
CUSTODIAL VIOLENCE: A MENACE IN INDIA

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ABSTRACT

Custodial violence remains a significant issue in India's legal system. Despite the provisions of the Constitution of India, which protect the citizens of the country, the problem of custodial torture, illegal detention, and custodial death persists in the country. These crimes are generally committed against the citizens of the weaker sections and idigent persons of Indian society. The present article discusses the historical background, nature, and reasons behind custodial violence in the country, which are contributing to the persistence of this problem in the criminal justice system of the country. The present article also discusses the efforts of the Supreme Court of India to stop the problem of custodial violence in the country through some of the important decisions that protect the rights of citizens of the country who are in custody. The analysis of the problem of custodial violence in the criminal justice system of the country highlights the need for immediate legal reforms to stop this problem in the legal system of the country. The article also discusses the Bills to outlaw torture in detention that were presented to the Parliament at different points in time. But most of the bills failed to pass. This was mostly due to the bills' gaps and the fact that they were introduced as private member bills. This is a discussion of India's legislative system and its shortcomings, with brutality against detainees.

INTRODUCTION

“Teach them a lesson on how to behave with the police”¹, these were some of the conclusions reached by the CBI in the Santhakulam tragedy, in which nine police officials cruelly tortured a father and a son until they died. Recently, these nine police officers were convicted by one of the Madurai courts, though the sentence is yet to be announced. This is one of the few cases where erred police officer met their fate, and that too because the investigation was conducted by an independent agency like CBI; however, in the majority of cases of custodial violence, police officers got scot-free just because the crime didn’t gather media outrage. So, what exactly does the term “custodial violence” mean that we are talking about in this article? Violence, as the term suggests, is a physical or mental harm attributed to a person. Similarly, when this violence takes place behind bars, it becomes custodial violence. Custodial violence poses a serious threat to society and the criminal justice system of a country, as the police departments and the law enforcement agencies that are entrusted with the task of protecting people themselves get engaged in criminal activity. Custodial violence is not a new concern in India; it has been there for centuries. This police’s brutality and cruelty have not emerged out of thin air.² It has its roots in the Vedic era and is still in use now. Torture is a crime that takes place under explicit instructions or under the police’s supervision, it is a crime of obedience. According to the NCRB³ report of 2022, 75 deaths were reported in police custody, and in none of these cases, a chargesheet had been filed till the report was published. Even though it's common knowledge that one of the heinous crimes is custodial violence, mainstream media, movies, and TV shows most of the time glorify the incidents of custodial violence by using sensational headlines justifying the police violence and promoting copaganda. However, some of these movies, project these incidents sensitively. The movie *Jai Bhim* is based on the case of *Rajakannu vs. the State of Tamil Nadu*,⁴ where the victim was tortured to death. The plight of her family is evident from the statement of her wife given in an interview after the release of the movie. She said, “For me, it's an old nightmare- familiar but not softened in the least. For 28 years, I have learned to work myself to exhaustion every day to keep my mind off the things that I saw and experienced. But in the past few weeks, my

¹ Arun Janardhanan, *They Wanted to Teach Father, Son 'How to Behave with Police': Behind Brutal 2020 Custodial Killings in Tamil Nadu*, *The Indian Express* (Mar. 24, 2026, 7:59 AM IST). <https://indianexpress.com/article/india/six-years-after-death-of-man-his-son-in-custodial-torture-9-cops-convicted-in-tamil-nadu-10597397/> (Last visited on March 24, 2026).

² Nirman Arora, *Custodial Torture in Police Stations in India: A Radical Assessment*, 41 *JILI* 513, 516 (1999).

³ NATIONAL CRIME RECORDS BUREAU, *CRIME IN INDIA 2022* 1034 (2023).

