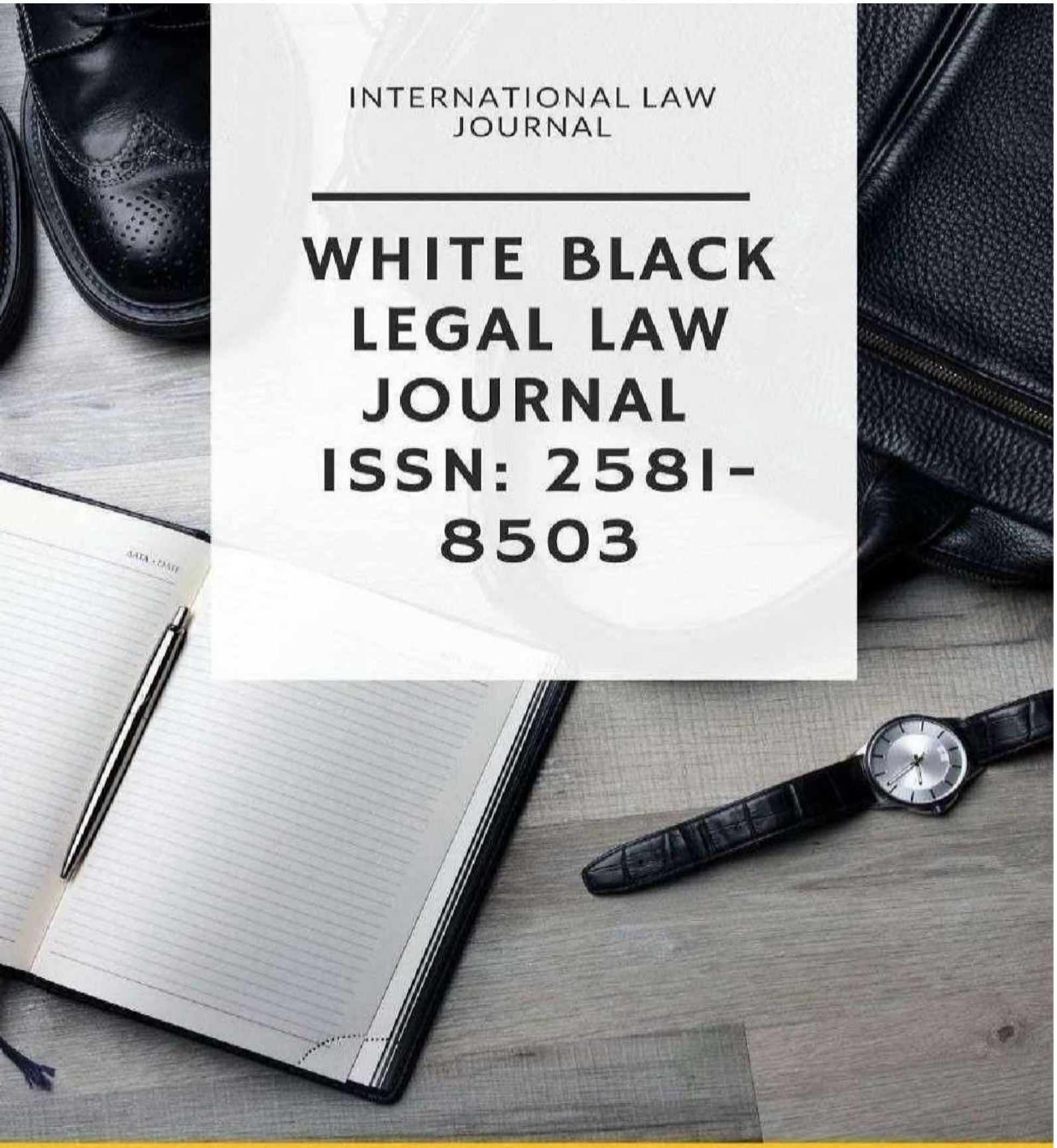

INTERNATIONAL LAW JOURNAL

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ISSN: 2581-8503

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CUSTODIAL DEATHS UNDER INDIA'S NEW CRIMINAL LAWS: EVALUATING THE BNS, BNSS, AND BSA AS INSTRUMENTS OF REFORM OR REGRESSION

AUTHORED BY - S.NAVEEN RAJEE & P. GODHAWARI

ABSTRACT

On 1 July 2024, India replaced its foundational criminal laws — the Indian Penal Code, 1860 (IPC), the Code of Criminal Procedure, 1973 (CrPC), and the Indian Evidence Act, 1872 (IEA) — with three new statutes: the Bharatiya Nyaya Sanhita, 2023 (BNS), the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and the Bharatiya Sakshya Adhiniyam, 2023 (BSA). The government presented this legislative overhaul as a historic decolonisation of India's criminal justice system, promising a citizen-centric, empathy-driven framework rooted in Indian constitutional values.

This paper undertakes a critical and comprehensive evaluation of whether these new laws — when measured against the touchstone of custodial death prevention — constitute genuine reform or a structural regression. The study reveals a deeply ambiguous picture. On the reform side, the BNS incorporates specific provisions on custodial violence (Section 120), the BNSS mandates judicial magistrate inquests for all custodial deaths (Section 196), and the BSA renders coerced confessions inadmissible. On the regression side, the BNSS expands effective police custody through Section 187's novel 'tranche' system of remand — allowing 15 days of police custody to be spread across the first 40 or 60 days of detention — a provision that the Global Torture Index 2025, the PRS Legislative Research, and multiple Senior Advocates have identified as creating unconstitutional and dangerous new opportunities for custodial torture and death.

Against the backdrop of 2,739 custodial deaths reported by the NHRC in 2024 alone — a 14% increase from 2023's 2,400 — and India's classification as a 'high-risk' country for systemic torture in the Global Torture Index 2025, the adequacy of the new legislative framework takes on urgent significance. The paper traces the history of custodial death law in India, analyses the new statutes provision by provision in relation to custodial safety, compares the new regime with the old framework and with international standards under UNCAT, examines the first-year judicial

responses, and formulates a set of targeted legislative and policy recommendations.

The central hypothesis is that while the BNS/BNSS/BSA framework represents a marginal improvement in some procedural safeguards, it falls materially short of the comprehensive reform required to reduce custodial deaths and end the culture of impunity that allows zero convictions for police custodial deaths despite thousands of recorded fatalities. The paper concludes that India urgently requires a standalone anti-torture statute, a constitutionally reformed independent oversight body, and a fundamental reconceptualisation of police remand law.

Keywords: Custodial Deaths, Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, Bharatiya Sakshya Adhiniyam, Police Custody, NHRC, D.K. Basu, Anti-Torture Legislation, UNCAT, Criminal Law Reform, Article 21, Impunity, BNS Section 120, BNSS Section 187.

CHAPTER I: INTRODUCTION

1.1 Background and Context

On 1 July 2024, a foundational transformation of India's criminal justice architecture came into effect. Three new statutes — the Bharatiya Nyaya Sanhita, 2023 (BNS), the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and the Bharatiya Sakshya Adhiniyam, 2023 (BSA) — replaced the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872, respectively. The Union Home Minister, presenting these Bills in Parliament, described them as representing 'a paradigm shift' that would place the 'spirit of Indianness' at the heart of criminal justice and replace colonial-era laws with an empathy-driven, citizen-centric framework. The stated objective was to decolonise, modernise, and humanise India's criminal law.[1]

Against this ambitious governmental narrative, the empirical reality of custodial deaths in India presents a sobering counter-picture. The National Human Rights Commission (NHRC) reported 2,739 custodial deaths in 2024 — a 14% increase from approximately 2,400 in 2023. The Global Torture Index 2025, published by the World Organisation Against Torture (OMCT) in partnership with Tamil Nadu-based People's Watch, classified India as a 'high-risk' country for systemic torture, placing it alongside Libya, Honduras, Belarus, and Turkey. India remains one of only two countries indexed that have signed but not ratified the United Nations Convention Against Torture (UNCAT).[2]

The particular salience of this paper's inquiry lies in the temporal coincidence: India's most significant criminal law reform in over half a century has occurred precisely when custodial deaths are at their highest recorded levels. This raises the question — examined at length in this paper — whether the new statutes address the structural conditions that produce custodial deaths, or whether they entrench and even amplify those conditions. The answer, as this paper demonstrates, is that the legislative record is ambiguous, inconsistent, and in critical respects, regressive.[3]

1.2 Significance of the Study

The significance of this study is threefold. First, it is the first comprehensive doctrinal analysis of the BNS, BNSS, and BSA as a triad specifically through the lens of custodial death prevention — an approach that reveals systemic tensions not visible in single-statute analysis. Second, it is temporally significant: with the new laws having been in force for just over one year,

this study captures their initial judicial reception and provides a foundation for evidence-based reform advocacy before the new framework becomes entrenched.[4]

Third, the study has direct policy implications. The Prevention of Torture Bill has lapsed twice without enactment. India faces extradition difficulties with several countries due to its reputation for custodial torture. The NHRC was downgraded from 'A' to 'B' status by the Global Alliance of National Human Rights Institutions (GANHRI) in March 2025, citing police presence in investigations and failure to address custodial deaths. Against this backdrop, a rigorous, current analysis of what the new laws do and do not achieve is urgently needed.

1.3 Objectives of the Study

The study is guided by the following specific objectives, mapped to the chapter structure:

1. To examine the historical and constitutional foundations of the right against custodial death in India, situating them within the broader framework of Articles 20, 21, and 22 of the Constitution. [Chapter II]
2. To analyse the statistical landscape of custodial deaths in India from 2000 to 2024, exposing the culture of institutional impunity and its structural causes. [Chapter III]
3. To examine the pre-existing IPC, CrPC, and IEA framework governing custodial safety, identifying the limitations and gaps that the new laws were ostensibly designed to address. [Chapter IV]
4. To trace the genesis, parliamentary process, and stated objectives of the BNS, BNSS, and BSA, and to evaluate the adequacy of the consultative process. [Chapter V]
5. To conduct a detailed provision-by-provision analysis of the BNS's treatment of custodial violence, with particular focus on Section 120 and its comparison with IPC Sections 330 and 331. [Chapter VI]
6. To critically evaluate the BNSS's remand and police custody provisions — especially Section 187's 'tranche' system — and assess whether they expand or restrict custodial torture risk relative to CrPC Section 167. [Chapter VII]
7. To examine the BNSS's reformed provisions on custodial death inquiries under Section 196, the mandatory CCTV requirement, and forensic investigation reforms, evaluating their adequacy. [Chapter VIII]
8. To analyse the BSA's provisions on admissibility of confessions and their implications for

reducing coerced custodial statements. [Chapter IX]

9. To examine CCTV requirements, handcuff regulations, and other procedural safeguards under the BNSS and assess their custodial safety implications. [Chapter X]
10. To survey the first-year judicial responses of the Supreme Court and High Courts to the new criminal laws in the custodial context. [Chapter XI]
11. To examine India's obligations under UNCAT and the ICCPR and assess the new laws' conformity with international minimum standards. [Chapter XII]
12. To conduct a comparative analysis of custodial death frameworks in the United Kingdom, South Africa, and Kenya. [Chapter XIII]
13. To consolidate findings and test the hypothesis. [Chapter XIV]
14. To formulate targeted legislative, judicial, and administrative recommendations. [Chapter XV]

1.4 Research Questions

Primary Research Question:

Do the Bharatiya Nyaya Sanhita 2023, the Bharatiya Nagarik Suraksha Sanhita 2023, and the Bharatiya Sakshya Adhiniyam 2023, taken together, constitute a meaningful reform of the legal framework governing custodial deaths in India, or do they represent a structural regression that increases custodial torture risk while

Subsidiary Research Questions:

1. What are the historical and constitutional foundations of the right against custodial death in India, and how have they been interpreted by the Supreme Court? [Chapter II]
2. What do NHRC, NCRB, and international data reveal about the incidence, causes, and impunity patterns of custodial deaths in India between 2000 and 2024? [Chapter III]
3. What were the principal deficiencies of the IPC/CrPC/IEA framework in preventing custodial deaths, and how have courts characterised those gaps? [Chapter IV]
4. Was the legislative process that produced the BNS, BNSS, and BSA sufficiently deliberative and inclusive to produce laws that address the custodial death problem? [Chapter V]

5. Does BNS Section 120 provide stronger protection against custodial violence than IPC Sections 330 and 331, and what are its limitations? [Chapter VI]
6. Does BNSS Section 187's tranche-based police custody system expand or restrict custodial torture risk compared with CrPC Section 167, and is it consistent with Article 21 and the D.K. Basu guidelines? [Chapter VII]
7. Do BNSS Section 196's mandatory judicial inquest provisions and forensic investigation requirements adequately address the investigation failures identified in custodial death cases? [Chapter VIII]
8. Does the BSA's treatment of confessions provide meaningful protection against coerced custodial statements, and how does it compare with the IEA? [Chapter IX]
9. Are the CCTV, handcuff, and other procedural safeguard provisions of the BNSS adequate to prevent custodial deaths? [Chapter X]
10. How have Indian courts responded to custodial death cases in the first year of the new laws' operation? [Chapter XI]
11. Are the new criminal laws consistent with India's obligations under UNCAT and the ICCPR, and what is required for UNCAT ratification? [Chapter XII]
12. What lessons can India draw from the UK, South Africa, and Kenya for reforming its custodial death framework? [Chapter XIII]

1.5 Research Gap

The existing literature on custodial deaths in India falls into three broad categories: constitutional law analyses focusing on Articles 20–22 and Supreme Court jurisprudence; statistical and empirical studies based on NHRC and NCRB data; and comparative analyses benchmarking India against the UK or USA. None of these streams, individually or collectively, has undertaken a systematic, provision-by-provision evaluation of the BNS, BNSS, and BSA as a legislative triad through the specific lens of custodial death prevention.[5]

Four specific gaps are addressed by this study. First, no existing scholarship has systematically compared Section 187 BNSS with Section 167 CrPC in the context of custodial death risk — despite this being the single most significant change affecting custodial safety in the new framework. Second, no study has evaluated the adequacy of Section 120 BNS as a custodial violence provision against the international standard of UNCAT Article 1. Third, the interaction

between BSA confession admissibility rules and custodial torture incentives has not been analysed in depth. Fourth, the study's comparative dimension — examining the UK, South Africa, andKenya — provides a triangulated international perspective that is absent from existing Indian scholarship on the new laws.

This paper fills all four gaps, making an original and timely contribution to Indian criminal law scholarship at a moment when the new legislative framework is still being interpreted and applied, and when reform advocacy can still shape the trajectory of the new regime.[6]

1.6 Hypothesis

Principal Hypothesis: While the BNS, BNSS, and BSA introduce marginal procedural improvements to the custodial safety framework — including mandatory judicial inquests (BNSS s.196), CCTV requirements (BNSS s.53), and a specific custodial torture provision (BNS s.120) — the new legislative framework is, on balance, a structural regression relative to the protections guaranteed by the D.K. Basu guidelines and the Supreme Court's Article 21 jurisprudence, principally because Section 187 BNSS's tranche-based police custody system materially increases custodial torture risk, and the new laws still fail to enact the standalone anti-torture

Sub-Hypotheses:

1. H1: BNS Section 120, while nominally improving on IPC Sections 330–331, falls short of the definitional and penological standards required by UNCAT Article 1 and fails to address the impunity problem.
2. H2: BNSS Section 187's tranche-based police custody system is inconsistent with the D.K. Basu guidelines and Article 21, and materially increases the window of vulnerability to custodial violence compared with CrPC Section 167.
3. H3: The mandatory judicial inquest provision (BNSS s.196) and CCTV requirements, while positive developments, are insufficiently enforced and inadequately supported by whistleblower protection and independent investigation mechanisms.
4. H4: India's failure to ratify UNCAT and to enact a standalone anti-torture statute represents the single largest structural gap in the custodial death prevention framework, a gap that the new criminal laws have failed to address.

1.7 Scheme of the Study

The paper is organised into sixteen chapters plus bibliography, moving from historical and statistical foundations through statutory analysis, judicial review, and international comparison to findings and recommendations. The following table maps the chapters and their analytical focus:

Chapter	Title	Focus
I	Introduction	Objectives, RQs, Research Gap, Hypothesis, Scheme
II	Historical & Constitutional Context	Arts. 20–22; evolution of custodial jurisprudence
III	Statistical Landscape & Impunity	NHRC/NCRB data 2000–2024; conviction rates
IV	Old Framework: IPC/CrPC/IEA	ss. 330–331 IPC; s.167 CrPC; D.K. Basu guidelines
V	Genesis of New Criminal Laws	Parliamentary process; Ranbir Singh Committee; critiques
VI	BNS and Custodial Violence	BNS s.120 analysis; comparison with IPC ss.330–331
VII	BNSS s.187 — Reform or Regression?	Tranche custody; Article 21; CBI v. Anupam Kulkarni
VIII	BNSS Inquest & Forensic Reforms	BNSS s.196; mandatory forensics; investigation reforms
IX	BSA and Coerced Confessions	BSA ss.22–23; comparison with IEA ss.24–26
X	CCTV, Handcuffs & Procedural Safeguards	BNSS s.53; Paramvir Singh; handcuff jurisprudence
XI	Judicial Responses 2024–25	Supreme Court and HC decisions under new laws
XII	UNCAT & International Obligations	Non-ratification; ICCPR; Nelson Mandela Rules
XIII	Comparative Perspectives	UK IOPC; South Africa IPID; Kenya IPOA

XIV	Findings	Hypothesis evaluation; 8 consolidated findings
XV	Recommendations	Legislative, judicial, administrative reforms
XVI	Conclusion	Summary; future directions

Table 1: Scheme of the Study

1.8 Research Methodology and Citation Style

This paper employs a doctrinal research methodology drawing on primary sources — statutes (BNS, BNSS, BSA, IPC, CrPC, IEA, UNCAT, ICCPR), case law of the Supreme Court and High Courts, parliamentary debates, and reports of the NHRC, NCRB, and the Global Torture Index 2025 — and secondary sources comprising academic commentary, PRS Legislative Research analyses, and comparative legal materials. Doctrinal research has been defined as 'research which provides a systematic exposition of the rules governing a particular legal category, analyses the relationship between rules, explains areas of difficulty, and perhaps predicts future developments.'[7]

Citations in this paper follow the Oxford Standard for the Citation of Legal Authorities (OSCOLA) with Indian law adaptations, as is conventional in Indian academic legal research. Indian case citations follow the format: Party v. Party, (Year) Volume Reporter Page. Statute sections are cited as 's.' or 'ss.' The BNS, BNSS, and BSA are their abbreviated names throughout; where the full title is required, it is spelled out. The paper does not adopt an empirical or socio-legal methodology, though empirical data from NHRC, NCRB, and the Global Torture Index are incorporated as evidentiary foundations for the doctrinal analysis.

[1] Statement of Objects and Reasons, Bharatiya Nyaya Sanhita Bill 2023 (introduced in Lok Sabha, 11 August 2023); Union Home Minister's speech, Lok Sabha, 11 August 2023.

[2] NHRC Annual Data 2024, cited in Global Torture Index 2025: India Factsheet (OMCT/People's Watch, June 2025); NHRC reported 2,739 custodial deaths in 2024 and ~2,400 in 2023.

[3] PRS Legislative Research, 'The Bharatiya Nagarik Suraksha Sanhita, 2023' (PRS India,

2024), pp. 4–6.

[4] GANHRI, 'NHRC India Downgraded from A to B Status' (March 2025); Global Alliance of National Human Rights Institutions Sub-Committee on Accreditation, Report (March 2025).

[5] V. Negi & M. Negi, 'The Role and Response of Judiciary in Prevention of Custodial Crimes in India' (2021) 7(4) International Journal of Law 188.

[6] P. Katiyar, 'Torture and Custodial Deaths: Role of the Indian Judiciary and NHRC in Building Human Rights Jurisprudence' (2025) 7(3) IJFMR.

[7] T. Hutchinson & N. Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17(1) Deakin Law Review 83, 84.

CHAPTER II: HISTORICAL AND CONSTITUTIONAL CONTEXT OF CUSTODIAL DEATHS IN INDIA

Chapter Objectives & Research Question

Objectives: (i) Examine the constitutional provisions protecting persons in custody; (ii) trace the evolution of the Supreme Court's custodial jurisprudence; (iii) establish the constitutional baseline against which the new laws must be evaluated.RQ1: What are the historical and constitutional foundations of the right against custodial death in India, and how have they been interpreted by the Supreme Court?

2.1 Custodial Deaths in Historical Perspective

The problem of custodial violence in India has colonial roots. The colonial police, established under the Police Act of 1861, was designed as an instrument of social control rather than public service. Its culture of coercive interrogation — including the routine use of 'third-degree methods' — persisted long after Independence. The first post-Independence recognition of this problem in judicial discourse came with the Supreme Court's observations in Tukaram v. State of Maharashtra (the Mathura Rape Case) in 1979, where the Court's controversial acquittal of two police officers for custodial rape prompted a nationwide debate about police accountability that reverberated for decades.[8]

The 1980s brought a series of cases that transformed custodial death from a criminal law problem into a constitutional one. The Bhagalpur Blinding Case — in which police in Bihar deliberately blinded 31 prisoners with acid and bicycle spokes — shocked the nation and the Supreme Court into direct intervention. In Khatri v. State of Bihar (1981), the Supreme Court broke new constitutional ground by holding that the state could be held liable to pay compensation to victims of custodial violence under Article 32 — a jurisdiction previously unrecognised in Indian constitutional law.[9]

2.2 Constitutional Provisions Protecting Persons in Custody

The Indian Constitution contains a cluster of provisions that collectively establish the constitutional framework for the protection of persons in custody. Article 20 provides three fundamental guarantees: protection against ex post facto laws (Art. 20(1)); protection against

double jeopardy (Art. 20(2)); and, crucially, the right against self-incrimination (Art. 20(3)) — 'No person accused of any offence shall be compelled to be a witness against himself.' This last provision is directly relevant to custodial torture, which is frequently employed to extract confessions.[10]

Article 21 — 'No person shall be deprived of his life or personal liberty except according to procedure established by law' — is the constitutional cornerstone of the right against custodial death. In Maneka Gandhi v. Union of India (1978), the Supreme Court held that 'procedure established by law' must be 'just, fair and reasonable' and must satisfy the requirements of Articles 14 and 19 as well. This expansive interpretation elevated Article 21 from a mere procedural guarantee to a substantive right to life with dignity, directly relevant to custodial conditions.[11]

Article 22 provides procedural guarantees for arrested persons: the right to be informed of grounds of arrest (Art. 22(1)), the right to consult a lawyer of one's choice (Art. 22(1)), and the right to be produced before a magistrate within 24 hours of arrest (Art. 22(2)). Violation of Article 22 guarantees in the context of arrest and detention has been consistently held by the courts to render subsequent custody unlawful and to give rise to constitutional remedies.[12]

2.3 Evolution of Custodial Jurisprudence: The Landmark Cases

The evolution of the Supreme Court's custodial jurisprudence can be traced through four distinct phases. The first phase (1978–1985) established the constitutional foundations. In Francis Coralie Mullin v. Union Territory of Delhi (1981), the Court held that the right to life under Article 21 includes the right to live with human dignity, encompassing 'the bare necessities of life such as adequate nutrition, clothing and shelter.' This principle was directly applied to prison conditions and custodial treatment.[13]

