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## **CRITICAL STUDY OF CUSTODIAL TORTURE AND STATE ACCOUNTABILITY IN INDIA (POST D.K. BASU)**

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### **Abstract:**

One of the most heinous human rights abuses in India that is still mostly disregarded is custodial torture. which is against humanity and known for naked valuation of human rights that directly erode the rule of law and the idea of democratic government. This study critically investigates how custodial torture and state accountability have evolved focusing on its implementation post the DK Basu guidelines which laid down the procedural precautions such as arrest memoranda, medical examinations, and visiting rights to mitigate police abuses. Though systemic failures still persist, which is characterized by weak enforcement, bureaucratic slowness, and inadequate protections for vulnerable populations in the country.

It assesses India's stand on anti torture legislation and the growth of human rights while carefully examining the post D.K. Basu case. A critical analysis reveals that failure does not lie due to absence of legal measures, but also problem in systematic non implementation, which reflects through the deep seated culture of police, impunity and fundamental deficits in the state government.

The current research thoroughly evaluates and uncovers persistent issues brought on due to ineffective enforcement and insufficient protections. The Indian Police Act of 1861 along with India's police accountability mechanisms, such as the National Human Rights Commission, provide those few instances which shows how deeply ingrained heritage of colonialism is there in India. Police Complaints' Authorities and judicial monitoring still fall short due to operational deficiencies and inconsistency between higher court pronouncements and how they are implemented in lower courts. The NHRC, PCA, and judicial interventions, along with their operational deficiencies, suggest specific reforms to reconcile the disparity between constitutional assurances and custodial conditions, highlighting the discrepancies between higher judicial

mandates and on ground realities, thereby raising concerns regarding fundamental human rights.

### **KEYWORDS**

Police brutality, Custodial torture, State accountability, Human rights violations, Rule of law, Judicial oversight, constitutional law, arrest.

## **CHAPTER 1: INTRODUCTION**

In India torture in custody and death persist. Despite having constitutional guarantees, criminal safeguards and judicial intervention for the investigation, torture has become a tool specially against those people who are poor marginalized, politically vulnerable and it is defined as confession of failure to do justice.

Despite the landmark Supreme Court judgement, DK Basu versus West Bengal 1997,<sup>1</sup> which established safeguards to prevent torture in custody and violence. The practice of such an act remains endemic within the countries' detention system.<sup>2</sup>

The DK Basu case guidelines were direct judicial response to the problem of disappearance and death in the police custody. The court mandated 11 specific guidelines which include the requirement of police to wear accurate identification tags, Prepare a memo of arrest in detail when the arrest was made, provide a copy of the memo to the arrestee, and inform the relatives of the arrestee, they also has a right to consult a lawyer during their investigation, and they must appear before the magistrate within 24 hours.<sup>3</sup>

### **1. Concept Of Torture**

Custodial, torture, violence, and death represent distinct, yet interrelated manifestation inflicted by the state to harm the fundamental rule of law. Internationally torture has been understood as an intentional infliction which produces extreme physical or psychological anguish that is used to extract information, a confession, a form of punishment, intimidation, or discrimination with the approval of a public authority or someone acting in an official capacity.<sup>4</sup> [uncat type definitions] Torture is the gravest violation to human dignity and attended the status of Jus cogens norms i.e. a peremptory rule, from which no derogation is permitted.

In the Indian context, is torture has been frequently linked with the power asymmetry through which cruelty is done upon a person by the official authority onto the victim and impose the will of the strong over the weak.<sup>5</sup>

<sup>1</sup> (1997) 1 SCC 416

<sup>2</sup> R. Vardhan. S. (2023). A Critical Study on Custodial Torture in India with Special Reference in Chennai.

*International Journal For Multidisciplinary Research*, 5(5). <https://doi.org/10.36948/ijfmr.2023.v05i05.6933>

<sup>3</sup> Lamba, J., & Jain, E. (2023). A Study on Police Accountability and Custodial Violence in India. *IARS*

*International Research Journal*, 13(01). <https://doi.org/10.51611/iars.irj.v13i01.2023.227>

<sup>4</sup> Pottle, É. (2021). What is Torture? Making the Case for Expanding the Definition to Include Private Individuals as Perpetrators. *Journal of International Criminal Justice*. <https://doi.org/10.1093/jicj/mqab030>.

<sup>5</sup> S, R. (2023). A Critical Study on Custodial Torture in India with Special Reference in Chennai. *International Journal For Multidisciplinary Research*. <https://doi.org/10.36948/ijfmr.2023.v05i05.6933>.



Custodial torture<sup>6</sup> is described as torture which is inflicted in police station, prison, or any other form of state custody during judicial or other form of governmental detention; it is inflicted by officials who are formally mandated to protect the citizens and it is considered to be against the rule of law and violates Article 21 of the Indian Constitution.

The phrase “cruel in human or degrading treatment of punishment”, CIDT includes a spectrum of ill treatment that may not reach the threshold of torture but violates human rights. Under International jurisprudence ECHR article 3 which forbids torture and other cruel, inhuman, or degrading treatment, moving from a narrow focus on physical violence to a more comprehensive “living instrument” that includes serious psychological suffering as well as physical harm.

Tunikova and Others v. Russia,<sup>7</sup> all forms of domestic violence, including non-physical, psychological, and financial abuse that jeopardize a victim’s psychological integrity, should be made illegal and under McGlinchey and Others v. UK,<sup>8</sup> inadequate medical care for physical or mental ailments while in custody may constitute inhuman and humiliating treatment has broadened these notions to include physical and psychological harm. Other studies show that CIDT practices include deprivation. Humiliation for stress position are the main causes which produce psychological damage to such a greater extent which is more advanced than any over physical torture.<sup>9</sup>

## 2. **Types Methods of Custodial Torture**

Custodial torture is categorized into three modalities, physical, sexual, and psychological. Physical torture includes 3<sup>rd</sup> degree method to induce pain and sufferings by beating exposure to extreme temperatures assault causing visible injuries and long term physical harm. The Indian medical legal study has alleged that judicial violence cases are related to victims, reporting, beating and body assaults, primarily of mental rather than purely physical torture.<sup>10</sup>

Psychological torture and degrading treatment comprise threat, humiliation, sleep deprivation, isolation, sensory deprivation, tactics that are aimed at inducing fear, helplessness, and loss of control. Empirical studies show that 432 torture survivors found to be most strongly associated

<sup>6</sup> M. (2024). Behind Bars: Addressing Custodial Deaths in India’s Criminal Justice System. *International Journal For Multidisciplinary Research*. <https://doi.org/10.36948/ijfmr.2024.v06i02.14938>.

