



# Custodial violence & police accountability in India: a critical study of institutional failures and judicial trends

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**Abstract:** Custodial violence continues to be a serious issue in the Indian criminal justice system despite constitutional protections under Articles 20 and 21. Incidents of torture, abuse, and custodial deaths reflect weaknesses in enforcement, police accountability, and institutional oversight. This study examines the legal framework, judicial interventions, and causes of custodial violence, including political interference, weak safeguards, and police impunity. It analyses important laws, constitutional provisions, and landmark judgments such as *D.K. Basu v. State of West Bengal* and *Nilabati Behera v. State of Orissa*, which strengthened procedural safeguards and state accountability. The study concludes that although the judiciary has played an important role in protecting custodial rights, effective implementation of reforms and stronger accountability mechanisms are still urgently needed.

**Key Words:** Custodial violence, police accountability, custodial deaths, judicial intervention, police impunity, institutional oversight, torture.

## 1. INTRODUCTION:

Custodial violence is a serious issue in the Indian criminal justice system involving torture, illegal detention, harassment, and custodial deaths by law enforcement authorities. Such acts violate human dignity and fundamental rights, particularly the right to life and personal liberty under Article 21 of the Constitution. Despite constitutional safeguards, legal protections under the Bharatiya Nyaya Sanhita, 2023, and judicial guidelines, custodial abuse continues due to weak enforcement, lack of accountability, and systemic failures in policing. Today's police officers must protect people from physical harm, save lives, control traffic and maintain law and order in the streets and public spaces.<sup>(1)</sup> The Hon'ble Supreme Court, in cases like *Maneka Gandhi v. Union of India*<sup>(2)</sup>, emphasized that police powers must operate within constitutional limits while protecting individual rights.

## 2. LITERATURE REVIEW:

Existing literature on custodial violence and police accountability in India highlights that despite constitutional safeguards and statutory protections, incidents of custodial torture and deaths continue due to structural and institutional weaknesses within the criminal justice system. Scholars and institutions such as the Law Commission of India and the National Human Rights Commission have pointed out issues like weak accountability, underreporting, inadequate investigations, and systemic pressure on police authorities. Judicial decisions under Article 21 have strengthened protections against custodial abuse and recognised compensation for violations of fundamental rights. Comparative studies from countries like the United Kingdom, United States, and Scandinavian nations emphasize independent oversight and transparency. However, much existing research remains doctrinal, with limited focus on practical implementation and institutional functioning.

## 3. RESEARCH PROBLEM:

A theoretical examination of the concept, forms, causes, and historical development of custodial violence and police accountability, along with a critical analysis of the existing legal framework at both national and international levels. The study also compares accountability mechanisms in different countries and suggests reforms to prevent custodial violence and strengthen police accountability in India.



#### **4. RESEARCH QUESTION:**

How far are the existing legal and institutional mechanisms in India effective in preventing custodial violence and ensuring police accountability, and what reforms are necessary to strengthen the protection of human rights?

#### **5. RESEARCH OBJECTIVE:**

To critically examine the concept, causes, and legal dimensions of custodial violence in India, analyse the effectiveness of judicial and institutional accountability mechanisms, and suggest reforms for strengthening police accountability and protection of human rights.

#### **6. RESEARCH HYPOTHESIS:**

Custodial violence in India persists due to ineffective implementation of legal safeguards, weak police accountability mechanisms, and systemic institutional deficiencies, while stronger legal, technological, and administrative reforms can significantly reduce such violations and enhance accountability.

#### **7. RESEARCH METHODOLOGY :**

The study uses a doctrinal and analytical research methodology based mainly on secondary sources such as constitutional provisions, the Bharatiya Nagarik Suraksha Sanhita, 2023, judicial decisions, Law Commission reports, NHRC publications, books, and scholarly articles. It critically examines landmark cases on custodial violence and police accountability to analyse judicial safeguards, institutional challenges, causes, and consequences of custodial abuse. The research also includes limited comparative analysis of accountability mechanisms followed in other countries.

#### **8. RESEARCH SCOPE AND LIMITATIONS :**

The present study critically examines custodial violence and police accountability in India through constitutional provisions, statutory safeguards, judicial decisions, and institutional mechanisms. It mainly focuses on the Indian legal framework with limited comparative analysis of other jurisdictions. The research is doctrinal and analytical, based on secondary sources such as statutes, case laws, government reports, NHRC publications, books, and scholarly writings. However, the study is limited by lack of extensive field research, underreporting of custodial violence cases, inconsistent data, and evolving legal developments, which may affect complete practical assessment.