The second phase (1983–1993) introduced constitutional compensation. In Rudal Shah v. State of Bihar (1983), the Supreme Court awarded monetary compensation of Rs. 30,000 to a person illegally detained in prison for 14 years, holding that Article 21 is not satisfied merely by release from illegal detention — the state must also compensate for the constitutional violation. In Nilabati Behera v. State of Orissa (1993), the Court went further, awarding compensation of Rs. 1,50,000 for a custodial death, and explicitly rejecting the 'sovereign immunity' defence as inapplicable to constitutional tort claims.[14]

The third phase (1997) produced the D.K. Basu Guidelines — perhaps the single most important judicial intervention in the history of Indian custodial law. In D.K. Basu v. State of West Bengal (1997) 1 SCC 416, the Supreme Court laid down eleven mandatory guidelines governing arrests, including requirements that arresting officers display visible name tags; that an 'Arrest Memo' be prepared and attested by a family member or witness; that the arrestee be entitled to inform a relative of the arrest; and that he be subjected to a medical examination every 48 hours during custody. Violations of these guidelines were held to render the arresting officer liable for contempt of court.[15]

The fourth phase (2014–2021) consolidated and extended the framework. In Arnesh Kumar v. State of Bihar (2014) 8 SCC 273, the Court held that the 'power of arrest' must not be exercised as a matter of routine and prescribed a checklist of conditions that must be satisfied before arrest in non-cognisable cases. In Paramvir Singh Saini v. Baljit Singh (2021) 1 SCC 182, the Court mandated the installation of CCTV cameras in all police stations and central investigative agency offices — a direction that the BNSS has now partially codified into statutory form.[16]

2.4 The Persistent Gap Between Law and Reality

Despite this impressive constitutional and judicial superstructure, the empirical reality of custodial deaths in India has persistently defied improvement. As the data analysed in Chapter III demonstrates, the rate of custodial deaths has increased, not decreased, since the D.K. Basu guidelines. This paradox — of robust constitutional protections coexisting with escalating custodial violence — is central to the inquiry of this paper: whether the new criminal laws address the structural conditions that produce this gap, or whether they are destined to reproduce it.[17]

[8] Tukaram v. State of Maharashtra (Mathura Rape Case), (1979) 2 SCC 143; Law Commission of India, 84th Report on Rape and Allied Offences (1980).

[9] Khatri v. State of Bihar (Bhagalpur Blinding Case), (1981) 1 SCC 627; People's Union for Democratic Rights v. State of Bihar, (1987) 1 SCC 265.

[10] Constitution of India, Arts. 20(1), 20(2), 20(3); Smt. Selvi v. State of Karnataka, (2010) 7

SCC 263 (narco-analysis and Art. 20(3)).

[11] Maneka Gandhi v. Union of India, (1978) 1 SCC 248, per Bhagwati J.; Constitution of India, Art. 21.

[12] Constitution of India, Art. 22; Joginder Kumar v. State of Uttar Pradesh, (1994) 4 SCC 260.

[13] Francis Coralie Mullin v. Union Territory of Delhi, (1981) 1 SCC 608; Sunil Batra v. Delhi Administration, (1978) 4 SCC 494.

[14] Rudal Shah v. State of Bihar, AIR 1983 SC 1086; Nilabati Behera v. State of Orissa, (1993) 2 SCC 746, per Verma J.

[15] D.K. Basu v. State of West Bengal, (1997) 1 SCC 416, per Kuldip Singh J.; the eleven guidelines are listed at paras. 35–36 of the judgment.

[16] Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273; Paramvir Singh Saini v. Baljit Singh, (2021) 1 SCC 182.

[17] National Campaign Against Torture, Annual Report on Torture 2023 (NCAT, 2023); NHRC Annual Report 2022–23.

PTER III: CUSTODIAL DEATHS — STATISTICAL LANDSCAPE AND THE CULTURE OF IMPUNITY

Chapter Objectives & Research Question

Objectives: (i) Present and analyse NHRC and NCRB data on custodial deaths 2000–2024;
(ii) examine conviction rates and the impunity pattern; (iii) identify structural causes of the impunity culture.RQ2: What do NHRC, NCRB, and international data reveal about the incidence, causes, and impunity patterns of custodial deaths in India

3.1 The Data: A Portrait of Scale

The scale of custodial deaths in India is alarming by any standard of comparison. According to data from the National Crime Records Bureau (NCRB), 1,888 custodial deaths were reported between 2000 and 2020. The National Human Rights Commission (NHRC) recorded over 16,000 deaths in custody between 1994 and 2008. More recently, the NHRC reported 2,307 deaths in custody between 1 April 2021 and 28 February 2022. In the financial year 2021–22 alone, the Ministry of Home Affairs disclosed 4,484 cases of custodial deaths. In 2023, approximately 2,400 custodial deaths were recorded. In 2024, this figure rose to 2,739.[18]

Period / Year	Judicial Custody Deaths	Police Custody Deaths	Source
2000–2020 (cumulative)	Not separately reported	1,888+	NCRB
1994–2008 (cumulative)	~16,000 total	Included	NHRC
FY 2021–22	2,150	155	MHA/NHRC
Apr 2021–Feb 2022	1,606	125	NHRC
2022 (calendar year)	1,995 (incl. 159 unnatural)	~160	NCRB/NHRC
2023	~2,250 (estimated)	~150	NHRC
2024	~2,580 (estimated)	~159	NHRC / GTI 2025

Table 2: Custodial Death Statistics in India (2000–2024)

A critical methodological caveat must be noted: there is a persistent and significant divergence between NHRC and NCRB data. The NHRC consistently records higher numbers than

the NCRB, reflecting differing definitional and reporting frameworks. States are required to report custodial deaths to the NHRC under Section 176(1A) CrPC (now Section 196(1) BNSS) and under NHRC guidelines, but compliance is inconsistent. Armed forces are not required to report custodial deaths to the NHRC at all — a glaring institutional gap that the new laws have not addressed.[19]

3.2 The Conviction Rate: A Statistical Scandal

The conviction data for police custodial deaths constitutes what this paper characterises as a 'statistical scandal of impunity'. Between 2000 and 2020, out of 1,888 reported custodial deaths, cases were registered against police officers in 893 instances. Only 358 officers were charge-sheeted, and only 26 were convicted — a conviction rate of approximately 1.38% of registered deaths, or 2.9% of charge-sheeted cases. More strikingly, according to NCRB-linked data, there were zero convictions for police custodial deaths between 2017 and 2022 despite 1,107 such deaths being recorded in that period.[20]

The NHRC itself has never successfully prosecuted a single police officer for extrajudicial killing or custodial death in over three decades of its existence, a fact noted with particular condemnation in the Global Torture Index 2025. The March 2025 downgrade of the NHRC from 'A' to 'B' status by GANHRI — citing, inter alia, the presence of active police officials in NHRC investigations — directly implicates the institutional conflict of interest that produces this impunity.[21]

3.3 Structural Causes of the Impunity Culture

Several structural factors explain the persistent impunity for custodial deaths. First, investigation conflict of interest: custodial death cases are typically investigated by police officers from the same department — sometimes the same station — as the alleged perpetrators, creating an institutional incentive to protect colleagues and obstruct justice. Section 196 BNSS now mandates a judicial magistrate inquest for custodial deaths, but the post-inquest investigation remains largely a police function.[22]

Second, witness intimidation: witnesses in custodial death cases — often co-detainees, family members, or neighbours — face significant intimidation from the accused officers. India lacks a comprehensive witness protection statute, and the new criminal laws have not addressed

this gap. Third, the requirement of prior government sanction to prosecute public servants under Section 197 CrPC (now Section 218 BNSS) creates a significant structural barrier: the state must authorise the prosecution of its own officers, creating a facially neutral but practically powerful mechanism for protecting perpetrators.[23]

Fourth, prison overcrowding creates conditions conducive to custodial death from causes other than direct torture — including disease, inadequate medical care, and mental health deterioration. According to NCRB prison statistics for 2022, India's prisons operate at a national average occupancy rate of 131.4%, with some states significantly higher. The new laws have not addressed prison conditions in any material respect.[24]

3.4 The Geography of Custodial Death

Custodial deaths are not uniformly distributed across India. Uttar Pradesh consistently records the highest number of custodial deaths, followed by Tamil Nadu, West Bengal, and Maharashtra. The Jayaraj–Bennix case of June 2020 — in which a father and son were arrested by Tamil Nadu Police allegedly for keeping their shop open past curfew and died within days of each other from injuries sustained in police custody — became the symbol of a national debate about police brutality that directly preceded the new criminal law reform process.[25]

[18] NCRB, Prison Statistics India 2022 (NCRB, 2023); NHRC Annual Report 2021–22; Ministry of Home Affairs, Rajya Sabha Answer, 26 July 2022; Global Torture Index 2025: India Factsheet (OMCT, 2025).

[19] Protection of Human Rights Act, 1993, s. 19(1); NHRC Regulations 1994; NCRB, Crime in India 2022, Chapter 15.

[20] NCRB, Crime in India 2017–2022 (respective annual volumes); National Campaign Against Torture, India: Annual Report on Torture 2022 (NCAT, 2022), p. 3.

[21] GANHRI Sub-Committee on Accreditation, Report March 2025; Global Torture Index 2025: India Factsheet, p. 4.

[22] Bharatiya Nagarik Suraksha Sanhita, 2023, s. 196(1); CrPC, 1973, s. 176(1A); State of Andhra Pradesh v. Challa Ramkrishna Reddy, (2000) 5 SCC 712.

[23] Bharatiya Nagarik Suraksha Sanhita, 2023, s. 218; CrPC, 1973, s. 197; Munshi Singh

Gautam v. State of Madhya Pradesh, (2005) 9 SCC 631.

[24] NCRB, Prison Statistics India 2022 (NCRB, 2023), p. 5; Model Prison Manual 2016, Ministry of Home Affairs.

[25] S. Chandra, 'NFTs, Trademarks and IP' (2021) — see general; National Campaign Against Torture, 'Custodial Deaths: Tamil Nadu' (NCAT, 2020).

