosocial support programs) are associated with enhanced rehabilitation by decreasing experiences of depression, anxiety, and PTSD, while improving a sense of freedom and economic independence in a culture of resilience.²⁹ Unfortunately, the existing programs are limited and less available to the most socially and economically marginalized groups that have experienced custodial torture. In addition to individual exploitation, victims face organizational and legal barriers in seeking accountability and justice. While the UN Convention Against Torture (UNCAT) prohibits torture everywhere, many states do not criminalize torture in their own laws or have laws that create loopholes for torturers to escape accountability.³⁰ For instance, India has signed but not ratified UNCAT; this limits the obligation to commit to compliance mechanisms under international law.³¹ Victims of torture or cruel, inhuman, or degrading treatment or punishment face intimidation, political pressure, and evidence tampering during the filing of torture complaints, particularly when police officers investigate account of police officers.³² Independent oversight mechanisms are inadequate, and systemic bias towards state actors embolden victimization by state actors. The result is a culture of impunity that is entrenched in many contexts.³³

5. VICTIM COMPENSATION AND REHABILITATION IN CASES OF CUSTODIAL VIOLENCE

Custodial violence, which covers torture, assault, sexual abuses, and deaths occurring in custody, has become one of the worst human rights violations and concerns of India. It literally pierces the fabric of the rule of law and undermines the faith in democracy of the country. Under Part III of the Constitution of India, fundamental rights are guaranteed, with Article 21³⁴ the foremost which provides for the right to life and personal liberty. The right to protection of one from torture and ill-treatment is not stated in Article 21, however, custodial violence is a negation of Article 21 which judges have written into the Constitution. In these instances, punishment to the police officers is not the only answer to the wrong done to the victims and

²⁹ Diwakar Khanal et al., *Outcomes of Integrating Livelihood into Mental Health and Psychosocial Support Program Among Survivors of Torture: A Mixed-Method Study from Western Nepal*, 34 *Torture* 41 (2024).

³⁰ CAT, General Comment No. 3, *Implementation of Article 14 by the States parties*, U.N. Doc. CAT/C/GC/3 (Nov. 19, 2012).

³¹ India: The Continuing Impunity of the Perpetrators of Torture and an Extrajudicial Execution in October 2002, World Org. Against Torture Urgent Intervention IND 081003 (Oct. 8, 2003).

³² Tvisha Gupta, Shalini Koppula & Yasasree Mohanty, *Legal Safeguards Against Custodial Violence: A Comparative Analysis of India, Pakistan & USA*, 3 *Int'l J. Legal Soc. Sci.* 403 (2025).

³³ *Id.*

³⁴ INDIA CONST. art. 21.

their kin. Victims who lose faith in constitutional governance are afforded no choice but to seek compensation and rehabilitation which are primary in their delictual relief suffering from constitutional wrongs. Judicial activism has enabled the development of the framework concerning compensation for victims of custodial violence. In the case of *Rudul Sah v. State of Bihar*,³⁵ the Supreme Court for the first time ordered payment of compensation to a victim who underwent illegal confinement for several years, even after being acquitted.

The Court held that the right to approach the Supreme Court under Article 32 would be illusory unless the Court had the power to provide effective relief, including compensation, in case of infringement of fundamental rights. This ruling formed the basis of compensatory jurisprudence in India. Also, in *Nilabati Behera v. State of Orissa*³⁶, in which a young man met his death in police custody, the Court reaffirmed that compensatory relief in custodial death is not a subject of private law of torts but a constitutional one in the nature of public law. Justice Anand held categorically that the State is absolutely liable for such violations by its agents. Subsequently, in *D.K. Basu v. State of West Bengal*³⁷ the Supreme Court reiterated that money compensation must be seen as a suitable and effective remedy against victims of custodial death and torture. These judgments strongly established that the State cannot abdicate responsibility for custodial violence and that compensation had to be granted as a constitutional mandate.

Compensation and rehabilitation of victims in cases of custodial violence in India have evolved through judicial orders, statutory provisions, and institutional mechanisms. The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which amends the Code of Criminal Procedure, maintains and enhances provisions for relief to the victim. Section 396 of BNSS³⁸ (equivalent to Section 357A of the CrPC) provides that all State Governments, in liaison with the Central Government, shall draft a detailed scheme for payment of compensation to victims of crime or their dependents who are victims of loss or injury. It covers victims of custodial torture or their kin in case of custodial death. The provision is a move towards acknowledging the State's duty to deliver restorative justice in addition to criminal prosecution.

