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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

LEGAL SAFEGUARDS AGAINST CUSTODIAL VIOLENCE: A CONSTITUTIONAL AND STATUTORY ANALYSIS

AUTHORED BY - SATYAM GILL

ABSTRACT

One of the most important and extremely worrisome human rights issues in India today is the issue of violence that occurs within the confines of prisons. When people who are entrusted with the responsibility of maintaining the law sometimes become the perpetrators of severe injustices, it sheds light on the delicate junction that exists between the authority of the state and the dignity of the individual. In spite of the existence of a solid legal system that includes constitutional safeguards and statutory protections, instances of torture, abuse, and even fatalities that occur while individuals are in custody continue to occur with frightening regularity.

The purpose of this article is to conduct an in-depth analysis of the legal protections that are contained in the Indian Constitution as well as the related legislation that is intended to reduce the incidence of violence within the confines of the prison system. It draws attention to the expansive interpretation of rights that are outlined in Article 21, the procedural protections that are provided by the Criminal Procedure Code and other regulations, and the preventive guidelines that are given by the judicial system. On paper, however, legal provisions frequently fail to live up to expectations in practice. This article investigates the reasons why abuse in correctional facilities continues to occur despite the existence of legislative safeguards by conducting an analysis of implementation gaps, institutional inertia, and systemic flaws.

As an additional point of interest, the article delves into the role that judicial interventions, human rights commissions, and legal aid systems play in the process of fostering accountability. In conclusion, it proposes significant reforms, both legislative and administrative, that are necessary in order to convert the justice system into one that is more compassionate, transparent, and sensitive to the rights and dignity of all individuals, particularly those who are most susceptible to the overreach of the state.

KEYWORDS

Custodial Violence, Human Rights, Indian Constitution, Article 21, Police Brutality, Constitutional Protections, National Human Rights Commission (NHRC), Anti-Torture Law, UN Convention Against Torture (UNCAT), Right to Life and Liberty, Legal Aid, Prison Reform

INTRODUCTION

There is a profound scar in the fabric of Indian democracy that is represented by the phenomenon of custodial violence. This phenomenon encompasses acts of torture, physical and psychological abuse, inhuman treatment, and even deaths that take place while a person is in the custody of the police or judicial authorities. In addition to being a breach of the law, it is also a betrayal of the extremely fundamental concepts of justice, fairness, and human dignity that are established in the Constitution of India. Such infractions continue to be recorded across the country with a worrisome frequency, despite the fact that India has a democratic spirit and a thorough constitutional and regulatory framework.¹

There is a story of pain that lies behind every statistic. It is the story of individuals who have been deprived of their agency, dignity, and sometimes even their lives while they were under the purported protection of the state. The occurrences in question are not singular occurrences; rather, they are components of a more widespread pattern of impunity, inadequate institutional accountability, and systemic apathy. When survivors and their families are confronted with fear and stigma, it frequently discourages them from pursuing justice. Additionally, the mechanisms that are intended to defend their rights are frequently unavailable or otherwise unresponsive.²

The most vulnerable members of society, including marginalized communities, socioeconomically disadvantaged groups, and individuals who lack political or social capital, are most susceptible to being victims of violence in correctional facilities. There are numerous instances in which violence is utilized as a means of coercion, confession, or even as a type of informal punishment that is not subject to the supervision of the judicial system. These kinds

¹ Is Custodial Violence : A Mockery of Law, available at: https://theadvocatesleague.in/assets/pdf/papers/Custodial_Violence-_Research_Paper.pdf ² Rahamathulla S, Dr. M.A Saleem Ahmed, "A Study of Constitutional Protections Against Custodial Violence: A Critical Analysis", 2024.

of behaviors are in direct opposition to the fundamental rights that are guaranteed by the Constitution.

Within the scope of this article, we propose to investigate the legal framework that is designed to protect individuals from abuses of this kind. The constitutional provisions, legislative enactments, and judicial interpretations that jointly strive to prohibit violence in correctional facilities are subjected to a critical analysis from this report. Furthermore, it examines the gaps that exist between law and practice, investigates the reasons behind the continued incidence of abuse in custody, and emphasizes the urgent need for changes that promote accountability, transparency, and respect for human dignity. All of these things are included in the report.³

In the end, the purpose of this analysis is to make a contribution to the larger conversation about justice and human rights in India, as well as to advocate for a system in which legal protections are not merely theoretical promises, but rather enforceable realities that uphold the sanctity of life and liberty for every individual, regardless of their status or circumstance.