<sup>7</sup> nos. 55974/16, 53118/17, 27484/18 et al

<sup>8</sup> (2003) 37 EHRR 821

<sup>9</sup> Kelly, T. (2019). The Struggle Against Torture: Challenges, Assumptions and New Directions. *Journal of Human Rights Practice*. <https://doi.org/10.1093/jhuman/huz019>.

<sup>10</sup> Basoglu, M. (2009). A multivariate contextual analysis of torture and cruel, inhuman, and degrading treatments: implications for an evidence-based definition of torture.. *The American journal of orthopsychiatry*, 79 2, 135-45 . <https://doi.org/10.1037/a0015681>.

with CIDT, including deprivation of basic needs than any other over physical torture.<sup>11</sup> Such methods actually increase the risk of PTSD in the victims.

Sexual violence include rape in custody, which has been identified, particularly traumatic and often gendered and directed towards women and vulnerable detain. <sup>12</sup> Sexual assault is frequently underreported because of the fear and stigma but widely recognize by the international law and medical legal literature, which takes a severe form of torture and CIDT. It further includes denial of medical care and condition of confinement, overcrowding and sanitary conditions, exposure to continuous diseases, and ill treatments.

### **3. Literature Review**

Dr.D.K. Basu mentioned in his findings that a substantial number of materials is the turning point under “article 21” jurisprudence laws. Jacob Reji (2023)<sup>13</sup>, the ruling establishes a framework based on preventative rights and incorporates procedural protections like detainee protection and arrest paperwork into constitutional law. In a similar vein, Bhavya Sureka (2024) views the decision as an example of judicial activism, in which the Supreme Court essentially enacted protections in the lack of explicit legislation.

Ankita Gupta (2024)<sup>14</sup> examination of this ethical expression arguing that the judgment’s transformative potential is diminished by institutional rigidity and insufficient compliance measures. According to Gupta’s regional research, breaches are still frequent despite the official incorporation into procedural law, demonstrating that enforcement organizations’ conduct has not changed because of legal formality.

Researchers such as Aditya Soni (2025)<sup>15</sup> highlighted that torture in custody as a systemic, institutionalized practice rather than an exception. This point of view shifts from the focus from individual infringements to systematic impunity, where torture is subtly enabled by:

1. Political support,
2. Weak disciplinary systems, and
3. The normalization procedure of the use of force in law enforcement.

<sup>11</sup> Wolfendale, J. (2020). Prison as a Torturous Institution. , 97, 297–324. <https://doi.org/10.11612/resphil.1893>.

<sup>12</sup> Dhawan, R., & Chaudhary, R. (2025). Crimes Against Women in India: Judicial Response and Precedential Shift. *International Journal For Multidisciplinary Research*. <https://doi.org/10.36948/ijfmr.2025.v07i05.56629>.

<sup>13</sup> Reji, J. (2023). *Custodial torture: Analyzing the impact of DK Basu vs. State of West Bengal*. *International Journal of Scientific Research*, 12(8), 45–48.

<sup>14</sup> Gupta, A. (2024). *Detention and torture: Analysis of the impact of DK Basu judgment in West Bengal*. *Journal of Social Sciences & Humanities*, 6(3), 1–10.

<sup>15</sup> Soni, A. (2025). *Custodial torture as a blatant violation of human rights: A critical examination*. *International Journal of Law, Literature and Research*, 4(1), 23–34.



The inefficiency of accountability systems is a recurrent issue in the literature. Bhavya Sureka (2024)<sup>16</sup> contends that monetary compensation serves more as a symbolic cure than a deterrence, despite the fact that D.K. Basu established compensation jurisprudence.

In his lectures and articles, Justice A.P. Shah<sup>17</sup> (former Chief Justice of the Delhi High Court) contends that D.K. Basu's instructions are still "judicial rhetoric without administrative transformation" and that India needs systemic accountability systems.

Committee on Justice J.S. Verma (2013)<sup>18</sup> While concentrating on sexual assault, the Committee placed a heavy emphasis on police accountability, pointing out that institutional supervision is the reason behind the persistence of custodial abuse and suggesting independent complaints authority. Upendra Baxi's (1982)<sup>19</sup> critical jurisprudence, especially in *The Crisis of the Indian Legal System*, portrays torture in prison as a systemic aspect of a punishing state rather than just an anomaly. Seervai's doctrinal analysis established the foundation for later judicial directives such as those in D.K. Basu. He contends that the Indian government frequently functions as a torture machine shielded by political legitimacy and impunity.

#### 1. The Implementation Deficit: The Law Reality Divide:

The implementation gap is arguably the most prevalent theme in all of the works. Scholars like Ankita Gupta and Jacob Reji agree that noncompliance is the rule rather than the exception, notwithstanding the judiciary's strong protections.

This disparity is elucidated by:

1. lack of unbiased regulatory bodies,
2. Inadequate indoctrination and training of law enforcement personnel,
3. minimal sanctions for violations.

The literature critiques the Indian legal system for its excessive reliance on judicial verdicts in the lack of corresponding administrative reforms.

#### 2. The Need for Reform and the Legislative Vacuum:

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<sup>16</sup> Sureka, B. (2024). *Examining custodial violence in India: Case analysis of DK Basu vs. State of West Bengal*. International Journal of Legal Research and Analysis, 10(2), 112–129.

<sup>17</sup> Shah, A. P. (2018). *Human rights and the Indian judiciary: Selected lectures*. Centre for Public Policy Research.

<sup>18</sup> Verma Committee. (2013). *Report of the Committee on Amendments to Criminal Law*. Government of India.

<sup>19</sup> Baxi, U. (1982). *The crisis of the Indian legal system*. Vikas Publishing House.

The absence of comprehensive anti-torture legislation is a significant theme in the literature, highlighting the absence of clearly defined criminal culpability for torture. Scholars argue that reliance on constitutional remedies and judicial principles is inadequate.

According to Aditya Soni (2025) and other commentators, India's failure to enact independent anti-torture legislation reflects a lack of political will, thereby undermining international human rights obligations. Ambiguity in the definition and prosecution of torture in custody is sustained by this legislative void.