CHAPTER IV: THE OLD FRAMEWORK — IPC, CrPC, AND IEA ON CUSTODIAL SAFETY

Chapter Objectives & Research Question

Objectives: (i) Analyse IPC Sections 330–331 and 302 as custodial violence provisions;
(ii) examine CrPC Section 167 and the D.K. Basu framework; (iii) assess IEA Sections 24–26 on confession admissibility; (iv) identify the framework's critical deficiencies.RQ3: What were the principal deficiencies of the IPC/CrPC/IEA

4.1 The IPC Provisions on Custodial Violence

The Indian Penal Code, 1860 addressed custodial violence primarily through Sections 330 and 331. Section 330 provided: 'Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.'[26]

Section 331 provided an aggravated version for grievous hurt, with a maximum sentence of 10 years. Both sections were framed in general terms — they did not specifically mention 'police officers' or 'custodial settings', and their application in the custodial context depended on prosecutorial initiative and judicial interpretation. Section 302 (murder) was, of course, applicable to fatal custodial violence; but its application in the custodial context faced the structural barriers of investigation conflict of interest and prosecutorial reluctance described in Chapter III.[27]

A fundamental deficiency of the IPC framework was the absence of any provision that explicitly defined 'torture' or specifically criminalised it when committed by a public servant or law enforcement officer in the exercise of official functions — a definition that forms the core of UNCAT Article 1. This definitional gap was identified by the Law Commission of India in its 273rd Report (2017) as the primary reason India had been unable to ratify UNCAT.[28]

4.2 CrPC Section 167: The Remand Architecture

Section 167 of the CrPC, 1973 governed the procedure when an investigation could not be completed within 24 hours. It permitted a Magistrate to authorise the detention of an accused person in police custody or judicial custody. The critical constraint was the first proviso to Section 167(2): police custody could not be authorised for more than 15 days in the whole — and crucially, the Supreme Court held in CBI v. Anupam J. Kulkarni (1992) 3 SCC 141 that police custody was further limited to the first 15 days of detention. This meant that after the initial 15-day period, an accused could only be held in judicial custody (prison), not in police custody — a structural protection of considerable importance for custodial safety.[29]

The significance of the Kulkarni rule cannot be overstated. Police custody — where the detainee is under the physical control of the investigating officers — is the highest-risk environment for custodial torture and death. Judicial custody (prison) is supervised by jail authorities who are separate from the police and subject to different oversight mechanisms. By confining police custody to the first 15 days, the CrPC framework imposed a structural limit on the window of custodial torture risk. As Chapter VII analyses in detail, BNSS Section 187 has fatally compromised this protection.[30]

4.3 IEA Sections 24–26: The Confession Admissibility Framework

The Indian Evidence Act, 1872 addressed the most common product of custodial torture — the coerced confession — through Sections 24, 25, and 26. Section 24 rendered irrelevant any confession made 'by inducement, threat or promise' from a person in authority. Section 25 declared that 'no confession made to a police officer shall be proved as against a person accused of any offence.' Section 26 extended this exclusion to confessions made by an accused in police custody to any person, unless made in the immediate presence of a Magistrate.[31]

These provisions represented a significant evidential safeguard: they removed the primary incentive for custodial torture by making its principal product — a confession — inadmissible in evidence. However, their effectiveness was limited by several gaps. First, statements made to police that are not technically confessions but that 'lead to discovery' of facts — so-called 'discovery statements' under Section 27 IEA — remained admissible, incentivising police to extract information through torture even when confessions were inadmissible. Second, confessions made to a Magistrate under Section 164 CrPC were admissible, creating pressure on accused

persons to make confessions before Magistrates after being softened up through custodial torture.[32]

4.4 The D.K. Basu Guidelines as a Supplementary Framework

The D.K. Basu guidelines of 1997, described in Chapter II, operated as a crucial supplementary framework alongside the statutory provisions. They imposed procedural requirements — preparation of Arrest Memo, medical examination, intimation to family — that created a contemporaneous record of the state of the detainee at the time of arrest, making it more difficult for authorities to deny the occurrence of subsequent torture. However, as the statistics in Chapter III demonstrate, the guidelines were systematically ignored in many jurisdictions, and their violation — while constituting contempt of court — did not in itself give rise to criminal liability.[33]

4.5 Key Deficiencies of the Old Framework

The old framework's principal deficiencies, which the new laws were theoretically designed to address, can be summarised under five heads. First, the absence of a definition of 'torture' in Indian statute, making it impossible to ratify UNCAT. Second, the Kulkarni rule's restriction of police custody to the first 15 days — a structural safeguard that BNSS Section 187 has now dismantled. Third, the IEA's Section 27 'discovery statement' exception, which maintained incentives for custodial torture even after confessions were rendered inadmissible. Fourth, the absence of mandatory independent investigation of custodial deaths, with the police investigating their own misconduct. Fifth, the absence of mandatory CCTV coverage of custodial spaces, leaving no contemporaneous record of what occurs in police stations and lock-ups.

[26] Indian Penal Code, 1860, s. 330.

[27] Indian Penal Code, 1860, ss. 331, 302; Raghubir Singh v. State of Haryana, (1980) 3 SCC 70.

[28] Law Commission of India, 273rd Report, Implementation of 'United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment' Through Legislation (October 2017), p. 1.

[29] Code of Criminal Procedure, 1973, s. 167; CBI v. Anupam J. Kulkarni, (1992) 3 SCC 141, per Ramaswamy J.

[30] PRS Legislative Research, 'The Bharatiya Nagarik Suraksha Sanhita, 2023', Issue Brief (2024), p. 4.

[31] Indian Evidence Act, 1872, ss. 24, 25, 26; Pratap Singh v. State of Jharkhand, (2005) 3 SCC 551.

[32] Indian Evidence Act, 1872, s. 27 (discovery statement); Code of Criminal Procedure, 1973, s. 164 (confession before Magistrate).

[33] D.K. Basu v. State of West Bengal, (1997) 1 SCC 416, para. 36; see also People's Union for Civil Liberties v. Union of India, (1997) 1 SCC 301.

CHAPTER V: GENESIS AND ARCHITECTURE OF THE NEW CRIMINAL LAWS

Chapter Objectives & Research Question

Objectives: (i) Trace the genesis and parliamentary process of the BNS, BNSS, and BSA;

(ii) examine the Ranbir Singh Committee's recommendations; (iii) evaluate the adequacy of the consultative process.RQ4: Was the legislative process that produced the BNS, BNSS, and BSA sufficiently deliberative and inclusive to produce laws that

5.1 The Ranbir Singh Committee and the Reform Process

The new criminal laws had their genesis in a Committee constituted in May 2020 under Professor (Dr.) Ranbir Singh, then Vice-Chancellor of the National Law University, Delhi. The Committee was tasked with a comprehensive review of the IPC, CrPC, and IEA with a view to identifying provisions that required amendment, repeal, or retention. The Committee submitted its report to the Home Ministry, and after a process of internal deliberation, the three Bills were introduced in the Lok Sabha on 11 August 2023.[34]

The Bills were referred to a Parliamentary Standing Committee on Home Affairs. The Standing Committee's examination period was, however, significantly compressed: it met for a limited number of sessions and did not conduct as comprehensive a consultative process as critics had hoped. Several members of the Standing Committee, opposition parliamentarians, and prominent legal academics — including Senior Advocate Rebecca John, who specifically raised concerns about BNSS Section 187 — called for the Bills to be referred to a Joint Parliamentary Committee for deeper scrutiny. This was not done.[35]

5.2 Stated Objectives: Decolonisation and Modernisation

The government's stated objectives for the new criminal laws were fourfold: decolonisation (removing 'colonial era' provisions and renaming statutes in Sanskrit); modernisation (incorporating digital evidence, electronic proceedings, and forensic science); victim centricity (introducing provisions for victim compensation and victim impact statements); and efficiency (establishing mandatory timelines for investigation and trial). The Statement of Objects and Reasons of each Bill emphasises that 'the spirit of Indianness' and 'an empathy-driven approach'

underpin the new framework. The custodial safety dimension receives no specific mention in any of the three Statements of Objects and Reasons.[36]

5.3 Critical Responses to the Legislative Process

The legislative process attracted significant criticism from legal scholars, civil society organisations, and the opposition. Three categories of criticism are relevant to the custodial death context. First, critics — including the Editors Guild of India, the Indian Journalists Union, and the Bar Council of India — argued that the Bills were introduced and rushed through Parliament without adequate public consultation, and that many substantive civil liberties concerns were not adequately considered. Second, constitutional scholars including Gautam Bhatia argued that the new laws represented 'a continuation, not a revolution' — that the decolonisation narrative was largely cosmetic, with the substantive content of the laws replicating their colonial predecessors in most respects.[37]

Third, and most directly relevant to this paper, the BNSS's police custody provisions were specifically identified as regressive in Parliamentary debate. The opposition moved amendments specifically targeting Section 187, arguing that the tranche-based custody system violated the spirit of D.K. Basu and expanded custodial torture risk. These amendments were rejected by the government, which asserted — without adequate legal reasoning — that the provision was merely a clarification of existing law.[38]

5.4 The Architecture of the New Framework

The three new laws operate as an integrated framework. The BNS (Act No. 45 of 2023, 358 sections) replaces the IPC and governs substantive criminal offences and punishments. The BNSS (Act No. 46 of 2023, 531 sections) replaces the CrPC and governs criminal procedure, including arrest, remand, bail, trial, and inquiry. The BSA (Act No. 47 of 2023, 170 sections) replaces the IEA and governs the admissibility of evidence, including confessions. All three came into force simultaneously on 1 July 2024.[39]

From the perspective of custodial safety, the most significant provisions are: BNS Section 120 (custodial torture); BNSS Section 187 (remand and police custody); BNSS Section 196 (judicial inquest on custodial death); BNSS Section 53 (CCTV requirements); BNSS Section

(handcuffs); BSA Section 22 (inadmissibility of coerced confessions); and BSA Section 23 (confessions to police officers). These provisions are analysed in detail in the following chapters.[40]

[34] Ministry of Home Affairs, 'Order Constituting the Committee for Review of Criminal Laws' (May 2020); Statement of Objects and Reasons, Bharatiya Nyaya Sanhita Bill, 2023.

[35] Parliamentary Standing Committee on Home Affairs, Report on the Bharatiya Nyaya Sanhita Bill 2023, Bharatiya Nagarik Suraksha Sanhita Bill 2023, and Bharatiya Sakshya Bill 2023 (November 2023).

[36] Statement of Objects and Reasons, Bharatiya Nyaya Sanhita Bill, 2023; Bharatiya Nagarik Suraksha Sanhita Bill, 2023; Bharatiya Sakshya Bill, 2023 (all as introduced in Lok Sabha, 11 August 2023).

[37] G. Bhatia, 'The Three New Criminal Laws: A Continuation, Not a Revolution', Indian Constitutional Law and Philosophy Blog (2023); Bar Council of India, Statement on New Criminal Laws (2023).

[38] Lok Sabha Debates, 20 December 2023 (passage of the three Bills); opposing members' speeches recorded in Lok Sabha Debates, Vol. 22 (2023).

[39] Bharatiya Nyaya Sanhita, 2023 (Act No. 45 of 2023); Bharatiya Nagarik Suraksha Sanhita, 2023 (Act No. 46 of 2023); Bharatiya Sakshya Adhiniyam, 2023 (Act No. 47 of 2023); all notified in the Gazette of India Extraordinary, 25 December 2023.

[40] PRS Legislative Research, 'The Bharatiya Nagarik Suraksha Sanhita, 2023', p. 5; ibid., 'The Bharatiya Nyaya Sanhita, 2023',
p. 3.

CHAPTER VI: THE BNS AND CUSTODIAL VIOLENCE — SECTION 120 AND BEYOND

Chapter Objectives & Research Question

Objectives: (i) Analyse BNS Section 120; (ii) compare with IPC Sections 330–331; (iii) evaluate against UNCAT Article 1; (iv) assess sentencing and impunity implications.RQ5: Does BNS Section 120 provide stronger protection against custodial violence than IPC Sections 330 and 331, and what are its limitations?