⁴ *Rajakannu v. State of Tamil Nadu and Ors.*, MANU/TN/0991/1994.

demons returned with a vengeance.”⁵ The possibility of getting justice in the cases of custodial violence is almost none because most of the time, victims belong to lower strata of society, and they are not educated enough to understand the nitty-gritty of the law. Forms of torture include inserting a rod in the anus of a prison inmate⁶, blinding the victims by putting acid inside their eyes⁷, beating the victim with a lathi till he succumbed to his injuries, raping the wife of the victim⁸, rape⁹ of the victim in police custody, suicide¹⁰ by the victims in police custody, assault, unauthorised arrests, fictitious encounters, vanishing of the accused from the police custody, illegal detentions etc. People belonging to weaker sections of society are more prone to sexual and physical harassment and street beatings by the police.¹¹ Members of transgender (hijra) community from Bengaluru described that harassment by the police routinely increased from 2007.¹² People belonging to the weaker and marginalised sections of society are the prime targets of police abuse. In the Human Rights Watch Report, certain police officers admitted that their primary method of investigation is to extract confessions from the accused through the medium of force. These officials rarely resort to modern scientific methods in their investigations.

COURT’S ROLE IN THE PREVENTION OF CUSTODIAL TORTURE CASES.

Since its inception, the Indian Supreme Court has been doing ground-breaking work to protect human rights in the country. In various decisions, the SC constantly issued various guidelines and reiterated the need for separate laws that exclusively deal with the offence of custodial violence. Hussainara Khatoon's case marks the beginning of “Public Interest Litigation in India.” The case was filed for the undertrial prisoners suffering in the jails. A.21 of the Constitution recognised the right to legal help as a fundamental right. The judgment leads to the release of 40000 undertrial prisoners languishing in Indian prisons for years.¹³ Sheela Barse

⁵ Saranya Chakrapani, *It's like reliving that nightmare at police station 28 years later*, THE TIMES OF INDIA (November 15, 2021), <https://timesofindia.indiatimes.com/city/chennai/its-like-reliving-that-nightmare-at-police-station-28-years-later/articleshow/87708943.cms>, (Last visited on March 24, 2026).

⁶ Sunil Batra vs Delhi Administration, 1980 (3) SCC 488.

⁷ Avijit Ghosh, *New documentary shows forced blindings continue in Bihar*, THE TIMES OF INDIA (March 27, 2017), <https://timesofindia.indiatimes.com/blogs/Addictions/new-documentary-shows-forced-blindingscontinue-in-bihar/> (Last visited on March 24, 2026).

⁸ Mehboob Batcha and Ors. v. State rep. by Supdt. of Police, (2011) 7 SCC 45.

⁹ Tukaram v. State of Maharashtra, (1979) 2 SCC 143.

¹⁰ Smt. Parvathamma vs The Chief Secretary & Ors. 1995 (6) KARLJ 8.

¹¹ HUMAN RIGHTS WATCH, *BROKEN SYSTEM DYSFUNCTION, ABUSE, AND IMPUNITY IN THE INDIAN POLICE* 11 (2009).

¹² *Id.*

¹³ Hussainara Khatoon & ors. v. Home Secretary, State of Bihar, Patna, 1980 (1) SCC 98.

& Anr vs Union of India & Ors. In this case, it was held that the “right to speedy trial is a facet of the right to life and personal liberty under A.21 of the Constitution of India.”¹⁴ In *Khatri vs State of Bihar*¹⁵, it was held that the right to live with dignity, which is one of the facets of A.21, is also available to persons in custody or detention. The Supreme Court of India gave directions to the magistrates and the session judges to inform the accused person who is brought before him to inform him that he is entitled to be represented by a lawyer at the state’s expense. In *Rudul Shah vs State of Bihar*¹⁶, the Supreme Court, with the help of its writ jurisdiction, granted compensation to the victim who was subjected to state torture by not being released from jail for 14 years after his acquittal. The Supreme Court also instructed the state government to provide data in a tabular format to the High Court regarding the prisoners who are in jails for several years so that the High Court can analyse how many prisoners are in illegal custody and can grant appropriate directions to the state government regarding their release, compensation and rehabilitation, the Supreme Court reprimanded the Bihar government and highlighted about the sorry state of affairs in Bihar prisons specifically mentioning about the Bhagalpur blinding incident. In *Nilabati Behra vs State of Orissa*¹⁷, the Supreme Court granted compensation to the deceased’s mother who was died in the police custody. It was decided that the “procedure established by the law” is the only way to deny someone in detention their right to life, which is protected under A.21 of the constitution of India. Police and jail authorities are responsible for ensuring that these individuals will not be deprived of their right to life under A.21 of the Constitution. “These rights are inherent in Articles 21 and 22(1) of the Constitution and require to be recognised and scrupulously protected.”¹⁸ The court issued certain requirements, such as the intimation of the arrest and the place where he was detained to his relative or friend, or any other person. This right should be told to the arrested person as soon as he is brought to the police station. The entry of the arrest and the person informed about the arrest should be made in a diary. These safeguards derived their authority from Articles 21 and 22(1) and should be strictly complied with. When an arrestee is brought before a magistrate, the magistrate should make sure these conditions are met.