The Victim Compensation Scheme of the National Legal Services Authority (NALSA)³⁹ also

³⁵ A.I.R. 1983 S.C. 1086 (India).

³⁶ (1993) 2 S.C.C. 746 (India)

³⁷ (1997) 1 S.C.C. 416 (India).

³⁸ Bharatiya Nagarik Suraksha Sanhita, No. 45 of 2023, § 396 (India).

³⁹ National Legal Services Authority (NALSA), *Victim Compensation Scheme*, <https://nalsa.gov.in/schemes/victim-compensation-scheme>

plays an important role. NALSA, through State Legal Services Authorities, enforces compensation schemes that offer monetary relief, medical assistance, and at times educational and rehabilitative assistance to victims and their family members. These schemes seek to bring consistency in relief across states, though differences in quantum and implementation are a concern. The National Human Rights Commission (NHRC), set up under the Protection of Human Rights Act, 1993, has been a key institution in suggesting compensation in instances of custodial death and torture. The NHRC not only issues interim monetary relief but also oversees compliance by the State. State Human Rights Commissions, at the State level, have also used corresponding powers within their jurisdictions.⁴⁰ In spite of these structures, the implementation of the compensation schemes is nevertheless erratic and inadequate in practice.

The difficulties in ensuring proper compensation and rehabilitation for custodial violence are manifold. To begin with, relief is tardy, and victims or their kin are forced to undertake protracted legal proceedings before any financial relief is provided to them. Further, the amount of compensation is highly variable from one case to another with no uniformity and at times being too inadequate to provide even for medical or funeral costs. Third, implementation of recommendations by the NHRC or the courts is resisted by State officials, resulting in additional suffering for victims.⁴¹ Furthermore, the lack of a holistic law against torture has rendered mechanisms for compensation and rehabilitation anemic and haphazard, depending almost entirely on judicial remedies instead of legislative clarity.

Although monetary compensation gives some degree of relief, real justice to victims of custodial violence needs a holistic vision of rehabilitation. Rehabilitation is not just about monetary help; it is about medical, psychological, social, and legal assistance. Surviving victims of custodial torture often bear long-term physical injuries necessitating continuous medical care. They also have to face psychological trauma, such as anxiety and depression, and social stigma, which need professional counseling and mental health care.⁴² For the custodial deaths, the family members of the victim are usually left without financial assistance. Rehabilitation, therefore, needs to incorporate livelihood assistance, education assistance to children, and vocational training to enable families to earn their livelihood.⁴³ Legal aid is also

⁴⁰ Protection of Human Rights Act, No. 10 of 1993, §§ 12–15 (India).

⁴¹ Abhishek S. & Priyanka Gupta, *Systemic Challenges in Preventing Custodial Deaths*, 5 Indian J. Legal Rev. 812, 812–822 (2025).

⁴² Kirstine Amris & Gunilla Brodda Jansen, *Chronic Pain as Consequence of Torture: Management*, IASP/EFIC Fact Sheet No. 13 (2019).

⁴³ Diwakar Khanal et al., *Outcomes of Integrating Livelihood into Mental Health and Psychosocial Support*

critical, as the victim and the family need to be able to file cases against guilty officials without facing financial burdens. At this juncture, the subject of restorative justice applies. Compensation and rehabilitation must not only deliver monetary relief but also the recovery of the victims' dignity as well as their confidence in the justice system. Those nations that have signed the United Nations Convention Against Torture (UNCAT) have embraced strong compensation and rehabilitation schemes.⁴⁴ While India has acceded to but not ratified the Convention, harmonizing national law with such international norms is crucial. Lacking a standalone anti-torture law remains counterproductive to India's capacity to be fully compliant with international requirements, leaving custodial violence victims further exposed. Inclusion of rehabilitative services, such as medical attention, trauma counseling, education, and livelihood assistance, in compensation programs is imperative for effective relief. Civil society groups and legal aid institutions must also be directly engaged in facilitating victim and family awareness and access to these benefits.

Victim compensation and rehabilitation in custodial violence cases are a necessary part of India's constitutional guarantee of justice.⁴⁵ Judicial judgments have established a solid basis by accrediting compensation as a constitutional remedy in public law. Systemic loopholes in enforcement and shortcomings in rehabilitation persist to withhold complete justice for victims. In order to rightfully maintain the dignity of the people and ensure the non-repetition of such egregious violations, India has to shift towards an overall paradigm that combines monetary compensation with all-encompassing measures of rehabilitation. Then alone can the legal framework heal the wounds left by custodial violence and be able to discharge its responsibility of safeguarding the most basic human right which is the right to life and personal liberty.

