
THE THEATRICALS AND SPECTATORSHIP OF JUSTICE - CUSTODIAL VIOLENCE AND THE RIGHTS OF ARRESTED PERSONS IN INDIA

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I. ABSTRACT

Beyond the reports of torture, mistreatment and disappearances within custody, a staggering number of 4,448 cases of custodial deaths were reported in India between 2020-2022¹. This is exactly what constitutes the paradox of Indian justice systems. While the constitution guarantees implementation of limited rights to arrested persons, the reality of custodial violence reveals otherwise. Within this context thus, justice becomes theatrical. It becomes a spectacle for viewership and a means by which the state asserts moral superiority and exercises power, at the cost of violation of fundamental rights of its citizens. The backstage story of these custodial institutions reveal systematic normalization of violence at the hands of the state where theatricals and spectatorship of justice manifest its ways into courtrooms, media trials and surveillance by the state, turning punishment into a performance and violence into a spectacle.

This essay argues that custodial violence is the foundational basis of the performative form of justice that exists in India.

¹People's Watch, *Global Torture Index 2025: India Factsheet*(OMCT 2025) <<https://www.omct.org/site-resources/files/factsheets/Factsheet-India.2025.pdf>> accessed 14 November 2025.

II. Legal Framework: Rights of Arrested Persons and Custodial Violence

Deep beneath India's statutory framework founded on fairness, equality, and non-arbitrariness lies a choreography of surveilled compliance and normalization of violence in the name of justice. The laws that have been established to protect the rights of arrested persons become the very laws that are exploited by actors of the state to enact their legitimacy and perpetuate violence without accountability.

A. The Script of Protection

The right against self-incrimination, right to life and dignity and the right to be informed and produced before a magistrate within 24 hours of arrest form the foundational rights guaranteed to arrested persons by the Indian constitution under Articles 20(3)², 21³, and 22⁴ respectively. During the Constituent Assembly Debates, concerns about these provisions becoming purely procedural performances were voiced by several members. The most notable one being that of K.M. Munshi who defended the right against self - incrimination by insisting that no person should "be made an instrument for his own conviction"⁵. During the debates around Article 22, Dr. B.R. Ambedkar voiced concerns about the executive abusing its powers in cases of detention and how a close restraint was necessary to make sure personal liberties did not become illusory.

These debates reveal that the co-existence of custodial violence alongside maintenance of procedural formalities was always considered a possibility. These rights that were initially intended as safeguards were feared for how easily they can become props in the performance of justice while simultaneously eroding it.

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) was formulated keeping in mind the 3 foundational principles. Section 35⁶ authorises arrest only when necessary and mandates recording reasons, while 37⁷ makes it mandatory for the arrested person to be informed about the grounds of their arrest. Further, Section 176(A)⁸ mandates a judicial inquiry into every

²Constitution of India 1950, art 20(3).

³Constitution of India 1950, art 21.

⁴Constitution of India 1950, art 22.

⁵K M Munshi, Constituent Assembly Debates, vol VII (3 December 1948).

⁶Bharatiya Nagarik Suraksha Sanhita 2023, s 35.

⁷Bharatiya Nagarik Suraksha Sanhita 2023, s 37.

⁸Bharatiya Nagarik Suraksha Sanhita 2023, s 176(A).

custodial death. Even though the addition of these provisions has promised protection against violation of fundamental rights, reports like the National Human Rights Commission (NHRC) Annual Report that state how India recorded over 2,739 custodial deaths in 2024 alone, out of which only 15% received a judicial inquiry reveal otherwise⁹. The inquiry added as an instrument for the formalisation of transparency and accountability itself showed major discrepancy in its implementation.

B. The Courtroom as Stage: When Legality Becomes Performance

India's jurisprudence on custodial violence is defined by the landmark judgements of D.K. Basu v. State of West Bengal¹⁰ and Nilabati Behera v. State of Orissa¹¹.

In D.K. Basu, the Supreme Court laid out eleven steps to ensure curbing of custodial violence and abuse. Despite the procedures that were laid out by this judgement, recent incidents like the case of Jeyaraj and Bennix¹² in Tamil Nadu in 2020 show a stark contrast in its implementation. Arrested for a minor offense of violating lockdown rules, they were detained beyond lawful hours and beaten to death. This shed light on the gaps that exist in the implementation of such frameworks. All the safeguards laid out in D.K. Basu were ethically adhered to in this scenario, yet the violence that followed led to custodial death. The violence that took place did not take place outside the law. It occurred as a consequence of the very provisions that are in place to safeguard the arrested.

Similarly, in the case of Nilabati Behera V. State of Orissa, it was held that it's mandatory to give compensation as a constitutional remedy under Article 21 in cases of death by custodial violence. While this was revolutionary in theory, the implementation has been far from it. The majority of the families of arrested persons who lost their lives due to custodial violence have still not received any monetary compensation, including the one mentioned above. In certain unfortunate circumstances, this compensation mandate also manifests itself as the only primary requirement while all the other processes are left incomplete. In Rasoolan v. State of Bihar¹³, even though the victim's family received compensation, the perpetrators of the crime were not

⁹National Human Rights Commission, *Annual Report 2022–23* (2023) <https://nhrc.nic.in/assets/uploads/annual_reports/1755187649_22c03590defde4e97944.pdf> accessed 14 November 2025.

¹⁰D K Basu v State of West Bengal (1997) 1 SCC 416.

¹¹Nilabati Behera v State of Orissa (1993) 2 SCC 746.

¹²Jeyaraj and Bennix Custodial Deaths Case (Tamil Nadu, 2020).