DK Basu v State of West Bengal,¹⁹ this case needs no introduction. It was a landmark judgment

¹⁴ *Sheela Barse v. State of Maharashtra*, 1986 (3) SCC 632.

¹⁵ *Khatri & ors. v. State of Bihar & ors.*, 1981 (1) SCC 627.

¹⁶ *Rudul Sah v. State of Bihar*, (1983) 4 SCC 141.

¹⁷ *Smt. Nilabati Behera Alias Lalit Behera v. State of Orissa And Ors*, 1993 (2) SCC 746.

¹⁸ *Id.*

¹⁹ *Shri D.K. Basu, Ashok K. Johri vs State of West Bengal, State Of U.P.*, 1997 (1) SCC 416.

of its time and will remain a landmark for future generations. The reason that prompted the court to analyse the issue of custodial violence deeply was the increasing number of deaths in police custody, and several news reports highlighted the matter. The court examined various safeguards available in the Constitution of India and criminal laws like the CrPC and the IPC. However, the court was troubled by a rising amount of cases of custodial mistreatment and killings in police custody, even after having various safeguards available to the citizens. The most egregious human rights abuses, according to the court, happened during the investigation when police use third-degree torture techniques on the victim to coerce confessions or information about the case. The court recommended a number of actions to prevent police officers from abusing their authority. The two important measures are “transparency” and “accountability.” Training and the work culture of the police authorities should be done in a manner that can inculcate humanistic values in them. There is a major need for reform in the training methodology of the police. The spirit to uphold constitutional values must be there in the police. The method of investigation and the attitude & approach towards investigation need to be re-examined. The court gave several important guidelines that became part of the CRPC later on through the amendment of 2008. Apart from issuing these guidelines, the Supreme Court made certain important observations, like custodial torture and custodial deaths are against the Rule of Law. The court not only reprimanded the police but also sympathised with them in certain instances. The court acknowledged the fact that police officials have to do various difficult tasks, from maintaining law and order in the state to providing security to the VIPs, and long hours of work without adequate leave violate their rights too.

In *Monica Kumar & anr. v. State of up & ors.*²⁰, the Supreme Court was concerned about the sorry state of affairs regarding the police functioning and exemplified the need for police reforms. The court highlighted the inhumane nature of the Indian police. The court stressed the police sensitisation towards the citizens' rights, and training of the police officials is of utmost necessity so that the violence against the citizens can be curbed and the police can “fulfil their role as the protector of citizens.”²¹ The court referred to various reports like the National Police Commission, National Crime Records Bureau and NGOs like Human Rights Watch, Amnesty International, etc., which highlighted the need for major amendments to the Indian Police Act. These reports also suggested the constitution of committees that shall study the increasing cases of custodial torture. The court also stressed the need to make the erring officials accountable

²⁰ *Monica Kumar and Ors. v. State of U.P. and Ors.*, (2017) 16 SCC 169.

²¹ *Id.*

for their illegal actions by initiating criminal prosecution against them.

The final nail in the coffin is the judgment of *Paramvir Singh Saini v. Baljit Singh and Ors.*,²² in which the court took a step ahead. The court discussed the judgment of *DK Basu vs. State of West Bengal & ors.*,²³ where it was held that there is a need for further directions to the governments to establish an independent committee that can monitor the CCTV footage and publish its report regularly. Later, in *Shafi Mohammad vs. State of Himachal Pradesh*, the Union government was directed to constitute a “Central Oversight Body” to implement the action plan of doing videography of the crime scene during the course of the investigation. This direction has now been granted statutory recognition in BNSS with the incorporation of section 105, which says the process of conducting a search of a place or taking possession of any property or article shall be recorded through audio-video electronic means²⁴, proviso to S.183(1) grants discretion to the magistrate to record confession or statement through audio-video electronic means, S.176(3) makes it mandatory to videograph the process of forensic investigation if the offence is punishable with seven years or more, a witness may be examined by audio-video electronic means according to Sections 265 and 266 of the BNSS etc.