#### **9. CUSTODIAL VIOLENCE AND POLICE ACCOUNTABILITY IN INDIA:**

##### **9.1.1. What is Custodial Violence?**

According to the **Law Commission of India**, “any crime committed by a public servant against an arrested or detained person amounts to custodial violence.”<sup>(3)</sup> It is important to note that no Indian statute formally defines the term “custodial violence,” which itself is part of the problem.

Custodial violence refers to any form of physical, mental, or emotional abuse inflicted upon a person who is under the custody or control of state authorities. It occurs when an individual, deprived of personal liberty through arrest, detention, or imprisonment, becomes completely dependent on the State for protection and well-being. Such violence constitutes a direct violation of fundamental rights guaranteed under the Constitution of India.

The term includes not only physical torture and assault but also psychological abuse, intimidation, coercive interrogation, humiliation, and denial of basic necessities such as food, medical care, legal assistance, and humane living conditions. In extreme cases, custodial violence may result in custodial deaths, reflecting serious abuse of authority and failure of the State to fulfil its duty of care.<sup>(4)</sup>

Custodial violence extends beyond police custody and also includes abuse in judicial custody and prisons. It represents misuse of state power and undermines the principles of human dignity, fair trial, and constitutional governance.



### 9.2. Forms of Custodial Violence:

Custodial violence can take various forms, ranging from physical abuse to psychological and sexual harassment.

- **Physical violence** includes beating, assault, electric shocks, starvation, forced body positions, and other forms of physical torture intended to inflict pain and fear.
- **Psychological violence** involves mental harassment through threats, humiliation, intimidation, sleep deprivation, and coercive interrogation, causing severe emotional and mental trauma to the detainee.
- **Sexual violence** includes custodial rape, sexual harassment, forced medical examinations, and other acts that violate the dignity and bodily autonomy of individuals in custody, particularly women.
- **Custodial deaths** represent the gravest form of custodial violence and may result from torture, negligence, suicide, illness, or police brutality while a person is under state custody.

### 9.3. Police accountability in India:

Police accountability in India operates through internal and external mechanisms designed to regulate police conduct and prevent misuse of power.

#### A. Internal Accountability Mechanisms:

Internal accountability is governed mainly by the Police Act, 1861, state police laws, and police manuals. Senior officers are empowered to suspend, dismiss, reduce rank, or punish police personnel for misconduct such as negligence, unauthorized absence, disobedience, or custodial violence.<sup>(5)</sup> Punishments include fines, imprisonment, dismissal, or reduction in rank.<sup>(6)</sup> However, departmental inquiries are often lengthy and ineffective.

- **Internal Disciplinary Authorities-** These authorities investigate misconduct and maintain discipline within the police force. Courts generally do not interfere with disciplinary findings unless there is procedural illegality.<sup>(7)</sup>
- **Police Complaints Authority (PCA)-** The PCA was recommended by the Hon'ble Supreme Court in *Prakash Singh v. Union of India*<sup>(8)</sup> to address complaints against police misconduct. It functions at both State and District levels to investigate serious allegations such as custodial violence, abuse of power, and misconduct. However, implementation across states remains limited and inconsistent.

#### B. External Accountability Mechanisms:

- **Judiciary-** The judiciary plays a major role in ensuring police accountability through writ petitions, public interest litigations, compensation orders, and guidelines regulating arrest, detention, and interrogation procedures.
- **Human Rights Commissions-** The National Human Rights Commission and State Human Rights Commissions investigate cases of police abuse and custodial violence. However, their recommendations are advisory and not legally binding. The Commission is supposed to be completely independent in its functioning, but there are certain provisions in the Act, which underscore the dependence of the Commission on the Government.<sup>(9)</sup>
- **Non-Governmental Organizations (NGOs)-** NGOs help expose police atrocities, advocate reforms, document human rights violations, and create public awareness regarding custodial abuse and police misconduct.
- **Media-** The media acts as an important watchdog by highlighting incidents of custodial violence and police abuse, thereby promoting transparency and public accountability.<sup>(10)</sup>