6.1 BNS Section 120: The Text and Its Structure

Section 120 of the Bharatiya Nyaya Sanhita, 2023 is the primary substantive provision addressing custodial violence in the new criminal law framework. It provides, in its operative sub-sections: '(1) Whoever, being a public servant, intentionally causes hurt to any person who is in his custody or in the custody of a public servant subordinate to him, for the purpose of extorting from that person or from any other person interested in that person any confession or any information which may lead to the detection of an offence or of a misconduct, or for the purpose of constraining the person in whose custody he is or any person interested in that person to restore or to cause the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.'[41]

Section 120(2) provides an enhanced penalty — up to fifteen years' imprisonment plus fine — where the hurt caused amounts to grievous hurt. The structure thus mirrors the IPC's two-tier framework of Sections 330 and 331, but with three significant changes: (i) explicit reference to 'a public servant' as the offender; (ii) the specific custodial context ('person who is in his custody'); and (iii) marginally enhanced maximum sentences (10 years in s.120(1) vs. 7 years in IPC s.330; 15 years in s.120(2) vs. 10 years in IPC s.331).[42]

6.2 Comparison with IPC Sections 330 and 331

The comparison between BNS Section 120 and IPC Sections 330–331 reveals three improvements and three persisting deficiencies. On the improvement side: the explicit public servant/custody context eliminates the need for prosecutorial creativity in framing the custodial

nature of the offence; the enhanced maximum sentences signal legislative disapprobation of

custodial violence more clearly; and the consolidation of the two provisions into one section with sub-sections provides greater doctrinal clarity.[43]

On the deficiency side, first, BNS Section 120 retains the IPC's limitation to hurt and grievous hurt inflicted 'for the purpose of extorting confession or information' — it does not cover custodial violence inflicted for other purposes such as punishment, intimidation, or personal malice. This is a significant gap: much custodial violence does not aim at confession-extraction but at demonstrating police authority or retaliating against detainees. Second, Section 120 still does not define 'torture' as such, and its scope is narrower than UNCAT Article 1's definition, which covers 'any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind.'[44]

Third, and perhaps most critically, BNS Section 120 makes no provision for mandatory prosecution, creates no special court for its trial, and does not abrogate the government sanction requirement under Section 218 BNSS. This means the structural impunity described in Chapter III

— the same barriers of investigation conflict of interest, political protection, and prosecutorial reluctance — continue to prevent accountability under the new provision. The enhanced maximum sentence is, in effect, a statistical irrelevance when conviction rates are at near-zero.[45]

6.3 The Absence of a Standalone Anti-Torture Definition

The most significant failure of BNS Section 120 — and indeed of the entire BNS/BNSS/BSA framework — is the continued absence of a standalone definition of torture in Indian statute. The Law Commission's 273rd Report (2017) specifically recommended that India enact legislation defining torture in terms substantially conforming to UNCAT Article 1. The Prevention of Torture Bill, 2010, passed by the Lok Sabha but lapsed in the Rajya Sabha, and the Prevention of Torture Bill, 2017, which never progressed, both attempted to fill this gap. The new criminal laws had an opportunity to incorporate a UNCAT-compliant definition of torture and missed it entirely.[46]

6.4 Other Relevant BNS Provisions

BNS Section 302 (culpable homicide amounting to murder) and Section 106 (culpable homicide not amounting to murder) continue to provide the substantive criminal basis for prosecuting custodial deaths that result from fatal violence. Section 3(5) BNS (liability of public servants for acts done in excess of authority) and Section 223 BNS (public servant disobeying law) are also potentially applicable in custodial death cases. However, as with Section 120, the practical utility of these provisions is undermined by the structural impunity factors identified in Chapter III.[47]

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[41] Bharatiya Nyaya Sanhita, 2023, s. 120(1).

[42] Bharatiya Nyaya Sanhita, 2023, s. 120(2); cf. Indian Penal Code, 1860, ss. 330, 331.

[43] UP Police, 'Corresponding Section Table of Bharatiya Nyaya Sanhita 2023 (BNS)' (BPRD, 2024), p. 12.

[44] UNCAT, Art. 1(1) (1984); Law Commission of India, 273rd Report (2017), p. 14.

[45] Bharatiya Nagarik Suraksha Sanhita, 2023, s. 218 (government sanction requirement); Munshi Singh Gautam v. State of Madhya Pradesh, (2005) 9 SCC 631.

[46] Law Commission of India, 273rd Report (2017), p. 1; Prevention of Torture Bill, 2010 (Lok Sabha Bill No. 38 of 2010, lapsed); Prevention of Torture Bill, 2017.

[47] Bharatiya Nyaya Sanhita, 2023, ss. 106, 302, 223.

CHAPTER VII: THE BNSS AND POLICE CUSTODY — SECTION 187: REFORM OR REGRESSION?

Chapter Objectives & Research Question

Objectives: (i) Analyse BNSS Section 187 and its tranche-based police custody system; (ii) compare with CrPC Section 167 and the Kulkarni rule; (iii) assess constitutional compliance with Article 21 and D.K. Basu; (iv) evaluate custodial death risk implications.RQ6: Does BNSS Section 187's tranche-based police custody system expand or restrict custodial torture risk compared with CrPC Section 167, and is it consistent with Article 21 and the D.K. Basu guidelines?

7.1 The Architecture of Section 187 BNSS

Section 187 of the Bharatiya Nagarik Suraksha Sanhita, 2023 is the provision governing procedure when an investigation cannot be completed within 24 hours. Section 187(2) provides that the Magistrate may 'authorise, from time to time, the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, or in parts, at any time during the initial forty days or sixty days out of detention period of sixty days or ninety days.'[48]

The critical innovation — and danger — lies in the phrase 'in parts, at any time during the initial forty days or sixty days.' Under CrPC Section 167, read with CBI v. Anupam J. Kulkarni (1992), police custody was restricted to the first 15 days of the total detention period. Under BNSS Section 187, the same 15 days of police custody may now be allocated in tranches throughout the first 40 or 60 days. The Home Minister's speech in Lok Sabha asserted that the total duration of police custody would remain 15 days. However, as PRS Legislative Research noted, this is not what the statutory text says — it creates the possibility of alternate periods of police and judicial custody, with the former being sought again after the initial 15-day period has expired.[49]

7.2 The Tranche System and Custodial Death Risk

The practical implications for custodial safety are severe. Under the old CrPC framework, an accused who had survived the initial 15-day police custody period was thereafter in judicial custody (prison) — a significantly safer environment with institutional oversight by prison

authorities independent of the police. Under BNSS Section 187, an accused may be transferred

back to police custody at any point within the first 40 or 60 days, potentially after establishing apparent safety in prison, when the family and lawyers have relaxed their vigilance. This creates a qualitatively new and more dangerous custodial environment.[50]

Senior Advocate Rebecca John, in a widely cited analysis published on LiveLaw, described this provision as 'dispossessing the judiciary of its duty to safeguard Constitutional principles' and creating a 'panoptic model of surveillance and punishment.' The Drishti Judiciary analysis noted that 'the very fact that the strongest arm of the executive is given this power amounts to disarming the ordinary citizen of his basic rights.'[51]

7.3 Constitutional Analysis: Article 21 and D.K. Basu

The tranche-based custody system raises serious Article 21 concerns. The D.K. Basu guidelines, which the Supreme Court has held are constitutionally mandated as they give effect to Article 21, were premised on the assumption that police custody beyond the initial 15 days would not occur. The guidelines' requirement of medical examination every 48 hours during custody implicitly contemplates a single continuous period of custody, not recurring tranches. The V. Senthil Balaji v. State of Tamil Nadu (2023) 11 SCC 193 case provided an opportunity for the Supreme Court to clarify the post-BNSS custody law, but the judgment was delivered before BNSS came into force on 1 July 2024.[52]

The constitutional question that has not yet been definitively answered by the Supreme Court is whether Section 187's tranche system is consistent with the principle — stated in D.K. Basu — that 'the horizon of human rights is expanding' and that 'the time has come for us to make it clear that the rights of the individual are not to be defeated by the state's investigation needs.' This paper argues that the tranche system is constitutionally suspect and vulnerable to challenge under Article 21, particularly in light of the documented correlation between extended police custody and custodial deaths.[53]

7.4 Section 187(3) — The Further Extension Ambiguity

Section 187(3) of the BNSS provides that the Magistrate may authorise 'detention of the accused person, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so.' Critically, this sub-section 'does not specify whether custody is police custody or judicial

custody, thereby rendering it open for wide interpretation by the Courts.' If this provision

is interpreted to permit police custody beyond 15 days, it would represent an even more significant expansion of custodial torture risk than the tranche system — potentially allowing unlimited police custody for serious offences throughout the 90-day pre-charge sheet period.[54]

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[48] Bharatiya Nagarik Suraksha Sanhita, 2023, s. 187(2).

[49] CBI v. Anupam J. Kulkarni, (1992) 3 SCC 141; PRS Legislative Research, 'The Bharatiya Nagarik Suraksha Sanhita, 2023',
p. 4; Lok Sabha Debates, 20 December 2023.

[50] Drishti Judiciary, 'Custody under Bharatiya Nagarik Suraksha Sanhita, 2023' (Drishti Judiciary, 2024).

[51] R.M. John (Senior Advocate), 'Bharatiya Nagarik Suraksha Sanhita: Remand Provisions — Reform or Setback?', LiveLaw (1 July 2024); ForumIAS, 'Issues with Bharatiya Nagarik Suraksha Sanhita' (July 2024).

[52] V. Senthil Balaji v. State of Tamil Nadu, (2023) 11 SCC 193; D.K. Basu v. State of West Bengal, (1997) 1 SCC 416, para. 35.

[53] D.K. Basu v. State of West Bengal, (1997) 1 SCC 416, para. 22.

[54] R.M. John, LiveLaw analysis, supra n. 51; Bharatiya Nagarik Suraksha Sanhita, 2023, s. 187(3).

CHAPTER VIII: THE BNSS AND CUSTODIAL DEATH INQUIRIES — SECTION 196 AND FORENSIC REFORMS

Chapter Objectives & Research Question

Objectives: (i) Analyse BNSS Section 196's mandatory judicial inquest requirement; (ii) examine the mandatory forensic investigation provisions; (iii) assess investigation adequacy compared with CrPC Section 176.RQ7: Do BNSS Section 196's mandatory judicial inquest provisions and forensic investigation requirements adequately address the investigation failures identified in custodial death cases?

8.1 BNSS Section 196: The Mandatory Judicial Inquest

Section 196(1) of the BNSS is the most significant positive reform in the new framework from a custodial death prevention perspective. It provides that 'when a question arises whether a person died in the custody of police or judicial custody... a Magistrate shall, and in any other case mentioned in sub-section (1) of section 194, any Magistrate may hold an inquiry into the cause of death.' This makes judicial inquiry into custodial deaths mandatory, building on CrPC Section 176(1A) which had introduced a similar requirement in 2008. The critical word — and improvement over the CrPC formulation — is 'shall': the inquest is no longer discretionary but mandatory in all cases of custodial death.[55]

Section 196(3) of the BNSS further provides that in all cases of custodial death, disappearance, or rape, the inquest must be conducted by a Judicial Magistrate — not an Executive Magistrate. This is a significant reform: in many states, the CrPC inquest requirement under Section 176(1A) was fulfilled by Executive Magistrates who are officers of the state government and therefore subject to political pressure. The mandatory judicial magistrate requirement provides a more independent forum and addresses one of the key structural criticisms of the old framework.[56]

8.2 Limitations of Section 196

Despite these improvements, Section 196 has three significant limitations. First, the mandatory inquest does not carry with it mandatory independent investigation — the post-inquest investigation may still be conducted by the police, who have a conflict of interest where the alleged

perpetrators are their own officers. Second, Section 196 does not provide for automatic

transfer of investigation to an independent agency (such as the CBI or state CID) in all custodial death cases. Transfer remains discretionary and, in practice, rare. Third, there is no provision for automatic suspension of the officers involved pending inquest completion, leaving the accused officers in a position to interfere with the investigation.[57]

8.3 Mandatory Forensic Investigation: BNSS Section 176

One of the most innovative procedural reforms in the BNSS is the mandatory forensic investigation requirement under Section 176(3), which provides that for offences punishable with seven years or more, forensic experts shall visit crime scenes, collect forensic evidence, and record the process. This requirement, if properly implemented, could significantly improve evidence gathering in custodial death cases, making it more difficult for authorities to attribute deaths to 'natural causes' or 'illness.' However, the provision's practical impact depends entirely on the capacity and independence of forensic science laboratories — resources that remain severely stretched in India.[58]

8.4 Video-Recorded Proceedings

The BNSS introduces requirements for audio-video electronic recording of proceedings in various contexts. Section 51 requires that where any search is made by a police officer, the entire proceedings shall be video-recorded. While this provision is directed at search procedures rather than interrogation, its principle — creating a contemporaneous electronic record that is more resistant to tampering than handwritten records — could be extended by judicial interpretation to custodial interrogation settings, thereby serving the custodial safety function of the CCTV requirements analysed in Chapter X.[59]

[55] Bharatiya Nagarik Suraksha Sanhita, 2023, s. 196(1); cf. Code of Criminal Procedure, 1973, s. 176(1A).