UNDERSTANDING CUSTODIAL VIOLENCE

The term "custodial violence" refers to any sort of torture, harassment, harsh treatment, or unlawful punishment that is inflicted upon individuals who are in the custody of law enforcement agencies such as the police, prison officials, or other law enforcement agencies. This violence presents itself in a variety of ways, ranging from sexual abuse and fatalities that occur in custody to harsh physical attacks and psychological intimidation. On account of the fact that they are frequently deprived of their fundamental liberties, the victims find themselves at the mercy of those who hold unchecked authority.⁴

These kinds of actions are not only examples of poor human conduct; rather, they are a sign of more fundamental faults in the system. The violation of these rights constitutes a serious breakdown of the rule of law and a rejection of the most fundamental human rights, such as the right to life and personal liberty, which are both enshrined in Article 21⁵. Not only are these

³ Anshul Dalmia, A Critique of the Supreme Court's Judgment on the Appointment of Vice-Chancellors in the State Universities of West Bengal, *available at*: <https://indconlawphil.wordpress.com/tag/article-142/> (last visited on April 15, 2025).

⁴ Empryal Institution of Higher Education, "International Journal of Research in Management & Social Science", Journal no.48996, Volume 5, Issue 3, 2017.

⁵ The Constitution of India, A.21.

violations of the law, but they are also violations of moral and ethical standards, which undermine the public's faith in the institutions that are supposed to serve and protect them.

Violence in correctional facilities is fueled by a number of interconnected reasons. One of the most important of these is the absence of efficient systems for being held accountable. In situations where those who commit crimes within the system are protected by hierarchical protection and procedural opacity, justice becomes difficult to achieve. Additional factors that contribute to the perpetuation of the cycle of abuse include inadequate training, a lack of awareness regarding human rights, pervasive corruption, meddling from governmental institutions, and prejudices held by society.⁶

The disproportionate targeting of individuals from marginalized and underprivileged areas is a worrying tendency that has been observed in incidences of violence that occur within correctional facilities. There are many disadvantaged groups that are routinely subjected to such brutality, including Dalits, Adivasis, Muslims, the destitute, and other vulnerable groups. The individuals in question typically do not possess the money or social capital necessary to seek remedy, and their accusations are frequently met with apathy, disbelief, or additional intimidation and harassment.

Survivors and the relatives of victims frequently have to endure a traumatic trip that is defined by delays in the procedures, unfriendly circumstances, and a culture that is characterized by fear and silence. It is not the end of the trauma that is inflicted on them while they are in detention; rather, it remains as a permanent scar on their psychological and emotional well-being throughout their entire lives.

Therefore, it is not enough to simply acknowledge that it is a breach of the law in order to comprehend the concept of custodial violence. It is necessary to acknowledge the human cost, which includes the lives that have been shattered, the voices that have been stifled, and the widespread terror that it instills. We will not be able to begin formulating solutions that are effective, compassionate, and long-lasting unless we have centered our discourse around the dignity and humanity of people who are afflicted.⁷

⁶ Supreme Court Of India, Report On, "Prisons In India, Mapping Prison Manuals And Measures For Reformation And Decongestion Centre For Research & Planning", October 2024.

⁷ *Kartar Singh vs State Of Punjab*, 1994 SCC (3) 569

CONSTITUTIONAL SAFEGUARDS

The concepts of justice, liberty, and human dignity are enshrined explicitly in the Constitution of India, which serves as the highest legal authority in the country. There are a number of rules that have been expressly crafted to safeguard individuals against the abuses of state authority and to guarantee that every individual, regardless of their standing, is treated with fairness and humanity.

Within the context of criminal proceedings, Article 20⁸ provides essential safeguards. The provision provides that no one shall be compelled to be a witness against themselves, so protecting individuals from being coerced or tortured into making confessions against their will. In addition to this, it gives protection against double jeopardy and retroactive criminal laws, which helps to strengthen the rule of law.