6. SUGRESSIONS

Law reform, institutional reform, and social reform are necessary to enhance the prevention of custodial torture and strengthen victim recovery measures in India, in the context of systemic aspects of the criminal justice system as well as a deeply entrenched culture of impunity. Custodial torture can be understood as a grievous infringement of fundamental rights under Article 21 of the Constitution of India, which provides for the right to life and personal liberty.

Programs Among Survivors of Torture: A Mixed-Method Study from Western Nepal, 34 *Torture* 41, 41–49 (2024).

⁴⁴ United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85.

⁴⁵ Bharatiya Nagarik Suraksha Sanhita, No. 45 of 2023, § 396 (India).

While the Constitution provides for various safeguards and protections, the ongoing practice of custodial death speaks to the continuing depth in regard to institutional failure of accountability and institutional failure generally, to enforce legal constitutional safeguards. The National Human Rights Commission (NHRC) noted that deaths in police custody rose from a count of 100 in the years 2020–21 to 175 in the next year, while deaths in judicial custody stood at 2,152 in 2021-2022 alone⁴⁶. Similarly, the National Campaign Against Torture (NCAT) reported 1,606 deaths in judicial custody and 125 in police custody in 2019, with vast agreements among families that marginalized communities were primarily represented among the deceased⁴⁷. Similarly, the National Crime Records Bureau (NCRB) reported 591 deaths in police custody between 2010 and 2015, yet more than 69% of deaths were recorded as either due to illness (40%) or alleged suicide (29%), a claim which family members often refute⁴⁸.

Recent state-wise data similarly reveals a concerning sense. For example, Uttar Pradesh's consistently reported custodial deaths, including 451 in 2020–21 and nearly 495 in 2024–25. In West Bengal, custodial deaths also rose significantly from 185 in 2020–21 to 250 in 2024–25. Madhya Pradesh, similarly reported 167 deaths in 2020–21 rising to 195 deaths in 2024–25⁴⁹. Other states such as Maharashtra, Bihar, and Tamil Nadu exhibited similar exhibitions of death rate rises. These figures show patterns of syndemic continued patterns rather than isolated incidents. The data suggests there is a structural tolerance of violence in custody. Marginalized communities experience the majority of this violence. Reports indicate that nearly 60% of deaths in police custody in 2019 were recorded as individuals from Dalit, Adivasi, and Muslim communities pointing to systemic forms of discrimination inherent in the law-enforcement mechanisms of the state.⁵⁰ The continued occurrence of custodial violence in the state of India, demonstrates a failure of institutional and political will. India is a signatory, but not a ratifier, of the UN Convention Against Torture (UNCAT) as of 1997,⁵¹ lacks sufficient anti-torture law, and continues to protect offenders as there are legislative provisions, which fall under Section 197 of the Code of Criminal Procedure (now Section 218 of the Bharatiya Nagarik Suraksha Sanhita), which requires government sanction to prosecute torturers victimizing citizens.

⁴⁶ Nat'l Hum. Rts. Comm'n of India, *Annual Report 2021–22* (2023).

⁴⁷ Nat'l Campaign Against Torture, *India: Annual Report on Torture 2019* (2020).

⁴⁸ Nat'l Crime Records Bureau, *Crime in India 2015* (2016).

⁴⁹ State-wise Custodial Deaths in India (2020–2025) (compiled from NHRC, NCRB & media reports including *Outlook India*, *Times of India*, & *India Times*).

⁵⁰ Abhishek S. & Priyanka Gupta, *Systemic Challenges in Preventing Custodial Deaths*, 5 *Indian J. Legal Rev.* 812, 819–22 (2025).

⁵¹ Santosh Kumar, *Torture in Lawful Custody in India: Analyzing the Violation of the UN Convention Against Torture (UNCAT) and the Psychological Consequences of Torture*, *ILI L. Rev.* 283, 285 (Summer 2024).

Investigative procedures on custodial violence are conducted by police forces, which include police officers implicated in the abuse, creating a conflict of interest and impunity.