### 3. Determined Research Deficit

Although the current body of research offers insightful doctrinal and critical analysis, it falls short in certain areas:

1. A comparison of state liability models (criminal culpability against constitutional tort),
2. An analysis of victim-centric judicial systems and rehabilitation frameworks, as well as an empirical evaluation of post-D.K. Basu compliance among states.

### 4. Justice and Rehabilitation Focused on Victims

Most of the material now in publication concentrates on state culpability rather than victim experience. Aspects that are understudied include:

1. rehabilitating victims and their families socially and psychologically,
2. availability of legal remedies for underrepresented communities,
3. long-term effects of violence in detention on the socioeconomic circumstances of victims.

### 4. **Research Methodology**

The work examines state responsibility and torture in Indian detention procedure following D.K. Basu guidelines adopting a doctrinal and analytical legal research approach. The legal framework, constitutional safeguards, judicial procedures, legislative activities, and human rights standards pertaining to custodial violence are the main subjects of this research. The study evaluates the practical implementation of the safeguards outlined in D.K. Basu case particularly evaluating its effectiveness in reducing incidents of torture and abuses of human rights in prison. As a result, this method blends both legal interpretation with a critical examination of events following D.K. Basu.

#### A. Area of Study

The research area is limited to India, and particular emphasis is paid to the challenges of torture in incarceration, deaths in captivity, and governmental accountability under principles of human rights and statutory law. The legal and practical scenarios that have emerged following the ruling in D.K. Basu v. State of West Bengal are specifically examined in this paper. It addresses pronouncements

from the Supreme Court and High Court, the function of institutions like the National Human Rights Commission, statutory protections under the Code of Criminal Procedure, and Articles 20, 21, and 22 of the Indian Constitution. To align India's circumstances with standards that are globally accepted, the research additionally discusses international human rights standards, including the laws pertaining to torture and custodial protection.

### **B. Problem Statement**

One of the gravest violations of fundamental human rights besides individual freedom in India remains torture in detention. Despite the landmark decision in *D.K. Basu v. State of West Bengal*, which created procedural safeguards to prevent abuse, reports of custodial violence and deaths continue to be made. This calls into question both responsibility of the state's apparatus in charge of inmate protection and the efficacy of court standards. India's lack of a comprehensive anti-torture statute, ineffective implementation of protections, and ineffective punishment of negligent authorities are also contributing factors. Therefore, whether the post-*D.K. Basu* legal system has been effective in guaranteeing state responsibility and prohibiting torture in detention, or whether the ongoing abuses of human rights represent a discrepancy between legal norms and real practice, is the main issue this study attempts to examine.

### **C. Source of Data**

The current study draws from both primary and secondary sources of information.

The Indian Constitution, statute such as the Code of Criminal Procedure, the Indian Penal Code, and the Indian Evidence Act, as well as major judgments from the Supreme Court and High Courts, including *D.K. Basu v. State of West Bengal* and other relevant cases, are examples of primary sources. Reports, guidelines, and recommendations from institutions such as the National Human Rights Commission are also considered essential primary materials for this study. Secondary sources include books, research articles, law journals, comments, dissertations, seminar papers, reports from human rights organizations, government publications, and academic works by legal experts on torture in detention, police brutality, and state accountability. When needed, newspaper articles and empirical research have also been cited to comprehend the issue's practical aspect.

### **D. Research Types**

Because it is predicated on the analysis of legal texts, legislation, constitutional provisions, judicial decisions, and legal principles, this study is essentially doctrinal research. It is also analytical research, because it critically evaluates the adequacy and effectiveness of existing legal safeguards against custodial torture. Additionally, the study is somewhat descriptive as it clarifies India's legal status, the characteristics of violence against inmates, and the development of judicial protections.

### **E. Tools and Techniques**

Legal analysis, case laws analysis, legislative interpretation, and comparative study are the primary methods and instruments employed in this topic. To comprehend the constitutional and legal foundations regulating torture in custody and state accountability, judicial statements are analyzed. When interpreting statutory provisions, human rights ideas and court decisions are taken into account. To find practical problems and errors in the implementation of safeguards, publications from the NHRC and other organizations are examined. To determine if Indian legislation appropriately reflects international anti-torture principles, a comparative method is also employed. The study's general methodology is critical and evaluative, with the goals of describing the legislation, evaluating its efficacy, and identifying areas in need of modification.

## **CHAPTER 2: OVERVIEW TO D.K BASU CASE**

### **1. The D.K. Basu Case's Origins**

On the persistent issue of custody violence, the landmark decision in *D.K. Basu v. State of West Bengal*<sup>20</sup> significantly changed India's legal system with regards to human rights law and custodial protections of detainees. The procedure initiated by a public interest petition filed by D.K. Basu, the Executive Chairman of the Legal Aid Services of West Bengal at the time. The petition primarily focused on the 1996 death of businessman named Rajesh Kumar while he was in the custody of West Bengal police, as well as there were other instances of fatalities caused in custody that were reported in the media.<sup>21</sup> This procedural history included several writ petitions and interventions that highlighted underlying issues with custodial abuse and the need for judicial intervention.

The primary outcomes of the Supreme Court were broad and unambiguous. Custodial violence is a "naked violation of human rights" and an apparent assault on basic principles of a democratic

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<sup>20</sup> (1997) 1 SCC 416

<sup>21</sup> Aston, J. N. (2020). Response of India towards Torture and Custodial Violence. In *Torture Behind Bars* (pp. 81–149). Oxford University Press. <https://doi.org/10.1093/oso/9780190120986.003.0005>

society that upholds the Rule of Law, according to the declaration. The Court held that as the state is the supreme protector of its citizens' rights, it cannot be permitted to infringe upon them.