In the *Paramvir*²⁵ case the state and government in union territories were instructed by the Court to ensure the installation of CCTV cameras at the various important places in a police station including the entrance, exit, main gate, all lockups, lobby, corridor, reception area, outside the lockup room, hall of the police station etc. both night vision and audio recording capabilities must be included in the CCTV. The recordings of the CCTV must be secured for at least 18 months, apart from the police stations the Union Government was also directed to install CCTVs in the offices of the “National Investigation Agency, Central Bureau of Investigation, Narcotics Control Bureau, Enforcement Directorate, etc”.

INCUMBENT AND PROPOSED LEGISLATIVE FRAMEWORKS TO DEAL WITH THE CASES OF CUSTODIAL VIOLENCE.

All present and upcoming legislative safeguards regarding custodial violence derive their authority from “Articles 20, 21 and 22” of the Constitution.²⁶ Legislative safeguards were

²² *Paramvir Singh Saini v. Baljit Singh and Ors.*, (2021) 1 SCC 184.

²³ *Shri Dilip K. Basu vs State of West Bengal & Ors.*, AIR 2015 SC 2887.

²⁴ *The Bharatiya Nagarik Suraksha Sanhita*, 2023, s.105.

²⁵ *Supra* note 22.

²⁶ India Cons. art. 20; see also *id.* art.21 & 22.

available in the CrPC of 1973 and now in the BNSS of 2023, S.35(3) to (5), talk about notice of appearance, which prevents unnecessary harassment and arrest of the person against whom a reasonable complaint has been made²⁷ S.36 deals with the procedure of arrest and duties of the officer making the arrest, which includes making a memorandum of arrest, clear identification of his name, etc.²⁸ S.37 establishes a police control room in every state and district, where a designated police officer will be responsible for maintaining the names and addresses of persons arrested.²⁹ S.38 deals with the rights of an arrested person to meet an advocate of his choice.³⁰ The corresponding provisions of these sections in the CrPC were added in compliance with the DK Basu³¹ judgment. S.182 of BNSS prevents police officers from making any “inducement, threat or promise” for extracting a confession. S.183(4) deals with the safeguards related to confessions made to a magistrate regarding the voluntariness of the confession. S.22³² BSA makes confessions extracted by “inducement, threat or promise” irrelevant. S.23 BSA discards the validity of a confession made to a police officer. S.258 BNS talks about “Commitment for trial or confinement by a person having authority who knows that he is acting contrary to law.”³³ S.120 makes “voluntary causing hurt or grievous hurt to extort confession or to compel restoration of property a punishable offence, which may extend up to 7 years”. S.127(8) talks about “wrongful confinement” of a person to extract a confession. POLICE ACT 1861 S.29³⁴ provides three months of punishment for neglect of duty.

“The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)” was signed by India in 1997, and since then it hasn’t been ratified. To ratify it, India has to pass a law that deals with torture. “Each member state shall take effective legislative, administrative, judicial, or other measures to prevent acts of torture in any territory under its jurisdiction, according to Article 2 of this treaty.”³⁵ However, no statute exclusively deals with the offence of custodial violence or police torture in India. “The Prevention of Torture Bill” has been introduced in the Parliament several times; however, it lapsed every time because of the lack of political will. Apart from this, there could be several other reasons

²⁷ The Bharatiya Nagarik Suraksha Sanhita, 2023, s.35, No. 46, Acts of Parliament, 2023 (India).

²⁸ *Id.*, s.36.

²⁹ *Id.*, s.37.

³⁰ *Id.*, s.38.

³¹ *Supra* note 19.

³² The Bharatiya Sakshya Adhinyam, 2023, s.22, No. 47, Acts of Parliament, 2023(India).

³³ The Bharatiya Nyaya Sanhita, s.258, No.45, Acts of Parliament, 2023 (India).

³⁴ The Police Act, 1861, s.29, No. 5, Acts of Parliament, 1861 (India).