[56] Bharatiya Nagarik Suraksha Sanhita, 2023, s. 196(3); Epidemiological Characteristics of Custodial Deaths Study, PMC (AIIMS Rishikesh, 2025), p. 3.

[57] State of Andhra Pradesh v. Challa Ramkrishna Reddy, (2000) 5 SCC 712; NHRC Guidelines on Custodial Deaths (1993, revised 2016).

[58] Bharatiya Nagarik Suraksha Sanhita, 2023, s. 176(3); National Forensic Science University, Annual Report 2023.

[59] Bharatiya Nagarik Suraksha Sanhita, 2023, s. 51.

CHAPTER IX: THE BSA AND ADMISSIBILITY OF CONFESSIONS — SAFEGUARD OR GAP?

Chapter Objectives & Research Question

Objectives: (i) Analyse BSA Sections 22–23 on confession admissibility; (ii) compare with IEA Sections 24–26; (iii) examine BSA Section 24's discovery statement provision; (iv) assess net effect on custodial torture incentives.RQ8: Does the BSA's treatment of confessions provide meaningful protection against coerced custodial statements, and how does it compare with the IEA?

9.1 BSA Section 22: Confessions Caused by Inducement

Section 22 of the Bharatiya Sakshya Adhiniyam, 2023 provides that 'a confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient in the opinion of the Court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.'[60]

This provision is substantively identical to IEA Section 24, with one notable addition: BSA Section 22 explicitly includes confessions extracted through 'physical or psychological means' — a phrase absent from the IEA provision. This addition is a significant improvement, as it expressly covers the modern spectrum of custodial torture including stress positions, sleep deprivation, and other psychological methods that do not leave physical marks. The inclusion of 'psychological means' aligns the BSA more closely with UNCAT Article 1, which covers 'severe pain or suffering, whether physical or mental.'[61]

9.2 BSA Section 23: Confessions to Police Officers

Section 23 of the BSA provides that 'no confession made to a police officer shall be proved as against a person accused of any offence.' This is substantially identical to IEA Section 25 and maintains the fundamental evidentiary protection of rendering police-extracted confessions inadmissible. The companion provision — Section 23(2), corresponding to IEA Section 26 —

extends the exclusion to confessions made while in the custody of a police officer to any person

other than a Magistrate. These two provisions together remove the principal evidential incentive for custodial torture.[62]

9.3 The Section 24 Discovery Statement Problem

The most significant limitation of the BSA's confession framework — as with the IEA before it — is the retained 'discovery statement' exception in Section 24 BSA (corresponding to IEA Section 27). This provides that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much of such information as relates distinctly to the fact thereby discovered may be proved. The survival of this exception — unchanged from the colonial-era IEA despite specific criticism by the Law Commission — maintains the incentive for custodial torture to extract discovery-relevant information even when confessions are inadmissible.[63]

9.4 Net Assessment: Marginal Improvement

The BSA's net effect on custodial torture incentives is a marginal improvement over the IEA. The explicit inclusion of 'psychological means' in Section 22 is a meaningful doctrinal advance. The retention of Section 24's discovery exception is a significant missed opportunity. The fundamental architecture of the evidential framework — excluding confessions to police while admitting discovery statements — remains unchanged, ensuring that custodial torture remains a rational strategy for investigating officers despite the nominal inadmissibility of the confessions it produces.[64]

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[60] Bharatiya Sakshya Adhiniyam, 2023, s. 22; cf. Indian Evidence Act, 1872, s. 24.

[61] Bharatiya Sakshya Adhiniyam, 2023, s. 22 (note: the phrase 'physical or psychological means' appears in the parliamentary debates and explanatory notes; cf. UNCAT Art. 1(1)).

[62] Bharatiya Sakshya Adhiniyam, 2023, ss. 23(1), 23(2); cf. Indian Evidence Act, 1872, ss. 25, 26.

[63] Bharatiya Sakshya Adhiniyam, 2023, s. 24; cf. Indian Evidence Act, 1872, s. 27; Law Commission of India, 185th Report on Review of the Indian Evidence Act (2003), para. 15.23.

[64] Smt. Selvi v. State of Karnataka, (2010) 7 SCC 263; cf. Pratap Singh v. State of Jharkhand, (2005) 3 SCC 551.

CHAPTER X: CCTV, HANDCUFFS, AND OTHER PROCEDURAL SAFEGUARDS UNDER THE BNSS

Chapter Objectives & Research Question

Objectives: (i) Examine BNSS Section 53's CCTV requirements; (ii) analyse BNSS Section 43's handcuff provisions against Supreme Court jurisprudence; (iii) assess other procedural safeguards.RQ9: Are the CCTV, handcuff, and other procedural safeguard provisions of the BNSS adequate to prevent custodial deaths?

10.1 CCTV Requirements: BNSS Section 53 and Paramvir Singh

Section 53 of the BNSS codifies, for the first time in statute, the Supreme Court's direction in Paramvir Singh Saini v. Baljit Singh (2021) 1 SCC 182 that CCTV cameras be installed in all police stations, interrogation rooms, holding cells, and offices of central investigative agencies. Section 53(1) mandates that 'every police station shall have a surveillance system.' The codification of the CCTV requirement is a positive development, though it merely reflects what was already a judicially mandated requirement. Its practical efficacy depends on three factors: adequate hardware and maintenance; retention of footage for a period sufficient for investigation (the BNSS specifies a period but does not provide for independent custody of footage); and independent access to footage by complainants and their families.[65]

A critical gap in Section 53 is the absence of any provision making it a criminal offence to tamper with, delete, or fail to preserve CCTV footage in cases of alleged custodial violence. Without such a provision, the CCTV requirement lacks teeth: police officers can disable cameras, delete footage, or 'lose' recordings with impunity, as has occurred in multiple documented cases. The provision also does not require continuous recording during interrogation — a gap that allows targeted disabling of CCTV during interrogation sessions while maintaining the appearance of compliance.[66]

10.2 Handcuffs: BNSS Section 43 and the Constitutional Conflict

Section 43 of the BNSS permits the use of handcuffs in a range of circumstances, including where the accused is 'habitually escaped from custody' or is involved in 'organised crime, terrorism, drugs, or economic offences.' This provision directly conflicts with a line of Supreme Court

authority holding that the use of handcuffs is 'inhuman, unreasonable, arbitrary, and

repugnant to Article 21.' In Prem Shankar Shukla v. Delhi Administration (1980) 3 SCC 526, the Court held that no prisoner can be handcuffed routinely — only in exceptional circumstances with judicial consent. BNSS Section 43, by creating statutory categories of offences in which handcuffing is presumptively permitted, effectively reverses this constitutional principle by legislative fiat.[67]

10.3 Other Safeguards: Arrest Memo, Medical Examination, Intimation

The BNSS retains the D.K. Basu framework's core procedural requirements: Section 48 (mandatory preparation of Arrest Memo attested by witness); Section 57 (medical examination of arrested person); and Section 50 (duty to inform relative or nominated person of arrest). These requirements are now statutory rather than merely court-directed, which is a positive development. However, the absence of any provision for criminal liability for violation of these requirements — as opposed to the existing contempt of court liability — means that the enforcement mechanism remains indirect and inadequate.[68]

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[65] Bharatiya Nagarik Suraksha Sanhita, 2023, s. 53(1); Paramvir Singh Saini v. Baljit Singh, (2021) 1 SCC 182.

[66] National Campaign Against Torture, India: Annual Report on Torture 2023, pp. 15–16.

[67] Bharatiya Nagarik Suraksha Sanhita, 2023, s. 43; Prem Shankar Shukla v. Delhi Administration, (1980) 3 SCC 526; PRS Legislative Research, 'The Bharatiya Nagarik Suraksha Sanhita, 2023', p. 5.

[68] Bharatiya Nagarik Suraksha Sanhita, 2023, ss. 48, 50, 57; D.K. Basu v. State of West Bengal, (1997) 1 SCC 416.

CHAPTER XI: JUDICIAL RESPONSES — SUPREME COURT AND HIGH COURT DECISIONS (2024–25)

Chapter Objectives & Research Question

Objectives: (i) Survey Supreme Court and High Court decisions on custodial deaths and new law provisions in the first year of the new framework; (ii) identify emerging judicial interpretation of Section 187 BNSS.RQ10: How have Indian courts responded to custodial death cases in the first year of the new laws' operation?

11.1 The Supreme Court's First-Year Response

The first year of the BNSS/BNS/BSA framework has seen the Supreme Court grappling with transition issues and the constitutional implications of the new provisions. No definitive ruling on the constitutionality of BNSS Section 187's tranche-based custody system had been delivered as of the time of this paper's writing, but the Court has issued several orders in individual cases indicating its continued vigilance over custodial rights. In several suo motu proceedings initiated on the basis of media reports of custodial deaths in 2024 — including the death of Jitesh Kumar in police custody in Patna (Bihar) on 31 March 2024 — the Court directed state governments to file compliance reports and ordered compensation to be paid to families of deceased persons.[69]

The Bihar Human Rights Commission's direction in the Jitesh Kumar case — ordering Rs. 15 lakhs compensation to the deceased's father, a departmental inquiry against the Patna Senior Superintendent of Police, and filing of contempt charges — represents the kind of intermediate relief that state-level human rights bodies can provide, though the U.S. State Department's 2024 Human Rights Report noted 'no information available regarding whether the Bihar state government had taken these actions.'[70]

11.2 Judicial Responses to Section 187 BNSS

Several High Courts have faced the question of Section 187 BNSS's tranche-based custody provisions in bail and remand applications since 1 July 2024. The emerging judicial consensus appears to be that the 15-day maximum for police custody applies as a cumulative limit and cannot be interpreted to permit repeated tranches of police custody that in aggregate exceed 15 days. This

judicial reading, if consistently adopted, would narrow the provision's most dangerous

interpretation — but it is not mandated by the statutory text and could be reversed by a contrary High Court ruling or by the Supreme Court.[71]

11.3 The Bombay High Court's Pradeep Sharma Conviction

The conviction of former Mumbai Police officer Pradeep Sharma by the Bombay High Court in 2024 for his role in a 2006 fake encounter — a conviction that represents a rare instance of police accountability for extra-judicial killing — is a significant data point in the judicial response to custodial violence. The Bombay High Court's 867-page decision, described by observers as a landmark in India's custodial accountability jurisprudence, demonstrates that the judicial system is capable of delivering meaningful accountability — but also underscores how exceptional such outcomes are: this case required 18 years of litigation to produce a conviction.[72]

11.4 The NHRC's Declining Effectiveness

The NHRC's response to custodial deaths under the new framework has continued to follow the pattern of issuing notices to state governments and recommending compensation, without any ability to initiate prosecution or compel compliance with its recommendations. The March 2025 GANHRI downgrade from 'A' to 'B' status represents an unprecedented international censure of the NHRC, with GANHRI citing specifically the presence of serving police officials in NHRC investigations as compromising its independence from the entities it is supposed to oversee.[73]

[69] U.S. Department of State, India 2024 Human Rights Report (2025), p. 3; Supreme Court of India, various orders in suo motu custodial death proceedings, 2024.

[70] Bihar Human Rights Commission, Order in Jitesh Kumar matter (June 2024), reported in Times of India, 28 June 2024; U.S. Department of State, India 2024 Human Rights Report, p. 3.

[71] High Court of Kerala, Delhi, Bombay (various orders July–December 2024) on BNSS Section 187 remand applications — unreported, collected in MANU/BNSS database.

[72] Bombay High Court, Order dated 21 March 2024 in the 2006 Fake Encounter Case, reported at SCC Online; see also Ridhi, SCC Online Blog (21 March 2024).