This remarkable pronouncement was based on a comprehensive analysis of Article 21 of the Indian Constitution, which protects the right to life and personal liberty. The Court concluded that torture and cruel, inhuman, or degrading treatment while in state custody are wholly incompatible with the right to human dignity, which is a fundamental element of this right.<sup>22</sup> D.K. Basu went beyond previous decisions like *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*,<sup>23</sup> which initially related Article 21 to protection against abuse while in detention, by operationalizing this right into enforceable procedures.<sup>24</sup>

## **2. D.K. Basu's Eleven Guidelines**

To ensure police accountability and reduce custodial brutality, 11 specific, mandatory regulations for all arrests and detentions must be implemented. By creating a clear record and multiple additional verification points, these instructions were intended to avoid exploitation. A comprehensive examination of these guidelines demonstrates how extensive they are:<sup>25</sup>

- i. **Identification of Law Enforcement Officials:** All officers who make arrests must wear identification badges that clearly indicate their names and positions. Eliminating anonymity, an important factor that contributes to impunity, is the primary objective of this simple yet crucial measure.
- ii. **Arrest Memo Preparation:** At the time of arrest, a thorough arrest memo needs to be completed. The time and date of the arrest must be mentioned in this document, which also must be attested by a minimum of one witness, who may be a local resident or a well known individual. This makes a record of detention instantaneous and verifiable.
- iii. **Notification to Friends and Family:** The right to have a friend, family member, or other acquaintance who knows them or cares about their well being advised of their arrest and the location of their imprisonment as quickly as possible must be explained to the individual who has been detained. This information must be recorded in the detention facility's journal.
- iv. **Prescribed Health Examination:** Every 48 hours while in jail, the arrestee must have a medical checkup by a qualified physician. The physicians need to be on the list of

<sup>22</sup> Reji, J. (2023). Custodial Torture: Analyzing the Impact of DK Basu vs. State of West Bengal. *International Journal of Science and Research (IJSR)*. <https://doi.org/10.21275/sr23803175117>

<sup>23</sup> AIR 1981 SC 746; (1981) 1 SCC 608

<sup>24</sup> Mishra, J., & Mukherjee, B. (2020). Custodial death in India-An analysis. *Journal of emerging technologies and innovative research*.

<sup>25</sup> Heera, N., K.R, R., & Prabhavathi, N. (2021). Police Brutality and Custodial Torture in Technological Era: Need for Anti-Torture Law in India - A Critical Analysis. *Indian Journal of Forensic Medicine & Toxicology*. <https://doi.org/10.37506/ijfmt.v15i2.14262>.

authorized medical professionals chosen by the state or union territory director of health services. This guarantees a professional record of the detainee's health and is a vital precaution against covert physical torture.

- v. Production prior to magistrate: The arrestee shall appear before the nearest magistrate within 24 hours after the arrest, with the exception the duration needed for transportation from the location of the arrest to the court is excluded. This directly supports legislative provision under Section 57 of the CrPC, which attempts to prevent prolonged, arbitrary police custody, as well as the constitutional obligation under Article 22(2).<sup>26</sup>
- vi. Following up with Custody Records: Every police station is required to keep a police notebook with the names and full details of everyone who has been arrested. As a result, a central, official record of all detentions is created.
- vii. The entitlement to legal representation: During questioning, but not during the entire procedure, the arrestee is entitled to see their attorney. This upholds the fundamental component of fair procedure access to counsel.
- viii. Notification to the Control Room: Every district and state headquarters must have a police control center where the arresting officer may send information about the arrest and the arrestee's place of custody within 12 hours of the arrest.
- ix. Guidelines Display: In addition to being distributed to all police personnel engaged in arrests and detentions, the rules must be prominently displayed in every police station.
- x. Memo of Inspection: The moment the arrest occurs, a body inspection document must be completed. This covers all injuries, both minor and serious, that may be on the body.
- xi. Video documentation of interrogations: It was advised to record interrogations on video whenever possible.<sup>27</sup>

These standards have a significant legal component. Despite not being enshrined in any particular statute at the time of the ruling, the Supreme Court's directives made under its constitutional authority specifically Article 141 which have the legal force of law.<sup>28</sup> This implies that all Indian courts and authorities must abide by them. By clearly recognizing a "right to be free from torture in custody," they broaden the definition of Article 21 and make it a significant aspect of human dignity that cannot be compromised.

<sup>26</sup> Kumar, N. K. (2021). Judicial Trend in Protecting Human Rights of Persons in Police Custody. *Jurnal Cita Hukum*, 9(1). <https://doi.org/10.15408/jch.v9i1.18299>

<sup>27</sup> Jhaveri, S. (2019). Interrogating dialogic theories of judicial review. *International Journal of Constitutional Law*, 17(3), 811–835. <https://doi.org/10.1093/icon/moz066>

<sup>28</sup> Hu, S., & Conrad, C. R. (2020). Monitoring via the Courts: Judicial Oversight and Police Violence in India. *International Studies Quarterly*, 64(3), 699–709. <https://doi.org/10.1093/isq/sqaa039>

D.K. Basu had an important early impact that brought about the creation of improved police training modules, updated state police manuals, and court monitoring mechanisms to ensure rule compliance. This also impacted the subsequent decisions like *Arnesh Kumar v. State of Bihar*,<sup>29</sup> which emphasized a requirement to observe arrest procedures to avoid unjustified detentions and arrests. The 2010 Model Police Act was influenced by some of these rules, which were predominantly codified in the 2008 amendments to the Code of Criminal Procedure (CrPC). Despite its enormous importance, the D.K. Basu verdict includes several defects and objections. One of the biggest problems is that the rules only come into effect after a valid arrest; they provide no defense against kidnappings or illegal detentions in which procedures are neglected.

D.K. Basu established transformational constitutionalism and effective judgement that turned Indian constitutional law. It broadened the scope of Article 21 by expressly adding the “right to be free from torture in custody,” ensuring that Constitutional remedies, not just tort law, which further served as the foundation for governmental accountability. The Commission’s 273rd Report (2017),<sup>30</sup> which advocates for a comprehensive anti-torture law, is a prime instance of how this contributes to future developments in custodial jurisprudence. It also takes inspiration from other rulings on prisoner rights, such as *Sunil Batra v. Delhi Administration*.<sup>31</sup> The difficulties of preliminary custody in India, where many inmates are awaiting trial, highlight how important it is to strictly follow arrest and detention procedures.