#### C. Importance of Police Accountability: Police accountability ensures:

- Protection of fundamental rights
- Prevention of abuse of power
- Transparency and ethical policing
- Fair investigation and due process
- Public trust in the criminal justice system<sup>(11)</sup>

#### D. Model Police Act, 2006:

The Model Police Act, 2006, drafted under the chairmanship of Soli Sorabjee, was a significant reform initiative aimed at replacing the colonial-era Police Act, 1861. It proposed:

- Professional and independent policing



- Fixed tenure for officers
- Police Accountability Commissions
- Separation of investigation from law-and-order functions
- Better welfare and working conditions for police personnel

The Act aimed to modernize policing and strengthen accountability, transparency, and efficiency within the police system in India.<sup>(12)</sup>

Thus, it gets clear that attempts are being taken to improve the police system in our country. Even in recent past bringing the Model Police Bill 2015<sup>(13)</sup> is also a forward step in this regard.

#### 9.4. Historical background of custodial violence in India:

The history of policing in India evolved from ancient systems of maintaining social order to the modern police structure established during British rule.

Early references to policing are found in ancient texts such as the Vedas and the Arthashastra, while medieval India developed centralized policing under officials like the Kotwal and Faujdar.

The modern police system was formally established through the Police Act, 1861, enacted after the Revolt of 1857 to strengthen colonial control. This system was hierarchical, centralized, and aimed more at maintaining authority than protecting citizens' rights.<sup>(14)</sup> Even after independence, many colonial features continued in Indian policing.

Today, the police system in India follows a multi-level administrative structure consisting of police ranges, districts, and police stations.<sup>(15)</sup> However, incidents of police brutality and custodial violence continue to raise concerns regarding accountability, human rights, and the need for police reforms.<sup>(16)</sup>

#### 9.5. Causes and Challenges of Custodial Violence:

Custodial violence in India continues despite constitutional safeguards and judicial interventions due to deep-rooted institutional and systemic failures within the policing system.

- Major causes include political interference, corruption, pressure on police officials to secure quick results, inadequate training, poor infrastructure, and excessive workload.
- The colonial nature of policing, weak supervision, outdated police laws, ineffective disciplinary mechanisms, and lack of independent oversight further contribute to abuse and impunity.
- Legal loopholes and coercive investigative practices also encourage forced confessions and custodial torture.
- Social factors such as public acceptance of harsh policing, fear among victims, underreporting of cases, and lack of legal awareness worsen the situation.
- The major challenges in preventing custodial violence include weak enforcement of laws, absence of a dedicated anti-torture legislation, judicial delays, political resistance to reforms, lack of transparency, insufficient accountability mechanisms, and resource limitations.

These failures continue to undermine human rights protection and public confidence in the criminal justice system.

#### 10. Legal framework on custodial violence at national and international level:

The legal framework relating to custodial violence in India consists of constitutional safeguards, statutory protections, judicial interpretations, and international human rights principles aimed at protecting individuals from torture, illegal detention, and abuse in custody.

##### A. Constitutional Safeguards:

The Constitution of India guarantees protection against custodial violence through:

- **Article 14** – Equality before law.



- **Article 20** – Protection against self-incrimination, double jeopardy, and ex-post facto punishment.
- **Article 21** – Right to life and personal liberty, including protection against torture and inhuman treatment.<sup>(17)</sup>  
(18) (19) (20)
- **Article 22** – Protection against arbitrary arrest and detention, right to legal counsel, and production before a magistrate within 24 hours.
- **Article 39A** – Right to free legal aid.

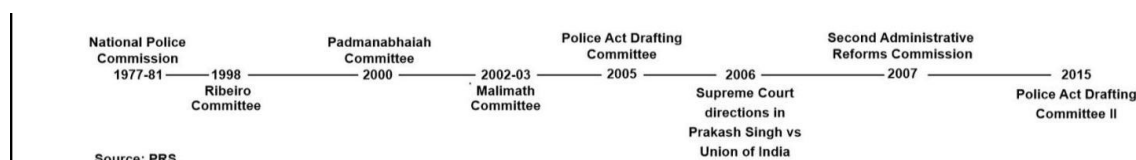
The Supreme Court has expansively interpreted these provisions to protect the dignity and rights of persons in custody.<sup>(21)</sup>

## B. National Legal Framework:

Several laws provide safeguards against custodial abuse:

- **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)** provides safeguards relating to arrest, detention, medical examination, legal representation, production before magistrates, and protection against forced confessions.
- **Bharatiya Nyaya Sanhita, 2023 (BNS)** criminalizes wrongful confinement, custodial torture, and custodial rape, and provides punishment for police misconduct.
- **Bharatiya Sakshya Adhiniyam, 2023 (BSA)** makes confessions before police generally inadmissible except in limited circumstances.
- **Protection of Human Rights Act, 1993** established institutional mechanisms like the NHRC for protection of human rights.
- **Prevention of Torture Bill** was introduced to criminalize torture specifically, but it has not yet been enacted.<sup>(22)</sup>
- **Police Act, 1861<sup>(23)</sup>** and other laws contain limited provisions relating to police misconduct and abuse of authority.

## C. Major commissions on police reforms:



Several committees and commissions have recommended reforms to strengthen police accountability and reduce custodial violence in India.

- The **National Police Commission (1977–1981)** recommended the establishment of State Security Commissions, improvement in police training, fixed tenure for senior officers, and reduction of political interference in police administration.
- The **Ribeiro Commission (1998)**, constituted following *Prakash Singh v. Union of India*, suggested replacing the Police Act of 1861, creating Police Establishment Boards, improving recruitment systems, and enhancing police training standards.
- The **Padmanabhaiah Committee (2000)** emphasised police training reforms, separation of investigation from law-and-order duties, establishment of Police Complaints Authorities, and creation of specialised crime prevention units.
- The **Malimath Committee (2002–2003)** on criminal justice reforms proposed several measures aimed at improving investigation procedures and strengthening the criminal justice system.
- The **Police Act Drafting Committee (2005)** under Soli Sorabji prepared the Model Police Act, 2006, which recommended fixed tenure for police officers, establishment of State Security Commissions, transparent transfer procedures, and modernisation of police administration.
- Further, the **National Human Rights Commission** recommended stronger accountability mechanisms, implementation of CCTV surveillance in police stations, establishment of Police Complaints Authorities, adoption of technology-friendly criminal justice systems, and effective implementation of the Supreme Court guidelines issued in *Prakash Singh v. Union of India*.



#### D. Limitations of the Legal Framework:

Despite these safeguards, custodial violence persists due to:

- Poor implementation of laws
- Weak accountability mechanisms
- Institutional bias
- Lack of awareness and sensitization
- Inadequate police reforms and oversight

#### E. International Framework:

International human rights instruments strongly condemn torture and custodial abuse, including:

- United Nation Charter, 1945<sup>(24)</sup>
- Universal Declaration of Human Rights (1948)<sup>(25)</sup>
- International Covenant on Civil and Political Rights (ICCPR)<sup>(26)</sup>
- UN Convention Against Torture (UNCAT)<sup>(27)</sup>
- Tokyo Rules on Non-Custodial Measures<sup>(28)</sup>

These conventions emphasize dignity, humane treatment, protection against torture, and fair criminal justice procedures. India is influenced by these international standards, although challenges remain in full implementation.

### 11. LANDMARK JUDICIAL PRONOUNCEMENTS:

The Indian judiciary has played a crucial role in addressing custodial violence and strengthening police accountability through an expansive interpretation of Article 21 of the Constitution. The Hon'ble Supreme Court has consistently recognised custodial torture, illegal detention, and custodial deaths as serious violations of fundamental rights and has evolved important procedural safeguards to protect individuals in custody.

In **D.K. Basu v. State of West Bengal**<sup>(29)</sup>, the Court laid down detailed guidelines governing arrest and detention procedures, including preparation of arrest memoranda, medical examinations, legal assistance, and judicial oversight, thereby promoting transparency and accountability in police functioning. Similarly, **Nilabati Behera v. State of Orissa**<sup>(30)</sup> recognised constitutional tort liability and established compensation as a public law remedy for custodial deaths and violations of Article 21.

The Court further addressed arbitrary arrests in **Joginder Kumar v. State of Uttar Pradesh**<sup>(31)</sup> by holding that arrests must not be routine and should be supported by valid reasons. In **Sheela Barse v. State of Maharashtra**<sup>(32)</sup>, the Court introduced gender-specific safeguards for women detainees, while **Khatris (II) v. State of Bihar**<sup>(33)</sup> emphasised free legal aid and fair trial rights as essential protections against custodial abuse.