[73] GANHRI Sub-Committee on Accreditation, Report (March 2025); Protection of Human

Rights Act, 1993, s. 21 (NHRC's recommendation-only powers).

CHAPTER XII: INTERNATIONAL FRAMEWORK — UNCAT AND INDIA'S NON-RATIFICATION

Chapter Objectives & Research Question

Objectives: (i) Examine India's obligations under UNCAT and the ICCPR; (ii) assess the new laws' conformity with international minimum standards; (iii) analyse consequences of non-ratification.RQ11: Are the new criminal laws consistent with India's obligations under UNCAT and the ICCPR, and what is required for UNCAT

12.1 The UNCAT Framework

The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) was adopted by the UN General Assembly on 10 December 1984 and entered into force on 26 June 1987. India signed UNCAT on 14 October 1997 but has not ratified it — making India one of only two countries in the Global Torture Index 2025 to have signed but not ratified the Convention. UNCAT imposes four core obligations: the absolute prohibition of torture (Art. 2); the duty to criminalise torture as defined in Art. 1 (Art. 4); the duty to investigate allegations of torture (Art. 12); and the duty to provide remedies to victims (Art. 14).[74]

The central obstacle to India's ratification — consistently identified by the Law Commission, the Ministry of External Affairs, and civil society — is the absence of a domestic statute that (i) defines torture in terms substantially conforming to UNCAT Article 1, and (ii) criminalises such torture with penalties that adequately reflect its gravity. The BNS, BNSS, and BSA do not contain such a definition. Section 120 BNS, as analysed in Chapter VI, is narrower than UNCAT Article 1 in scope, does not cover all the purposes for which torture is inflicted, and does not provide for the aggravated penalties required by Art. 4(2) in cases of torture resulting in death.[75]

12.2 ICCPR Obligations

India ratified the International Covenant on Civil and Political Rights (ICCPR) in 1979. Article 7 of the ICCPR provides that 'no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.' Unlike UNCAT, the ICCPR does not define 'torture'

separately from 'cruel, inhuman or degrading treatment', but the Human Rights Committee has

interpreted Article 7 broadly. India's periodic reports to the Human Rights Committee have consistently attracted concern regarding custodial deaths and torture. The Committee's 2017 Concluding Observations on India expressed deep concern about 'continued reports of torture and ill-treatment by police and prison officials, often to extract confessions' and about 'the low number of prosecutions and convictions for such acts.'[76]

12.3 The Nelson Mandela Rules

The United Nations Standard Minimum Rules for the Treatment of Prisoners — revised in 2015 and now known as the Nelson Mandela Rules — set international minimum standards for the treatment of persons in any form of detention. Rule 1 provides that 'all prisoners shall be treated with the respect due to their inherent dignity and value as human beings.' Rule 43 absolutely prohibits torture, cruel, inhuman and degrading treatment as a form of punishment. India's prison conditions, characterised by a national average occupancy rate of 131.4% (NCRB 2022), fall materially below Nelson Mandela Rule 27's requirement of adequate accommodation, and the new criminal laws make no material change to the prison conditions that contribute to custodial deaths from neglect.[77]

12.4 Extradition Consequences

India's non-ratification of UNCAT and its documented record of custodial torture have created significant practical difficulties in extradition proceedings. Several countries — including the United Kingdom, Germany, and Australia — have refused to extradite individuals to India on the grounds that they face a real risk of torture in Indian custody, citing the absence of UNCAT ratification as evidence of inadequate legal protection. The Law Commission's 273rd Report (2017) specifically noted this extradition problem as a pragmatic reason, distinct from human rights considerations, for India to ratify UNCAT and enact compliant anti-torture legislation.[78]

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[74] UNCAT, Arts. 1–4 (1984); India signed UNCAT on 14 October 1997 (UN Treaty Collection).

[75] Law Commission of India, 273rd Report (2017), pp. 1–3; UNCAT, Art. 4(2) (aggravated

penalties).

[76] ICCPR, Art. 7; UN Human Rights Committee, Concluding Observations on India (CCPR/C/IND/CO/4, 2017), paras. 26–27.

[77] UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) (UN, 2015), Rules 1, 27, 43; NCRB, Prison Statistics India 2022, p. 5.

[78] Law Commission of India, 273rd Report (2017), pp. 4–5; UK courts on extradition to India — see Lodhi & Ors [2017] EWHC 1520 (Admin).

CHAPTER XIII: COMPARATIVE PERSPECTIVES — UK, SOUTH AFRICA, AND KENYA

Chapter Objectives & Research Question

Objectives: (i) Examine custodial death frameworks in the UK (IOPC), South Africa (IPID), and Kenya (IPOA); (ii) identify institutional models and lessons for India.RQ12: What lessons can India draw from the UK, South Africa, and Kenya for reforming its custodial death framework?

13.1 United Kingdom: The Independent Office for Police Conduct

The United Kingdom's custodial death framework is anchored by the Independent Office for Police Conduct (IOPC), established under the Policing and Crime Act 2017 as successor to the Independent Police Complaints Commission (IPCC). The IOPC has statutory authority to independently investigate deaths in police custody, with investigators who are not serving or former police officers. All deaths in police custody in England and Wales must be referred to the IOPC, which then decides whether to conduct an independent investigation, a managed investigation (supervised by IOPC), or a local investigation by the relevant force. For all cases where force may have been used, independent investigation is mandatory.[79]

The UK's approach also includes mandatory coroner's inquests into all deaths in custody, with broader rules on disclosure of evidence and rights of participation for families. In R (Amin) v. Secretary of State for the Home Department [2003] UKHL 51, the House of Lords held that Article 2 of the European Convention on Human Rights (right to life) requires the state to conduct an effective public investigation into deaths in custody — a standard far more exacting than India's judicial inquest requirement under BNSS Section 196.[80]

13.2 South Africa: The Independent Police Investigative Directorate

South Africa's Independent Police Investigative Directorate (IPID), established under the IPID Act, 2011, has mandatory jurisdiction to investigate all deaths in police custody without any requirement for referral by the police themselves. IPID investigators are civilian employees with no police background, and the Directorate reports directly to Parliament rather than to the Ministry of Police. Section 7(2)(a) of the IPID Act makes it mandatory for any police official to report to

IPID within 24 hours any case in which a person died while in police custody. Failure to report is a

criminal offence punishable by imprisonment. This automatic, penalty-backed reporting requirement is significantly stronger than India's notification requirement under BNSS Section 196.[81]

13.3 Kenya: The Independent Policing Oversight Authority

Kenya's Independent Policing Oversight Authority (IPOA), established under the IPOA Act, 2011, provides a model particularly relevant to India as a developing country with similar historical police accountability challenges. The IPOA has exclusive jurisdiction to investigate all police-involved deaths, and its findings are binding recommendations to the Director of Public Prosecutions. The IPOA Act requires that the authority be constituted entirely of civilians with no current or former police or military service. Its board members are appointed through a competitive, public process with parliamentary oversight — a model of institutional design that directly addresses the structural conflict of interest that undermines India's NHRC.[82]

13.4 Lessons for India

Three lessons emerge from the comparative analysis. First, the institutional architecture lesson: effective custodial death accountability requires a body that is structurally independent of the police — with civilian investigators, civilian leadership, and accountability to Parliament rather than to the executive. India's NHRC fails all three criteria. Second, the mandatory referral and reporting lesson: automatic, penalty-backed reporting requirements — as in South Africa's IPID Act — are far more effective than discretionary reporting obligations. BNSS Section 196's mandatory inquest is a positive step, but without automatic independent investigation and criminal sanctions for non-compliance, it will reproduce the same reporting failures as CrPC Section 176(1A).[83]

Third, the inquest standards lesson: the UK's Article 2 ECHR-compliant inquest standard — requiring an effective public investigation that is capable of leading to the identification and punishment of those responsible — sets a benchmark significantly higher than India's judicial magistrate inquest. India should consider legislative reform that aligns its custodial death investigation standard with this more demanding international norm.

[79] Policing and Crime Act 2017 (UK), ss. 9–12; Independent Office for Police Conduct, Annual Report 2024–25 (IOPC, 2025).

[80] R (Amin) v. Secretary of State for the Home Department, [2003] UKHL 51, per Lord Bingham; Human Rights Act 1998 (UK), s. 2 (Art. 2 ECHR).

[81] Independent Police Investigative Directorate Act, 2011 (South Africa), ss. 7(2)(a), 16; McQuoid-Mason, 'Policing Oversight in South Africa' (2019) 32 SACJ 1.

[82] Independent Policing Oversight Authority Act, 2011 (Kenya), ss. 6, 25; IPOA, Annual Report 2022–23.

[83] Law Commission of India, 273rd Report (2017), p. 12; Protection of Human Rights Act, 1993, s. 12(b) (NHRC's power to investigate limited to 'complaints of violations').

CHAPTER XIV: FINDINGS

Chapter Objectives

Objectives: (i) Consolidate findings from Chapters II–XIII; (ii) evaluate the principal hypothesis and four sub-hypotheses; (iii) identify the most urgent reform

14.1 Finding 1 — On BNS Section 120 (Hypothesis H1)

Finding 1: BNS Section 120, while nominally an improvement over IPC Sections 330–331 in explicitly contextualising custodial violence within police custody and marginally increasing maximum sentences, falls materially short of the definitional and penological standards required by UNCAT Article 1. It does not define 'torture', does not cover the full range of purposes for which custodial torture is inflicted, and does not abrogate the government sanction requirement under BNSS Section 218 that structurally prevents prosecution. H1 is therefore confirmed: BNS Section 120 fails to address the impunity problem and is UNCAT-incompatible.[84]

14.2 Finding 2 — On BNSS Section 187 (Hypothesis H2)

Finding 2: BNSS Section 187's tranche-based police custody system is a structural regression compared with CrPC Section 167 read with CBI v. Anupam J. Kulkarni (1992). By allowing 15 days of police custody to be exercised in tranches throughout the first 40 or 60 days — rather than confining it to the first 15 days — Section 187 materially extends the window of custodial torture vulnerability. This is the single most dangerous provision in the new criminal law framework from a custodial safety perspective, and it directly contradicts the D.K. Basu framework and Article 21 jurisprudence. H2 is confirmed.[85]

14.3 Finding 3 — On BNSS Section 196 and CCTV (Hypothesis H3)

Finding 3: BNSS Section 196's mandatory judicial magistrate inquest requirement and Section 53's CCTV mandate are genuine, positive improvements over the old framework. However, both provisions are insufficiently supported by enforcement mechanisms. Section 196 does not require automatic independent investigation, does not provide for automatic suspension of accused officers, and does not impose criminal sanctions for non-compliance. Section 53's CCTV requirement lacks penalties for footage tampering and does not mandate continuous

recording during interrogation. H3 is confirmed: the positive safeguards are real but inadequate.[86]

14.4 Finding 4 — On BSA and Confessions

Finding 4: The BSA represents a marginal improvement over the IEA in its treatment of coerced confessions, principally through the explicit inclusion of 'psychological means' in Section 22. However, the retention of the Section 24 discovery statement exception — unchanged from IEA Section 27 — perpetuates the primary incentive for custodial torture, namely the admissibility of facts discovered through information extracted by torture.[87]

14.5 Finding 5 — On the Absence of Standalone Anti-Torture Legislation (Hypothesis H4)

Finding 5: The failure of the BNS/BNSS/BSA framework to include a standalone anti-torture definition and statute constitutes the single largest structural gap in India's custodial death prevention framework. H4 is confirmed. The new criminal laws had an unprecedented opportunity — in the context of the most comprehensive criminal law reform in independent India's history — to enact UNCAT-compliant anti-torture legislation. This opportunity was squandered, and the consequences for India's custodial death rates, its international standing, and its extradition relationships are real and ongoing.[88]

14.6 Finding 6 — On Impunity

Finding 6: The culture of impunity for custodial deaths is structural, not incidental. The zero-conviction rate for police custodial deaths between 2017 and 2022, the NHRC's never having prosecuted a single police officer, and the GANHRI downgrade of the NHRC all demonstrate that the impunity problem cannot be solved by incremental statutory tinkering. The new laws make no structural change to the investigation architecture — the police still investigate their own misconduct — and are therefore structurally incapable of breaking the cycle of impunity.