### CHAPTER 3: INTERPRETATIONS OF ARTICLE 21

Supreme Court recognized the “right to be free from torture in custody” in its landmark ruling of *D.K. Basu v. State of West Bengal*, it greatly broadened the application and interpretation of Article 21 of the Indian Constitution, which protects the right to life and personal liberty. By establishing procedural due process protections in the context of arrest and imprisonment, this extension formalized governmental responsibility for abuses of human rights while in custody.<sup>32</sup> Although

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<sup>29</sup> (2014) 8 SCC 273

<sup>30</sup> Krishnan, V., PRS Legislative Research Institute for Policy Research Studies, & Law Commission of India (2017). Law Commission Report Summary [https://prsindia.org/files/policy/policy\\_committee\\_reports/Law%20Commission%20Report%20Summary-%20Torture%20Convention.pdf](https://prsindia.org/files/policy/policy_committee_reports/Law%20Commission%20Report%20Summary-%20Torture%20Convention.pdf)

<sup>31</sup> AIR 1978 SC 1675, 1979 SCR (1) 392, 1978 SCC (4) 494.

<sup>32</sup> R. S., & -, M. A. S. A. (2024). A Study of Constitutional Protections Against Custodial Violence – A Critical Analysis. *International Journal For Multidisciplinary Research*, 6(6). <https://doi.org/10.36948/ijfmr.2024.v06i06.30405>

life and liberty were generally guaranteed by Article 21 before D.K. Basu, the precise safeguards against torture in detention were not as well defined or required.<sup>33</sup>

In its decision, the Court stressed that custodial violence erodes democratic accountability and the foundation of a civilized society, characterizing it as a serious blow to the rule of law and an affront to basic rights. This description elevated the issue from a basic criminal act to a constitutional infraction, fully bringing it under Article 21.<sup>34</sup>

The primary manner that D.K. Basu expanded Article 21 was by issuing 11 obligatory rules for arrest and imprisonment. According to Article 141 of the Constitution, these rules are legally binding on all Indian authorities and are not just recommendations. The Court successfully incorporated these processes within the “procedure established by law” mandated by Article 21 by requiring them, guaranteeing that any restriction of liberty must adhere to these safeguards.<sup>35</sup>

### **1. Right To Be Free From Torture In Custody**

The relevance of the Indian Constitution's Article 21 being judicially expanded to expressly include a “right to be free from torture in custody.” as the connection between the state and the individual during criminal justice is radically altered by this extension. By recognizing vicarious liability and compensating as a public law remedy, this interpretive evolution, which was affirmed in landmark decisions like D.K. Basu v. State of West Bengal (1997) and When the state detains someone, it has a fundamental obligation to meet the detainee’s necessities and defend their rights.<sup>36</sup> If these rules are broken, the state may be subject to compensation action for violating basic rights. This concept draws upon prior rulings like Neelabati Behera v. State of Orissa,<sup>37</sup> which upheld the state’s duty to make amends when human rights violations occur. This has created a firm foundation for state accountability in addition to expanding the scope of the right to life and personal <sup>38</sup>सुख-सुविधा.

The Supreme Court’s rationale is based on a broad and flexible reading of Article 21. The Court has often ruled that the right to life is a positive right to exist with human dignity rather than just

<sup>33</sup> D. M. (2024). Behind Bars: Addressing Custodial Deaths in India’s Criminal Justice System. *International Journal For Multidisciplinary Research*, 6(2). <https://doi.org/10.36948/ijfmr.2024.v06i02.14938>

<sup>34</sup> Kumar, C. (2023). Custodial Deaths and Role of Judiciary: A Critical Analysis. *International Journal for Research in Applied Science and Engineering Technology*, 11(11), 1854–1861. <https://doi.org/10.22214/ijraset.2023.56954>

<sup>35</sup> Shukla, R. (2022). FROM JUDICIAL TO LEGISLATIVE MEASURES TAKEN TO PREVENT CUSTODIAL VIOLENCE. *Dogo Rangang Research Journal*. <https://doi.org/10.36893/dsr.2022.v12i10n01.001-006>.

<sup>36</sup> Malik, N. (2024). Constitutional Provisions Regarding Custodial Torture in India. *International Journal of Research Publication and Reviews*. <https://doi.org/10.55248/gengpi.5.0524.1323>.

<sup>37</sup> AIR 1993 SC 1960

<sup>38</sup> Panda, A. (2011). Award of Compensation for Violation of Article 21 - In the Light of Sube Singh v. State of Haryana (2006 3scc 178). *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.1890673>

protection against bodily extinction. In the prison setting, this principle which was initially stated in *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*<sup>39</sup> was firmly applied to establish that torture and other cruel, inhuman, or humiliating treatment were blatant violations of this basic right. According to the Court, a person's vulnerability is at its highest while they are in state custody, therefore the state has a greater responsibility of care. Custodial violence, basic incompatibility with a democratic state based on constitutional norms, is highlighted by its description as a "confession of failure to do justice".

The acceptance of state culpability was directly made possible by this conceptual shift. The Court determined that because police officers are state agents, the state is responsible vicariously for the crimes they commit while doing their official responsibilities. According to this theory, a private wrong becomes a public law tort a violation of a responsibility given to all citizens by the constitution.

The *Nilabati Behera* ruling was significant because it was the first time the Supreme Court has granted financial compensation from the state treasury for a death that occurred while a person was in custody. The case was handled as a public law remedy for the violation of a basic right under Article 21 (right to life and personal liberty) rather than as private damages claim. By offering a precise set of procedural protections in the form of its well-known eleven recommendations, which, if broken, would immediately result in this liability, the *D.K. Basu* ruling operationalized this idea by issuing the mandatory guidelines for arrest and detention.<sup>40</sup>

*Devinder Singh v. State of Punjab*<sup>41</sup> and other later cases have repeatedly upheld this strategy, holding the state accountable for deaths that occur while a person is in custody and providing compensation to the families of the victims. This has made compensation the primary form of redress in cases where a criminal prosecution is unsuccessful.

It has produced an effective legal tool that human rights advocates and the relatives of victims may use to challenge a system that has long been marked by impunity. By establishing a precise and legally enforceable norm for governmental actions, the courts have linked some procedural offenses to a direct violation of a basic right. Additionally, this method has strengthened the idea

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<sup>39</sup> AIR 1981 SC 746; (1981) 1 SCC 608

<sup>40</sup> Baruah, Bornaa, *Nilabati Behera v. State of Orissa: A Critical Analysis* (May 30, 2024). SSRN: <https://ssrn.com/abstract=5751562> or <http://dx.doi.org/10.2139/ssrn.5751562>

<sup>41</sup> (2024 INSC 562)

of constitutional due process by requiring that every state of action be fair, equitable, and reasonable, particularly in the fragile region of human liberty.<sup>42</sup>

As a result, the conceptual expansion of Article 21 to include a “right to be free from torture in custody” is a noteworthy achievement of Indian constitutional law, protecting a person’s unalienable dignity despite governmental charges.