In **Raghubir Singh v. State of Haryana**<sup>(34)</sup>, the Court condemned police brutality and recognised freedom from torture as part of Article 21. **Nandini Satpathy v. P.L. Dani**<sup>(35)</sup> strengthened the right to legal counsel during interrogation, while **Vineet Narain v. Union of India**<sup>(36)</sup> contributed towards institutional accountability through independent investigative mechanisms.

Further, **Prakash Singh v. Union of India** introduced major police reforms aimed at improving transparency, fixed tenure, and independent complaint mechanisms. In **Rudal Shah v. State of Bihar**<sup>(37)</sup>, the Court recognised compensation as a constitutional remedy for illegal detention. Collectively, these judgments have significantly shaped custodial jurisprudence in India by reinforcing human rights, procedural safeguards, and state accountability.

### 12. COMPARATIVE STUDY OF POLICE ACCOUNTABILITY MECHANISMS IN DIFFERENT DEMOCRACIES:

A comparative study of police accountability mechanisms in different democracies shows that countries like the United Kingdom, United States, and Scandinavian nations have developed stronger safeguards against custodial violence through independent oversight, transparency, and technological monitoring.



- The UK follows a robust system with the Independent Office for Police Conduct (IOPC), strong legal safeguards<sup>(38)</sup>, CCTV monitoring, and independent investigations.
- The US uses constitutional protections, civilian review boards, judicial oversight, and body cameras, though issues like qualified immunity still exist.<sup>(39)</sup>
- The Scandinavian countries such as Norway and Sweden focus on rehabilitation, humane prison conditions, and strict oversight, resulting in low instances of custodial violence.<sup>(40)</sup>

Compared to these systems, India faces challenges like weak enforcement, limited transparency, and inadequate accountability.

The study suggests that India should adopt best practices such as independent police complaints authorities, CCTV surveillance, body cameras, digital record-keeping, stronger anti-torture laws, and better human rights training for police personnel.

### 13. CONCLUSION:

The study examined custodial violence in India from legal, judicial, and institutional perspectives and found that despite constitutional safeguards and judicial interventions, custodial abuse and deaths continue to persist due to weak implementation and lack of accountability. The research highlights that custodial violence represents a serious violation of human rights and human dignity, often arising from institutional failures, absence of strict enforcement mechanisms, and misuse of police powers.

Although the Indian legal system and the Hon'ble Supreme Court have developed important safeguards to protect individuals in custody, effective prevention of custodial violence requires stronger institutional compliance, police accountability, human rights-oriented training, and comprehensive reforms within the policing system.

### 14. RECOMMENDATIONS AND REFORMS:

The continuing incidence of custodial violence in India highlights the need for comprehensive legal, institutional, and administrative reforms. Although constitutional and judicial safeguards exist, weak implementation and lack of accountability continue to undermine their effectiveness.

- A major reform required is the enactment of a separate anti-torture legislation providing clear definitions of custodial violence and strict punishment for offenders. Existing laws under the Bharatiya Nagarik Suraksha Sanhita, 2023, Bharatiya Nyaya Sanhita, 2023, and Bharatiya Sakshya Adhiniyam, 2023 should also be strengthened through stricter enforcement and penal consequences for violations.
- Establishment of fast-track courts for custodial violence cases can further ensure speedy justice.
- Police reforms remain essential for improving accountability and transparency.
- The directions issued in *Prakash Singh v. Union of India* should be effectively implemented, including police autonomy, separation of investigation functions, and fixed tenure for officers.
- Human rights training, scientific investigation methods, better working conditions, and adequate staffing are also necessary to reduce custodial abuse.
- The study further recommends strengthening independent police complaint authorities, adopting a zero-tolerance policy towards custodial misconduct, and ensuring witness and victim protection mechanisms.
- Technological measures such as CCTV surveillance, body cameras, digital record-keeping, and videography of arrests and interrogations should be made mandatory to enhance transparency and judicial oversight.
- The judiciary, civil society, and media also have an important role in monitoring custodial violence, promoting awareness, ensuring compliance with legal safeguards, and strengthening accountability.
- Effective implementation of reforms ultimately requires political commitment, institutional coordination, and continuous monitoring to address the deeper structural and cultural issues within the policing system.

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