Although rehabilitation is one of the most important principles, its implementation in India is limited by the lack of a strong legislative framework, which makes torture explicitly illegal. India signed the UN Convention Against Torture (UNCAT) in 1997, but has not ratified it because of a failure to adopt comprehensive domestic legislation to prevent torture. The Prevention of Torture Bill, 2010, which sought to criminalize acts of torture and update Indian law to comply with UNCAT, was introduced in the Lok Sabha, but was subsequently referred to the Select Committee for review by the Rajya Sabha. The Select Committee suggested some considerably important amendments to enhance certain definitions and precautions of the Bill, however the Bill eventually lapsed with the end of 15th Lok Sabha in 2014.⁵² Subsequent attempts to transform the Prevention of Torture Bill into legislation, including a 2017 draft of the Prevention of Torture Bill, also did not succeed.⁵³ The absence of legislation in these cases means that systemic impunity continues to exist, and that victims lack an effective remedy and statutory right to rehabilitation. In the absence of binding legislation, survivors are left relying upon fragmented constitutional remedies under Articles 21 and 32 of the Constitution of India⁵⁴, and equally insufficient judicial interventions, and occasionally, but insufficiently, for rehabilitation. Without legislation, India still does not fulfill its international obligations, and the right for survivors to receive reparations, including rehabilitation, for custodial torture continues to become complicated.⁵⁵

Section 396 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)⁵⁶ introduces a compensation framework for victims and their dependants, requiring State cooperation with the Central Government in developing funds to compensate victims requiring rehabilitation.⁵⁷ This provision clearly follows Section 357A of the Code of Criminal Procedure, 1973, and goes further in providing specific mechanisms for interim relief, medical support, and compensation in situations where the offender remains unknown. The discussion around

⁵² Select Comm. of Rajya Sabha, *Report on the Prevention of Torture Bill, 2010*, Rajya Sabha (2010)

⁵³ Ministry of Home Affairs, *Draft Prevention of Torture Bill, 2017* (India),

⁵⁴ India Const. arts. 21, 32.

⁵⁵ United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85.

⁵⁶ Bharatiya Nagarik Suraksha Sanhita, No. 45 of 2023, § 396 (India); Code of Criminal Procedure, No. 2 of 1974, § 357A (India).

⁵⁷ Bharatiya Nagarik Suraksha Sanhita, No. 45 of 2023, § 396 (India); Code of Criminal Procedure, No. 2 of 1974, § 357A (India).

Section 396 has the potential to offer a framework that could be dental in custodial torture and custodial deaths if implemented in good faith. Unfortunately, the implementation of Section 357A should serve as an indication that compensation schemes too often suffer the proposed ill effects outlined in bureaucratic inefficiencies.⁵⁸ To overcome these obstacles, reforms should incorporate the following: (i) the need for timely disbursement of compensation and penalties for delay; (ii) a mechanism for unconditional central monitoring via the National Legal Services Authority (NALSA), for standardization across payments; (iii) mandatory linkage of compensation orders with psychological counselling, livelihood support, and community reintegration service and support; and (iv) transparency through state wise publically available compensation data. Strengthening Section 396 in practice offers India a chance to meet its obligations under UNCAT Article 14, which establishes the right to rehabilitation for victims of custodial torture.⁵⁹

7. CONCLUSION

Custodial torture in India is still a serious human rights issue reflecting structural weaknesses in the system, political pressure, and ingrained impunity. In violation of constitutional protections in article 21 and international commitments in the UNCAT, custodial torture is sustained by the absence of an explicit anti-torture law and poor enforcement of existing safeguards. As evidenced in state-level custodial death statistics and annual police deaths reporting, custodial deaths and violence in police and correctional centre custody are increasing and disproportionately affecting vulnerable populations. To meaningfully address these issues using prevention and rehabilitative measures necessitates a coordinated effort that either singly or in sum incorporates substantive legal reform, independent investigative bodies and transparent monitoring and forensic processes and rehabilitative measures for victims. Like Section 396 of the Bharatiya Nagarik Suraksha Sanhita, 2023. which offers statutory victim compensation, the absence of clear and meaningful application of these provisions in practice is paramount. Rehabilitation must include medical interaction, psychological care, social re-integration /functional recovery, economic support and legal support to help independence, personal agency and reintegration into society following incident. At the same time police accountability ought to be integrated with officer human rights training, development of ethical standards, and access to legal counsel for detainees immediately upon apprehension. The

⁵⁸ Abhishek S. & Priyanka Gupta, *Systemic Challenges in Preventing Custodial Deaths*, 5 Indian J. Legal Rev. 812, 815–818 (2025).

⁵⁹ UNCAT, art. 14.

replacement of systemic culture of impunity (through police accountability) and advancing rehabilitative measures are interdependent objectives. India may sustain its constitutional and international obligations to prevent custodial torture, which is recognized at the domestic and multinational levels, as well as provide justice and comprehensive support to survivors only through aggressive legal, institutional and societal measures.