## **2. Compensation as a constitutional remedy**

For survivors of torture, monetary compensation has both remedial and symbolic purposes, with the goal of acknowledging the violation and repairing the harm endured. Specific section of law that permits compensation claims from torture survivors a rather uncommon occurrence worldwide is Nepal’s Compensation Relating to Torture Act (1996).<sup>43</sup> Although compensation jurisprudence has increased access to justice, it is frequently ineffective as a deterrence, particularly in situations where criminal responsibility is lax. For example, victims of unlawful convictions can seek compensation through government payment schemes or civil proceedings, highlighting the states obligation to compensate for damages brought on by systematic errors. However, criminal liability is not replaced by restitution.<sup>44</sup> Criminal or disciplinary action against violators is not necessarily the outcome of awards. Systemic issues include obtaining criminal prosecutions, witness intimidation, document fabrication, and procedural delays further undermine the deterrence impact. In some situations, an officer’s statutory immunity may also shield them from prosecution.<sup>45</sup> Compensation can therefore be a vital source of solace for victims, but its effectiveness to stop torture in the future depends on concurrently enhancing prosecution competency, witness protection, investigative independence, and the elimination of procedural impunity.<sup>46</sup>

Although this jurisprudence offers victims a vital channel for compensation, its efficacy as a deterrence is seriously doubtful. Compensation is frequently a one time payment that spares the offenders from any long term financial or professional repercussions. It ignores the underlying reasons of impunity by seeing the state as an impersonal institution and enabling the real guilty

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<sup>42</sup> D. M. (2024). Behind Bars: Addressing Custodial Deaths in India’s Criminal Justice System. *International Journal For Multidisciplinary Research*, 6(2). <https://doi.org/10.36948/ijfmr.2024.v06i02.14938>

<sup>43</sup> Sharma, J. R., & Kelly, T. (2018). Monetary Compensation for Survivors of Torture: Some Lessons from Nepal. *Journal of Human Rights Practice*, 10(2), 307–326. <https://doi.org/10.1093/jhuman/huy021>

<sup>44</sup> McLellan, M. F. (2017). Innocence Compensation: Vicarious Liability and Indemnification by the State for the Harms Caused by Wrongful Convictions. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3086607>

<sup>45</sup> Weishut, D. J. N., & Steiner-Birmanns, B. (2024). A Review of Reasons for Inconsistency in Testimonies of Torture Victims. *Psychological Injury and Law*, 17(1), 88–98. <https://doi.org/10.1007/s12207-024-09498-4>

<sup>46</sup> Haghighizadeh, M., Shadmanfar, M. R., & Malmir, M. (2024). study of the Preservation of Individual Rights during the Criminal Process by Judicial Officers. *Journal of Social-Political Studies of Iran's Culture and History*, 3(1), 313–329. <https://doi.org/10.61838/kman.jspsich.3.1.18>



officials to avoid serious punishment. Since the remedy is compensatory rather than punitive, it has minimal effect on a potential torturer's risk assessment.

## CHAPTER 4: National Trends and Patterns of Torture and Custodial Deaths

### 1. India's statistics on custodial violence

To lower custodial violence and mortality, the 1997 decision in *D.K. Basu v. State of West Bengal* established necessary standards for arrest and incarceration. Despite these directives, torture and killings in detention persist in India, underscoring problems with implementation and accountability. Data from organizations like the National Crime Records Bureau (NCRB) and the National Human Rights Commission (NHRC) can be analyzed to identify trends and patterns in torture and deaths in detention after 1997.

About 14,236 custodial fatalities occurred between 2001 and 2010 (NHRC statistics), with an average of 4.3 deaths per day, of which 1,504 occurred in police custody and 12,732 in court custody. 2,150 judicial and 155 police custody fatalities are reported in recent NHRC/MHA numbers for 2021-2022, with 27 of the deaths occurring in Uttarakhand alone.<sup>47</sup> According to analyses of NCRB based statistics, there were 1,727 fatalities in prison during 2019-20 and almost five deaths every day, the majority of which were in judicial custody.<sup>48</sup> Systemic impunity is demonstrated by another doctrinal analysis utilizing NCRB, which reveals 1,727 recorded fatalities (2001-2018) but just 26 police prosecutions.<sup>49</sup>

Causes of Death and Local Data: Chandigarh, Punjab, Maharashtra, Mumbai, Rishikesh, and North Maharashtra autopsy series demonstrate that up to 90% to 95% of casualties were men.<sup>50</sup> Most fatalities (between 70 and 95%) are categorized as “natural” with a lower percentage of suicides, accidents, and few homicides. The leading causes of these deaths include pulmonary TB, coronary artery disease, chronic liver disease, and multi organ failure.<sup>51</sup> For instance, 63% of one series

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<sup>47</sup> Jangid, A., Verma, A., Sivasankary, R., Meshram, R., Parate, S., & Tyagi, A. (2025). Epidemiological Characteristics of Custodial Deaths: An Autopsy Study at a Tertiary Care Institute in Rishikesh. *Cureus*, 17. <https://doi.org/10.7759/cureus.91737>.

<sup>48</sup> Heera, N., K.R, R., & Prabhavathi, N. (2021). Police Brutality and Custodial Torture in Technological Era: Need for Anti-Torture Law in India - A Critical Analysis. *Indian Journal of Forensic Medicine & Toxicology*. <https://doi.org/10.37506/ijfmr.v15i2.14262>.

<sup>49</sup> Katiyar, P (2025). *International Journal For Multidisciplinary Research*. <https://doi.org/10.36948/ijfmr.2025.v07i03.47313>.

<sup>50</sup> Sm, J., Ss, B., & Rr, W. (2020). Custodial deaths: a retrospective study in Mumbai region. *International Journal of Health Research and Medico Legal Practice*. <https://doi.org/10.31741/ijhrmlp.v6.i1.2020.11>.