³⁵ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 2, Dec. 10, 1984, 1465 U.N.T.S. 85.

that can be associated with its lapse, like every bill has certain discrepancies hidden in it, and none of the Bills deals with the issue of custodial violence comprehensively. The first Bill³⁶ Introduced in the parliament in 2010 was a half-hearted attempt to determine police accountability. The Select Committee report highlighted various loopholes in that Bill; these loopholes continue to exist. No provisions were made to provide compensatory relief to the victims and their families; the lack of such a provision defeated the very purpose of the law. Apart from this, there was no separate provision dealing with women and children, and no provision dealing with sexual offences in the custody of the police, etc. Clause 4 of the Bill talks about the punishment for torture; it did not prescribe any minimum punishment but rather left the entire matter at the discretion of the court. The limitation period prescribed for reporting the offence was 6 months. Also, the clause 6 of the proposed Bill prohibits the courts from taking cognizance of an issue without prior approval from the central or state governments. Can we expect that the state would be interested in prosecuting its officers?

Now talking about “THE PREVENTION OF TORTURE BILL, 2017”³⁷, The only change that was made in this new bill was introducing a minimum sentence of three years for the offence of torture. Bill of 2022 named “THE PREVENTION OF TORTURE BILL, 2022”³⁸ was introduced in the parliament, like the other two Bills, this Bill also had major discrepancies. Clauses 3, 4, and 5 cover notifying a relative of the individual and any other person designated by the arrested individual about their arrest. These provisions provided some safeguards to the arrestee; however, there was no need to add these clauses in this particular Bill, as these safeguards are already made available to the arrestee in the CrPC and now in BNSS. Clause 6 of the Bill provided an exhaustive compensation scheme to the victims and their families. The criteria for determining compensation were also exhaustive, clause 6³⁹ mandates the court to take into account the following considerations while granting compensation to the victims. These include the extent of the victim's injuries, the emotional trauma he experienced, the costs associated with his treatment and rehabilitation, his actual and anticipated earning potential, and the costs associated with the case's prosecution.⁴⁰ This move was appreciable. However, a peculiar thing to note about this Bill is that it did not define torture and its punishment. How can we prevent torture without adding the definition of the offence of torture or custodial

³⁶ The Prevention of Torture Bill, 2010, No. 58 of 2010 (India).

³⁷ The Prevention of Torture Bill, 2017, No. 29 of 2017 (India).

³⁸ The Prevention of Torture Bill, 2022, No. 206 of 2022, (India).

³⁹ *Id.*, cl.6.

⁴⁰ The Prevention of Custodial Torture Bill, 2022, Cl.6, No. 206 of 2022 (India).

violence in the law that is supposed to prevent torture?

Now, coming to the latest and most comprehensive bill among the four bills that have been introduced in the parliament so far. The Bill was named “THE PREVENTION OF CUSTODIAL TORTURE BILL, 2023.”⁴¹ The Bill addressed various shortcomings in previous Bills. Clause 3 defines the meaning of the term custodial violence. According to clause 3, “custodial violence means the intentional infliction of physical or mental suffering on a person detained to obtain information or confession, for the act he/she or a third person committed, or intimidating or coercing the detainee based on caste, religion, gender, race, place of residence, language or sexual orientation”. The definition was comprehensive enough to cater to all the cases of custodial violence. In clause 4, the burden of proof was also shifted upon the public servant to prove his innocence. The minimum punishment provided for the offence of custodial torture was 3 years, which may extend to 10 years (Clause 5). Provisions for compensation to the victim have been provided in clause 6. The notable thing about this bill was that it separately deals with the incidents of sexual abuse in custody under clause 8. However, clause 9 of the Bill sets a time limit of 2 years for reporting the offence of custodial torture, which does not go in tune with S.514(2)(c)⁴² BNSS, which says no Court shall take cognisance of an offence after the expiry of the period of three years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years, the Select Committee Report of 2010 also suggested that filing of the complaint shall be allowed upto two years from the date of the incident. However, the committee also suggested an additional safeguard to deal with the exceptional circumstances to vest the discretion with the court to grant the concession of a further one year for filing the complaint. The committee further analysed clause 6 of the 2010 Bill where the previous sanction of the government was necessary for prosecuting a police officer, this provision was necessary according to the report because of the potential misuse of the law of custodial torture against honest public servants, to meet the ends of justice committee recommended a balanced approach that can safeguard the rights of the victims and interest of the honest public servants.⁴³

However, there were certain lacunas still left in the Bill; there was no special consideration given to the children as suggested by the Select Committee Report of 2010, and there is no

⁴¹ The Prevention of Custodial Torture Bill, 2023, No. 31 of 2023 (India).