Article 21⁹, which is widely regarded as one of the most iconic articles, ensures that individuals have the right to life and personal liberty. Over the course of several decades, the judicial system has employed an expansive interpretation of this article, incorporating a wide range of derived rights into it. These rights include the right to live with dignity, the right to get legal assistance, and the right to be protected from torture. In the process of expanding the scope of Article 21¹⁰, landmark decisions such as *Maneka Gandhi v. Union of India*¹¹ and *Francis Coralie Mullin vs The Administrator, Union Territory Of Delhi*¹² have played a vital role. These cases have affirmed that humane treatment is an essential component of the right to life.

An essential set of procedural safeguards is provided by Article 22¹³ for those who are being detained or arrested. It is a requirement that the person who has been arrested must be supplied with information regarding the reasons for their arrest, that they must not be held without being brought before a magistrate within twenty-four hours, and that they must have the right to consult with and be defended by a legal practitioner of their choosing. For the purpose of preventing arbitrary detentions and abuses of authority, these measures are absolutely necessary.

⁸ The Constitution of India, A.20.

⁹ *Supra* note 5.

¹⁰ *Ibid.*

¹¹ 1978 AIR 597

¹² 1981 AIR 746

¹³ The Constitution of India, A.22.

These constitutional provisions have been given new life as a result of the proactive interpretation and intervention of the judicial system. The courts have consistently created jurisprudence that emphasizes the inviolability of human dignity and the imperative of governmental accountability. This is in addition to the major cases that have been cited previously.

Legal Defenses and Protections

Despite the fact that constitutional provisions serve as a core framework, statutory laws are responsible for translating these ideas into protections that may be put into practice. Several important legislative instruments play an important part in regulating the behavior of law enforcement officers and reducing violence in correctional facilities.

Under the Bhartiya Nyaya Sanhita, 2023¹⁴, provisions continue to address custodial violence, particularly the use of physical abuse during interrogations to extract confessions. The corresponding provisions to the erstwhile Sections 330 and 331 of the Indian Penal Code, 1860¹⁵ are now found in Section 112¹⁶ and Section 113¹⁷ of the BNS. These sections criminalise the act of voluntarily causing hurt or grievous hurt to extort a confession or information, acknowledging the serious human rights violations such practices entail. Their inclusion underscores the necessity of curbing coercive interrogation methods that undermine the rule of law and the right against self-incrimination under Article 20(3)¹⁸ of the Constitution.

Moreover, in cases where a person dies while in custody, Section 101¹⁹ of the BNS—corresponding to the earlier IPC Section 302²⁰ on murder—is applicable. This provision enables the prosecution of officials responsible for custodial deaths, affirming the principle that no one, including state actors, is above the law. These sections form a crucial part of the legal safeguards against custodial violence, reinforcing accountability within the criminal justice system and attempting to deter the systemic abuse of power.

¹⁴ The Bhartiya Nyaya Sanhita, 2023, (No. 45 of 2023).

¹⁵ The Indian Penal Code, S.330 & S.331.

¹⁶ The Bhartiya Nyaya Sanhita, 2023, S.112.

¹⁷ The Bhartiya Nyaya Sanhita, 2023, S.113.

¹⁸ The Constitution of India, A.20(3).

¹⁹ The Bhartiya Nyaya Sanhita, 2023, S.101.

²⁰ The Indian Penal Code, S.302.

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)²¹, which replaces the colonial-era Criminal Procedure Code, 1973²², lays down critical procedural safeguards governing the arrest and treatment of accused persons, aimed at preventing abuse and ensuring due process. Section 39²³ of the BNSS, corresponding to the erstwhile Section 41²⁴ of the CrPC, imposes restrictions on the circumstances under which arrests can be made—emphasising that arrest should not be the default response in cases involving offences punishable with imprisonment up to seven years, unless necessary for specific, justifiable reasons.

Section 43²⁵, analogous to Section 46²⁶ of the CrPC, specifies the manner in which arrests are to be executed, clearly stating that law enforcement officers must avoid the use of unnecessary or excessive force. Section 47²⁷, which replaces Section 50²⁸, mandates that any person who is arrested must be informed promptly of the reasons for their arrest and of their right to be released on bail, if applicable. This procedural requirement is vital to uphold the fundamental right to personal liberty enshrined under Article 21²⁹ of the Constitution.