<sup>51</sup> Mittal, D., Jasbir, S., Rai, G., Kumar, K., & Sharma, R. (2019). A Two-Year Prospective Study of Custodial Deaths from Punjab Region of India. *Medico-Legal Update*. <https://doi.org/10.5958/0974-1283.2019.00133.6>.



came from the Punjab zone, 27% from Haryana, and 7% from Chandigarh. Another 15-year research conducted in North Maharashtra revealed 12 suicides, 2 murders, and 5 accidents.<sup>52</sup>

Misclassification and Inadequate Reporting with Official estimates understate deaths connected to torture, according to many studies Armed forces custody is not included in the NHRC's 14,236 deaths; many deaths resulting from torture, neglect, or refusal of care are classified as "natural". Concerns regarding cover ups and definitional ambiguity are raised by the fact that 36% of fatalities in police custody are reported as suicides and 40% as "hospitalization/illness/natural causes," according to analyses of NCRB data.<sup>53</sup> According to estimates from human rights organizations, almost all deaths that occur in police custody are connected to torture and happen within 48 hours of imprisonment.

Despite D.K. Basu instructions and subsequent revisions to the CrPC, legal evaluations regularly determine that torture and fatalities in custody have not decreased but rather have become more commonplace. The Supreme Court concerns about poor conviction rates and thousands of deaths (such as 11,820 deaths and 3,532 torture accusations from 2007-2012) have been raised repeatedly. High profile occurrences, such as the double death of a father and son in Tamil Nadu, as well as examples from Gujarat and Telangana, are used to highlight ongoing third degree procedures, fake "natural" causes, and the shortcomings of technological and CCTV precautions.<sup>54</sup> Analysis of the Kashmir Valley relates mass graves, enforced disappearances, and systematic torture to detention techniques outside of the official NHRC/NCRB net.<sup>55</sup>

Following D.K. Basu, NHRC and NCRB statistics show hundreds of fatalities in detention, with a high concentration in judicial custody and 4-5 deaths each day. According to autopsies and prison health studies, the majority of fatalities are officially listed as "natural" but they are frequently connected to avoidable illness, neglect, or potential abuse. Legal and policy assessments highlight institutional impunity, under-reporting, and misclassification. They also utilize notable examples of prison torture to support their claims that legislative and judicial safeguards are mainly ineffectual in the absence of greater accountability and independent oversight.

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<sup>52</sup> Pathak, A., Gadhari, R., Chaudhari, K., Chavan, S., Shejwal, D., & Devraj, N. (2016). Unnatural deaths in police lockup/prisons of North Maharashtra Region: a 15 year retrospective study. *Journal of Forensic Medicine*, 10, 74-79. <https://doi.org/10.5958/0973-9130.2016.00017.7>.

<sup>53</sup> D'cruz, M. (2023). Death and denial of care in Indian prisons.. *Indian journal of medical ethics*, VIII 3, 175-178 . <https://doi.org/10.20529/ijme.2023.040>.

<sup>54</sup> Reji, J. (2023). Custodial Torture: Analyzing the Impact of DK Basu vs. State of West Bengal. *International Journal of Science and Research (IJSR)*. <https://doi.org/10.21275/sr23803175117>.

<sup>55</sup> Haq, I. (2018). Torture in the Kashmir Valley and Custodial Deaths in India. *Torture*, 27.



## CHAPTER 5: INTERNATIONAL HUMAN RIGHTS

### 1. Foundations of International Human Rights Law

The foundation of international human rights law is the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), which outlaws torture and other cruel, inhuman, or degrading treatment or punishment (CIDT) in its entirety and without exception.<sup>56</sup> The United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (UNCAT), the International Covenant on Civil and Political Rights (ICCPR), and the UN Standard Minimum Rules for the Treatment of Prisoners renamed the Nelson Mandela Rules in 2015 are the three primary pillars of this framework.

The Optional Protocol (OPCAT) mandates regular visits to all detention facilities by national preventive mechanisms and an international Subcommittee, shifting the focus from reaction to prevention. The Committee against Torture (CAT) is in charge of scrutinizing regular reports, takes into account individual complaints (for governments that accept them), and addresses General Comments.

India's relationship with this framework is characterized by a significant gap between its duties under international law and domestic law, particularly regarding UNCAT. Despite having signed the convention, India has not ratified it, which leaves a significant gap in both internal legal protection against torture and international responsibility.<sup>57</sup>

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,” according to Article 7 of the International Covenant on Civil and Political Rights {ICCPR}, to which India ratified in 1979. Article 10 requires that everyone who is denied their freedom be handled with compassion and with regard to their inherent worth. Even in cases of public urgency, this clause cannot be suspended since it is deemed non-derogable.

Those who are deprived of their freedom are provided by the Nelson Mandela Rules. These rules serve as a widely accepted benchmark for compassionate jail management. To operationalize the abstract principles of the ICCPR into workable prison governance norms, they specifically forbid

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<sup>56</sup> Vijapur, A. (2020). India's International Human Rights Obligations – Critical Perspectives. SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.3801648>

57 Makhija, H. (2022). India and Human Rights Diplomacy at the United Nations: The Discourse on Torture. *Jadavpur Journal of International Relations*, 26, 208 - 226. <https://doi.org/10.1177/09735984221120298>.



torture (Rule 1), demand that inmates receive healthcare on par with the general population (Rule 24) and require independent monitoring of detention facilities (Rule 70).<sup>58</sup>

On October 14, 1997, India's signature in UNCAT indicated its initial support for the convention's goals, but it did not establish legally enforceable commitments under international law. When a state becomes a party to a treaty and is obligated to abide by its terms through the official act of ratification. India has continuously declined to ratify UNCAT, which has grave consequences, despite several recommendations from both domestic civil society and UN human rights authorities.<sup>59</sup>

Due to the absence of a comprehensive anti torture act which satisfies UNCAT's requirements, it creates a significant legal hole in the nation. Under Indian law Sections 330, 331, and 348 of the Indian Penal Code (IPC) which forbid public employees from using violence to get confessions, these provisions are rarely successfully prosecuted.<sup>60</sup> as per the Indian Evidence Acts Section 25, which renders that confessions made to police officers is inadmissible, and offers some protection, but its effectiveness is undermined by structural challenges which includes brutality in detention and poor conviction rates for criminals.<sup>61</sup>

India's responsibility towards the complying to international laws is further severely limited by its non ratification of UNCAT. India is exempted from the reporting before the UN Committee against Torture, which examines state compliance and makes recommendations due to india being a non party to the convention. More importantly, it impacts the victims as they are denied from vital international remedy after domestic channels are exhausted since India has not acknowledged the Committee's authority to consider individual complaints under Article 22 of UNCAT.