¹³Rasoolan v State of Bihar (2023) SCC OnLine SC 1680.

convicted. The state fulfilled the obligation that was the most visible to the public and made restitution and compensation a performance to escape accountability.

These examples reveal a dangerous pattern in criminal justice laws in India. Violence does not persist as an aberration, but as a performance of order. The police perpetuate violence and brutality to assert power and authority, and the courts respond with performatory inquiry and compensation that are barely fulfilled. This leads to an obsession with compliance over substantive protection to the victims.

III. Interdisciplinary Lens: Sociology of Spectatorship and Structural Violence

From the lens of sociology, custodial violence must not be viewed in isolation. It represents structures that enact hierarchy in furtherance of justice. As argued by Anand Teltumbde in *The Republic of Caste*, the Indian justice system reproduces caste hierarchies by perpetuating custodial violence on marginalised communities¹⁴. According to an NCRB report from 2022, over 55% of India's undertrial prisoners happen to be from the scheduled castes and tribes, or other backward classes, reflecting the states prejudice on 'suspects'.

Multiple reports by NCRB suggest a strong increase in the violence perpetrated on the Dalit community in India as a result of deeply entrenched systematic biases and inherent discrimination within the society. This unequal distribution of violence is further sustained by a culture of spectatorship of justice that is supported by the media. Aravind Rajagopal's "Politics After Television" analyses how media coverage transforms law and justice into a spectacle as they televise raids, hold press conferences and attempt to create viral narratives that are based on half truths¹⁵. Drawing on Erving Goffman's dramaturgical theory, the police station becomes the front stage, where law performs the act of discipline and transparency¹⁶. In contrast, the cell is the backstage where confessions are extracted through violence and bodies broken to sustain the illusion of authority. Such violence and hierarchy ensure that

¹⁴Rahul Govind, 'Reading Anand Teltumbde in the Wake of Hathras' (Scroll.in, 13 October 2020)

<<https://scroll.in/article/976856/reading-anand-teltumbde-in-the-wake-of-hathras>> accessed 14 November 2025.

¹⁵Arvind Rajagopal, *Politics after Television: Hindu Nationalism and the Reshaping of the Public in India* (CUP 2001) <<https://www.cambridge.org/core/books/politics-after-television/351539E83E0C85414625CA21A715CA05>> accessed 14 November 2025.

¹⁶Erving Goffman, *The Presentation of Self in Everyday Life* (University of Edinburgh Social Sciences Research Centre 1956)

<https://monoskop.org/images/1/19/Goffman_Erving_The_Presentation_of_Self_in_Everyday_Life.pdf> accessed 14 November 2025.

power is maintained by inflicting suffering on those never allowed to be part of the audience.

IV. Legal Theory and Architecture of Justice

In *Homo Sacer*, Giorgio Agamben argues that the sovereign assumes power to create “states of exception” where they suspend law in the name of law itself. This suspension of law creates “bare life” within people who have been stripped off all dignity including political and legal protection¹⁷. The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) stands at the intersection of this paradox with theatrical precision. Section 35 allows the police to arrest individuals without a warrant on grounds of “reasonable suspicion” while Section 172¹⁸ allows use of “reasonable” force during arrest. Further, the bail bond provisions in Sections 436-440 might seem aligned with equality at first sight, but manifest into what sociologists call “structural custody” creating situations where the poor remain in prison not because they are guilty, but because they cannot afford to perform the functions of justice. Above all, the provisions of Section 183¹⁹ grant preventive detention powers allowing detention upto 24 hours even without formal charges. The performative feature of law lies in how it operates even while it’s suspended. Custody acts beyond being an instrument of investigation, and becomes a state’s assertion of performative power and control.

B. Architecture of Prisons: Violence Built into Space

This theory is by the designs of prisons in India. The Tihar Jail in Delhi or the Yerwada Central Prison in Pune even after decades of independence continue to follow layouts with high walls, isolated cells and narrow corridors. Beyond control, these are constructed to torture and surveil. The architecture in itself enables a form of hierarchy between the prisoner and the jail keeper, mirroring the power asymmetry that defines custodial violence. These places are the moral geography of punishment as the detainees become hyper visible to the state but completely invisible in the public eye. This curiosity allows fear to thrive outside the walls, while torture thrives inside.

Custodial violence thus is not just arbitrary, but an architectural and ideological foundation of

¹⁷Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*(Daniel Heller-Roazen tr, Stanford UP 1998) <<https://www.thing.net/~rdom/ucsd/biopolitics/HomoSacer.pdf>> accessed 14 November 2025.

¹⁸Bharatiya Nagarik Suraksha Sanhita 2023, s 172.

¹⁹Bharatiya Nagarik Suraksha Sanhita 2023, s 183.

the Indian jail system.

V. Policy Recommendations: Toward Substantive Justice

1. Criminalisation of Torture:

Due to the absence of an established anti-torture law in India, custodial violence goes largely unpunished. Implementing an act for prevention against torture will not only align with the UN Convention Against Torture (UNCAT) internationally, but also domestically fill the legal vacuum that allows violence like this to perpetuate.

2. Independent Oversight:

State level custodial justice commissions should be established, that are completely independent of police intervention. They should have the power to investigate custodial deaths suo moto. Beyond this, the recommendations from the NHRC report 2019 of video recording interrogations and mandating public reporting of custodial deaths should be implemented. Further, training on human rights and increasing caste and class sensitivity within police academies should be implemented.

VI. Conclusion

Under the existing law, the body of the arrested person becomes a subject that the state uses to establish its legitimacy. The law asserts authority not by preventing violence but by managing its visibility and who it's perpetuated on. Custodial violence reveals the performative nature of law and how it thrives on spectatorship. True reforms thus demand dismantling these theatrics and restoring dignity.

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