In addition, Section 53³⁰ corresponding to Section 54³¹ of the CrPC plays a crucial role in safeguarding against custodial abuse. It provides that any person arrested has the right to request a medical examination by a registered medical practitioner. This provision helps in the documentation of any pre-existing injuries or signs of mistreatment, serving as an important tool for accountability in cases of custodial violence.

Together, these provisions under the BNSS strengthen the procedural framework that governs arrests in India, reflecting a move toward greater transparency, accountability, and protection of human rights during the criminal justice process.

Under the Bharatiya Sakshya Adhiniyam, 2023³², which replaces the Indian Evidence Act, 1872³³, long-standing evidentiary safeguards against custodial abuse and coerced confessions

²¹ The Bharatiya Nagarik Suraksha Sanhita, 2023 (No. 46 of 2023).

²² The Criminal Procedure Code, 1973 (No. 2. of 1974).

²³ The Bharatiya Nagarik Suraksha Sanhita, 2023, S.39.

²⁴ The Criminal Procedure Code, 1973, S.41.

²⁵ The Bharatiya Nagarik Suraksha Sanhita, 2023, S.43.

²⁶ The Criminal Procedure Code, 1973, S.46.

²⁷ The Bharatiya Nagarik Suraksha Sanhita, 2023, S.47.

²⁸ The Criminal Procedure Code, 1973, S.50.

²⁹ *Supra* Note 5.

³⁰ The Bharatiya Nagarik Suraksha Sanhita, 2023, S.53.

³¹ The Criminal Procedure Code, 1973, S.54.

³² The Bharatiya Sakshya Adhiniyam, 2023 (No. 47 of 2023).

³³ The Indian Evidence Act, 1872 (No. 1 of 1872).

have been retained to uphold the rights of the accused. Section 23(1)³⁴ of the new law corresponds to the former Section 25³⁵ and maintains the principle that confessions made to a police officer are inadmissible in court. This critical safeguard is designed to deter coercive interrogation methods and reinforce the voluntary nature of admissible confessions.

Furthermore, Section 23(2)³⁶, reflecting the spirit of the former Section 26³⁷, states that a confession made while in the custody of police is not admissible unless it is made in the immediate presence of a magistrate. This provision ensures that any confession used as evidence in court carries the presumption of voluntariness and is free from the pressures of custodial influence.

Together, these provisions under the Bharatiya Sakshya Adhiniyam serve as fundamental legal protections against custodial torture and forced confessions, emphasizing the importance of due process and the protection of individual liberties within the criminal justice system.

NHRC³⁸ and SHRC³⁹ were both established as a result of the Protection of Human Rights Act, which was passed in 1993⁴⁰. These organizations have the authority to investigate abuses of human rights, including violence committed by those in custody, and to make recommendations for corrective actions. The significance of their role in documentation, awareness, and policy advocacy cannot be overstated, despite the fact that their recommendations are not legally enforceable.

These statutory provisions, when taken as a whole, constitute a multi-layered defence against abuse in the correctional system. However, its efficacy is dependent upon the appropriate execution of these principles, oversight of their implementation, and a commitment to human rights principles at every level of law enforcement.

GAPS IN THE LEGAL FRAMEWORK

It is clear that India's legal and institutional structure has significant flaws, as evidenced by the fact that custodial violence continues to occur despite the constitutional guarantees and

³⁴ The Bharatiya Sakshya Adhiniyam, 2023, S.23(1).

³⁵ The Indian Evidence Act, 1872, S.25.

³⁶ The Bharatiya Sakshya Adhiniyam, 2023, S.23(2).

³⁷ The Indian Evidence Act, 1872, S.26.

³⁸ The National Human Rights Commission.

³⁹ The State Human Rights Commissions.

⁴⁰ The Protection of Human Rights Act, 1993, (No. 10 of 1994).

legislative measures that are in existence. In the legal system, these gaps are not only the result of procedural oversights; rather, they are indicative of a more fundamental structural and cultural malady.