⁴² The Bharatiya Nagarik Suraksha Sanhita, s.514(2)(c), No.46, Acts of Parliament, 2023 (India).

⁴³ SELECT COMMITTEE OF RAJYA SABHA, REPORT OF THE SELECT COMMITTEE ON THE PREVENTION OF TORTURE BILL, 2010, (2010). ⁴⁷ *supra* note 23.

provision that deals with attempts to torture. No proposed provision dealt with the period within which the investigation and the trial should have been completed. The Bill of 2023 had the opportunity to comply with the guidelines issued in the Peramivir judgment. One of the major issues that comes forward while dealing with the issue of custodial violence is the process of investigation in these cases. Police might not be interested in investigating the offence committed by their officer because of ties of brotherhood; there are no redressal mechanisms available to the victim and his family because police generally do not register the FIR in such cases. Because the act of custodial violence is typically conducted within the confines of the police station and is planned in a confidential manner, there will be a lack of proof even if the FIR is filed. Witnesses are generally fellow police officers and prisoners, who might not testify against the erring officer because of fear and other considerations. Manipulation of the evidence is an easy task for the police officials. As a result of these difficulties, in the majority of cases, erring police officers will secure an acquittal. Filing reports, obtaining government approval for prosecution, and navigating bureaucratic hurdles require legal knowledge, political clout, and financial stability.⁴⁴ One of the major solutions to deal with this deadlock is to entrust the investigation of these cases to an independent agency that can investigate the cases of custodial violence without any biases or prejudices. “Nemo iudex in causa sua”, which says that “no one can be judged in his own cause”, is one of the well-known Latin maxims or tenets of natural justice. In a similar vein, I believe that the police departments' investigation of police torture instances violates the natural justice concept.

CONCLUSION

Our nation still lacks a separate law addressing custodial torture and violence, despite the timely and ongoing intervention of the Supreme Court. Being a significant offense against the human body and, in certain instances, against property is also considered a serious offense. This issue needs to be addressed on a primary basis. The law has not yet been enacted, though, due to lack of political will. Every case of custodial violence will not reach the Supreme Court, as the discussion above shows. In every case, the Supreme Court will be unable to offer justice or provide monetary compensation to the victim and their family. This is where the necessity for a separate law pertaining to custodial torture arises. In addition, the Supreme Court has acknowledged the fact that filing a case in a lower court for

⁴⁴ RADHA KUMAR, *POLICE MATTERS: THE EVERYDAY STATE AND CASTE POLITICS IN SOUTH INDIA, 1900-1975* 106 (Cornell University Press 2021).

compensation can be a lengthy process. This is why the court has the authority to grant compensation under A.32 of the Constitution. The trial may be delayed for a long time, evidence may disappear, or the erring officers may be transferred. This could disrupt the process of delivering justice. Nevertheless, when a distinct law is enacted that incorporates provisions for compensation, such as providing interim compensation to the victim, conducting investigations, expediting the trial of cases, and establishing the constitution of special courts, the process will become more straightforward. The fact that victims and their families don't have to wait 13 years to get justice is another example, as happened in Rajakannu's case. The modern and scientific methods of investigation should be used by the police. Usage of body cameras while making arrests and investigations can ease the videography task of police officers as mandated by BNSS. The police departments should receive the sufficient funding to incorporate these modern techniques of investigation in their methodology. These were some of the points that can make the criminal justice system, in the context of custodial torture, efficient. One of the major aspects in the prevention of custodial torture cases is police reforms; however, this paper did not deal with it because the topic of police reforms is an ocean in itself that needs separate attention and research. Hence, constitutional goals of liberty, equality, fraternity, etc., can't be achieved till the police continue to behave like an unruly horse.