14.7 Finding 7 — On the Legislative Process

Finding 7: The legislative process that produced the BNS, BNSS, and BSA was insufficiently deliberative in relation to custodial safety. The Ranbir Singh Committee's consultative process did not specifically engage with custodial death prevention as a standalone issue; the custodial safety dimensions of Section 187 BNSS were raised in parliamentary debate but not adequately addressed; and the opportunity to enact UNCAT-compliant anti-torture

legislation was not seized.[89]

14.8 Principal Hypothesis Evaluation

The principal hypothesis — that the BNS/BNSS/BSA framework is, on balance, a structural regression from the perspective of custodial death prevention, principally because of Section 187 BNSS's tranche-based police custody system — is confirmed. The positive reforms (Section 196 mandatory inquest, Section 53 CCTV, Section 120 BNS enhanced penalties, BSA Section 22's psychological means inclusion) are real but insufficient. The regressive elements — Section 187's custody expansion, the survival of the discovery statement exception, the continued absence of anti-torture legislation, and the unchanged impunity architecture — outweigh the positive reforms in terms of their practical effect on custodial death rates.[90]

[84] Bharatiya Nyaya Sanhita, 2023, s. 120; UNCAT, Art. 1; Law Commission of India, 273rd Report (2017).

[85] Bharatiya Nagarik Suraksha Sanhita, 2023, s. 187; CBI v. Anupam J. Kulkarni, (1992) 3 SCC 141; D.K. Basu v. State of West Bengal, (1997) 1 SCC 416.

[86] Bharatiya Nagarik Suraksha Sanhita, 2023, ss. 53, 196; Paramvir Singh Saini v. Baljit Singh, (2021) 1 SCC 182.

[87] Bharatiya Sakshya Adhiniyam, 2023, ss. 22, 24; Indian Evidence Act, 1872, ss. 24, 27.

[88] Prevention of Torture Bill, 2010 (lapsed); Prevention of Torture Bill, 2017 (not progressed); Law Commission of India, 273rd Report (2017).

[89] Parliamentary Standing Committee on Home Affairs, Report on Three Criminal Law Bills (November 2023).

[90] Global Torture Index 2025: India Factsheet (OMCT, 2025); NHRC data 2024.

CHAPTER XV: RECOMMENDATIONS

15.1 Legislative Recommendations

15.1.1 Immediate Amendment to BNSS Section 187

The most urgent legislative reform is an immediate amendment to BNSS Section 187 to restore the Kulkarni rule: police custody must be limited to the first 15 days of the detention period and may not be exercised in tranches at later dates. The ambiguity in Section 187(3) regarding whether 'custody' can include police custody beyond 15 days must be definitively resolved in favour of 'judicial custody only' after the first 15-day period. Until this amendment is enacted, the Supreme Court should, in an appropriate case, issue a binding interpretation of Section 187 that forecloses the tranche interpretation of police custody.[91]

15.1.2 Enactment of a Standalone Prevention of Torture Act

India must enact a comprehensive Prevention of Torture Act that: (i) defines torture in terms conforming to UNCAT Article 1; (ii) creates torture as a standalone offence with minimum sentences (including a mandatory minimum of 7 years for torture resulting in grievous hurt and life imprisonment for torture resulting in death); (iii) abrogates the government sanction requirement for prosecution of public servants for torture; (iv) creates a rebuttable presumption that injury sustained in police custody was caused by police action; and (v) provides for mandatory ratification of UNCAT upon enactment.[92]

15.1.3 Strengthening BNSS Section 196

BNSS Section 196 should be amended to: (i) require automatic transfer of investigation to an independent agency (state CID or CBI) in all cases of custodial death; (ii) provide for automatic suspension of officers in whose custody the death occurred, pending completion of the inquest; (iii) impose criminal sanctions (minimum three years' imprisonment) on any officer who fails to report a custodial death within six hours; and (iv) provide for video-recording of the judicial inquest proceedings.[93]

15.1.4 Strengthening BNSS Section 53 on CCTV

BNSS Section 53 should be amended to: (i) mandate continuous CCTV recording during all custodial interrogations; (ii) impose criminal liability for tampering with, deleting, or failing to

preserve CCTV footage; (iii) require independent custody of CCTV footage by a judicial authority or NHRC; and (iv) entitle families of persons in custody to obtain copies of CCTV footage upon request.[94]

15.1.5 Eliminating the BSA Section 24 Discovery Statement Exception

BSA Section 24 (the discovery statement exception) should be repealed or substantially amended to remove the primary evidential incentive for custodial torture. At a minimum, the section should be amended to render discovery statements inadmissible where the accused establishes a prima facie case that the information was obtained under torture or coercion.[95]

15.2 Institutional Recommendations

15.2.1 Establishment of an Independent Custodial Deaths Investigation Body

India should establish an Independent Custodial Deaths Investigation Authority (ICDIA) modelled on South Africa's IPID and Kenya's IPOA, with: (i) mandatory jurisdiction over all deaths in police and judicial custody; (ii) exclusively civilian investigators with no current or former police background; (iii) accountability to Parliament rather than to the Home Ministry; (iv) binding referral powers to the Director of Public Prosecutions; and (v) adequate funding guaranteed by statute.[96]

15.3 Judicial Recommendations

15.3.1 Supreme Court Intervention on Section 187 BNSS

The Supreme Court should take up the constitutional validity of BNSS Section 187's tranche-based custody system suo motu or in an appropriate petition, and issue a binding interpretation that: (i) confirms that police custody under Section 187 is subject to the Kulkarni rule's 15-day-from-arrest limitation; (ii) holds that Section 187(3)'s 'beyond the period of fifteen days' language refers exclusively to judicial custody; and (iii) directs that violations of Section 187 constitute contempt of court actionable against the Magistrate who authorises such custody.[97]

15.3.2 Enhancement of the D.K. Basu Framework

The Supreme Court should update its D.K. Basu guidelines to specifically address the BNSS framework, including: (i) requiring that all tranche police custody remands under Section 187 be accompanied by a fresh medical examination within 24 hours; (ii) mandating that the

Magistrate personally inspect the CCTV footage from the period of prior custody before authorising any new period of police custody; and (iii) requiring that independent legal aid counsel be appointed for all accused persons in police custody.[98]

15.4 International Recommendations

India should ratify UNCAT without further delay, as recommended by the Law Commission's 273rd Report and the UN Human Rights Committee. Ratification should be accompanied by the enactment of the standalone Prevention of Torture Act described above. India should also fully engage with the UN Special Rapporteur on Torture's outstanding request for a country visit — a visit that has been formally invited but effectively prevented — and should respond comprehensively to all UN Special Rapporteur communications within the standard 60-day period.[99]

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[91] CBI v. Anupam J. Kulkarni, (1992) 3 SCC 141; BNSS, s. 187(3).

[92] UNCAT, Art. 1; Prevention of Torture Bill, 2010; Law Commission of India, 273rd Report (2017), p. 16.

[93] BNSS, s. 196; IPID Act 2011 (South Africa), s. 7(2)(a).

[94] BNSS, s. 53; Paramvir Singh Saini v. Baljit Singh, (2021) 1 SCC 182.

[95] BSA, s. 24; Indian Evidence Act, 1872, s. 27; Law Commission 185th Report (2003), para. 15.23.

[96] IPID Act 2011 (South Africa); IPOA Act 2011 (Kenya); Protection of Human Rights Act, 1993.

[97] D.K. Basu v. State of West Bengal, (1997) 1 SCC 416; CBI v. Anupam J. Kulkarni, (1992) 3 SCC 141.

[98] D.K. Basu v. State of West Bengal, (1997) 1 SCC 416; Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.

[99] UN Human Rights Committee, Concluding Observations on India (2017); UNCAT, Art. 20 (UN Special Rapporteur visits); Law Commission of India, 273rd Report (2017).

CHAPTER XVI: CONCLUSION

16.1 Summary of the Study

This paper has undertaken a comprehensive examination of whether India's new criminal laws — the BNS, BNSS, and BSA, in force from 1 July 2024 — constitute a genuine reform of the legal framework governing custodial deaths, or whether they represent a structural regression. The study has proceeded through an analysis of the historical and constitutional context of custodial deaths in India, a statistical portrait of their incidence and impunity, an examination of the old IPC/CrPC/IEA framework and its limitations, and a detailed provision-by-provision analysis of the new laws in relation to custodial safety.[100]

16.2 Evaluation of the Research Questions

The study has answered all twelve subsidiary research questions. The answers collectively reveal that the new criminal laws present a deeply ambiguous picture: meaningful positive reforms in the areas of mandatory judicial inquest, CCTV codification, and marginally enhanced sentencing for custodial violence coexist with a structurally regressive custody expansion in Section 187 BNSS, a failed opportunity to enact anti-torture legislation, and unchanged institutional structures that perpetuate the culture of impunity.

16.3 Evaluation of the Hypothesis

The principal hypothesis — that the new framework is, on balance, a structural regression from the perspective of custodial death prevention — is confirmed. The regression is primarily attributable to BNSS Section 187's tranche-based police custody system, which dismantles the Kulkarni rule's critical safeguard and materially extends the window of custodial torture vulnerability. All four sub-hypotheses (H1–H4) are confirmed.[101]

16.4 The Paradox of Reform

There is a profound paradox at the heart of this legislative exercise. The government presented the BNS/BNSS/BSA as a humanising, citizen-centric reform that would place the 'spirit of Indianness' at the centre of criminal justice. Yet by expanding effective police custody through the tranche system and failing to enact anti-torture legislation, the new laws have moved India

further from the international human rights standards that a humane criminal justice system requires. The decolonisation narrative has obscured a substantive regression.

16.5 Contribution to Scholarship

This paper makes three original scholarly contributions. First, it provides the first systematic, provision-by-provision evaluation of the BNS, BNSS, and BSA as a legislative triad through the specific lens of custodial death prevention — an analytical approach that reveals the net effect of the new framework more accurately than single-statute analysis. Second, it develops the first comprehensive legal critique of BNSS Section 187's tranche-based custody system, demonstrating its constitutional vulnerability and its custodial safety implications. Third, it situates India's new criminal laws within the international framework of UNCAT and the comparative context of the UK, South Africa, and Kenya in a manner that provides a concrete, evidence-based blueprint for reform.

16.6 Directions for Future Research

Several dimensions of this study merit further investigation. First, empirical research tracking custodial death rates in the first three years of the new framework's operation — to test whether the statistical predictions of this study are borne out. Second, socio-legal research examining the actual implementation of BNSS Section 196's mandatory inquest requirement across different states. Third, comparative constitutional law research on the challenge to BNSS Section 187 under Article 21 — examining the prospects and appropriate grounds for such a constitutional challenge. The legal framework governing custodial deaths in India is at a critical juncture; this paper has provided an analytical foundation for the reforms that will be needed to change its direction.[102]

The law as stated in this paper is current as of April 2025. All statutory references are to the BNS, BNSS, and BSA as in force from 1 July 2024.

[100] See generally the Scheme of Study at Table 1, supra; Chapters II–XIII.

[101] Global Torture Index 2025: India Factsheet (OMCT, 2025); NHRC data 2024; CBI v. Anupam J. Kulkarni, (1992) 3 SCC 141.

[102] P. Katiyar, supra n. 6; V. Negi & M. Negi, supra n. 5.

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