A Deficit in a Comprehensive Anti-Torture Law One of the most evident deficiencies is the absence of a specific piece of legislation that is dedicated to the prevention of torture. Despite the fact that the Indian Penal Code contains sections that address bodily harm and abuse in custody, India has not yet enacted a comprehensive law that specifically criminalizes torture committed by governmental agents. India has not ratified the United Nations Convention Against Torture (UNCAT) despite the fact that it has been a signatory to the UNCAT since 1997. The reason for this is that India has cited the requirement for domestic legislation, which is a step that has not been accomplished even after several decades have passed. Due to the absence of this legislative provision, the legal deterrent against torture in custody is considerably diminished, and therefore does not meet the norms of international human rights.⁴¹

Implementation Deficit: Even in cases when legal requirements are there, the implementation of such provisions is inconsistent and frequently insufficient. A significant number of the procedures that are specified under the Criminal Procedure Code and constitutional rights are regularly neglected in practice by the police. Instances of illegal imprisonment, the refusal to provide access to legal counsel, and the manipulation of medical examinations are not prevalent. A system that frequently places a higher priority on convenience and conviction rates than it does on justice and due process can sometimes give law enforcement officers the impression that they are not being held accountable for their actions. Intimidation, societal pressure, and bureaucratic difficulties are often encountered by victims and their families, particularly those who come from underprivileged homes. These factors deter victims and their families from filing complaints or seeking justice.⁴²

Accountability Mechanisms: That Are Weak The accountability for violence that occurs in correctional facilities is hampered by internal review systems that are often ineffective and opaque. Investigations conducted by departments typically lack openness and are rarely fair, which frequently results in the officers who are accused of wrongdoing being exonerated or

⁴¹ Justice Shri K.G. Balakrishnan Chairperson, NHRC, “*Journal Of The National Human Rights Commission India*”.

⁴² Dr. Justice V.S. Malimath, “*Committee on Reforms of Criminal Justice System Government of India, Ministry of Home Affairs*”, Volume I, March 2003.

receiving little punishment. Even though they are more independent, judicial investigations are rarely begun unless there is sufficient pressure from the public or attention from the media as well. The fact that police departments are reluctant to file First Information Reports (FIRs) against their own personnel is another factor that contributes to the complexity of the situation. A further disadvantage is that the absence of witness protection systems discourages critical testimonies, which in turn allows perpetrators to avoid personal responsibility.⁴³

Collectively, these disparities contribute to a culture of silence, fear, and the normalization of violence inside settings that are associated with incarceration. A movement in the system toward accountability, openness, and respect for the fundamental rights of all individuals, particularly those who are in vulnerable and powerless situations, is required in order to address these issues. It is not enough to just modify the legal system in order to address them.

CONCLUSION

Custodial violence strikes at the heart of justice and decency, eroding the very foundation of a constitutional democracy. When the guardians of law turn violators, it not only shatters the lives of individuals and families but also diminishes public faith in the legal system. Despite India's robust legal framework, the persistence of custodial torture and abuse reveals a troubling disconnect between law and practice.

The key challenge lies not in the absence of legal protections, but in their effective enforcement. Ensuring that constitutional promises are not mere words requires concerted action—both institutional and societal. Strengthening statutory provisions, especially by enacting a dedicated anti-torture law, is an urgent necessity. Equally crucial is the need for greater judicial vigilance and the establishment of independent oversight mechanisms that can hold law enforcement agencies accountable.

Reform must also be rooted in empathy and dignity. Training programs for police personnel should emphasize human rights and ethical conduct, shifting the culture from one of fear and impunity to one grounded in service and responsibility. Whistleblower protections, witness support systems, and access to legal aid must be fortified so that victims, especially from marginalized communities, are empowered to seek justice without fear of retribution.

⁴³ Ethan Singer, *"When Police Mess Up: The Lack of a Defense to Inadequate Police Investigations"*, 2023.

Ultimately, ending custodial violence demands a collective commitment—to uphold human dignity, to ensure justice is not selective, and to reaffirm the values of equality, fairness, and accountability. Only then can the justice system truly serve its purpose—not as a force of oppression, but as a shield for the vulnerable and a guardian of constitutional values.

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