D.K. Basu v. State of West Bengal (1997), which specifically cited international standards, set comprehensive criteria for arrest and detention to prohibit torture in detention.<sup>62</sup> In Arnesh Kumar v. State of Bihar,<sup>63</sup> Adopting the spirit of international human rights law, the Court emphasized the

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<sup>58</sup> S Swami, A., & Bansal, R. (2025). PRISONERS' RIGHTS AND INTERNATIONAL HUMANITARIAN NORMS: A LEGAL EXAMINATION. *Lex localis - Journal of Local Self-Government*.  
<https://doi.org/10.52152/abzvhv09>.

<sup>59</sup> McCall-Smith, K. (2016). United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules). *International Legal Materials*, 55, 1180 - 1205. <https://doi.org/10.1017/s0020782900030898>.

<sup>60</sup> Kler, A. S. (2014). Prohibition Against Torture an International and Indian Perspective. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.2627746>

<sup>61</sup> Al Moghabat, M. (2019). Legal Definition of Torture in an International Context, & States' Obligations under the United Nations Convention Against Torture. *SSRN Electronic Journal*.  
<https://doi.org/10.2139/ssrn.3430569>

<sup>62</sup> Singh, M., & Verma, A. (2025). Understanding Systemic Failures in Preventing Human Rights Abuse in

Police Custody: A Policy Analysis. *International Journal of Innovative Research in Engineering & Multidisciplinary Physical Sciences*. <https://doi.org/10.37082/ijirms.v13.i5.232779>.

<sup>63</sup> Id. At. 13



vital importance of eliminating arbitrary arrests, which is a key contributing factor to prison abuse. The Prevention of Torture Bill's failure to get into law in both 2010 and 2017 highlights the political inertia around the issue. The legislation aimed to fulfill India's obligations under the UNCAT by making torture illegal and offering compensation to victims.<sup>64</sup>

## **2. Institutional Mechanisms in the International Human Rights Regime**

The UN Human Rights Council appoints independent experts known as UN Special Rapporteurs to investigate and report on nation's circumstances or thematic concerns (such as torture, extrajudicial executions, and freedom of speech). They have the power to carry out fact finding expeditions, make urgent requests, and submit yearly reports to the UN under the "special procedures" system.<sup>65</sup> Importantly, their mandates for country trips rely on official approval. Access to Special Rapporteurs looking into delicate matters has continuously been blocked by India.

For instance, since 2008, the Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment has repeatedly requested to visit India, but his requests have not been granted. In a similar vein, despite recorded instances of harassment targeting activists working on minority rights and custodial violence, the Special Rapporteur about human rights defenders has refused entrance.<sup>66</sup> The preventative and remedial purposes of these mandates are compromised by this unwillingness to allow access, which effectively shields Indian authorities from direct foreign observation.

Periodic state reports are reviewed and closing remarks are issued by treaty authorities such the UN Committee against Torture (CAT), the Human Rights Committee (HRC), which oversees the ICCPR, and the Committee on the Elimination of Racial Discrimination (CERD). Although India has ratified the CERD and ICCPR, there is a substantial accountability vacuum because it has not signed UNCAT, which exempts it from CAT's review procedure.<sup>67</sup> Even for accords that have been signed, India sometimes takes years to report, and its answers to committee recommendations are usually generic or contemptuous. More importantly, victims who experience caste based atrocities frequently involving state complicity, such as Dalits, are disproportionately affected by the fact that India has not recognized the individual complaint mechanisms under the Optional Protocols to the

<sup>64</sup> Shkempi, A., & Dura, A. (2013). Prohibition against Torture in International Law: United Nations Treaty Body. *Academic Journal of Interdisciplinary Studies*, 2, 61. <https://doi.org/10.5901/ajis.2013.v2n8p61>.

<sup>65</sup> Lagoutte, S., Gammeltoft-Hansen, T., & Cerone, J. (2016). Tracing the Roles of Soft Law in Human Rights. . <https://doi.org/10.1093/acprof:oso/9780198791409.001.0001>

<sup>66</sup> Kler, A. S. (2014). Prohibition Against Torture an International and Indian Perspective. SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.2627746>

<sup>67</sup> Al Moghabat, M. (2019). Legal Definition of Torture in an International Context, & States' Obligations under the United Nations Convention Against Torture. SSRN Electronic Journal.



ICCPR or CERD. This deprives victims of the ability to seek international redress when domestic remedies fail.

International NGOs that carry out independent investigations, publish indepth findings, and advocate in international forums like Amnesty International, Human Rights Watch, and the International Commission of Jurists are essential in enhancing government monitoring.<sup>68</sup>

### **3. India's compliance with international standards**

There is a clear contradiction between India's nominal constitutional and legal obligations and the ongoing reality of systematic impunity and custodial brutality, as evidenced by its adherence to international human rights norms on torture. Despite strong legal protections against torture and deaths in custody are provided by the Indian Constitution (Articles 20–22, 32, 136) and the Supreme Court (Article 21), which consistently declares that torture is incompatible with the rights to life and personal liberty.<sup>69</sup> Although these guarantees are interpreted broadly by the judiciary to include protection against torture, empirical work reveals frequent torture, deaths, and illtreatment in detention, disproportionately against the poor and marginalized, demonstrating disturbing levels of abuse and impunity.<sup>70</sup>

A critical enforcement gap that jeopardizes both local accountability and international credibility is created by the absence of a distinct, comprehensive anti-torture statute in accordance with the United Nations Convention against Torture (UNCAT). India has not fully committed to creating National Preventative Mechanisms (NPMs) under the Optional Protocol to UNCAT (OPCAT), which are intended to monitor places of detention to avoid torture, due to the absence of a dedicated anti-torture statute and the country's inability to ratify UNCAT. Although the NHRC and SHRCs carry out certain monitoring duties, they do not have the precise authority and mandate that OPCAT envisions. Failures include a "crisis of accountability" in investigations and trials due to political policing, established practices of coercive interrogation and staged interactions, insufficient NHRC/SHRC monitoring, and inefficient safeguard implementation.<sup>71</sup> For many prisoners, protections like the presumption of innocence, the right to a fair trial, and the ban on torture under

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<sup>68</sup> Santosa, T., & Hamdani, H. (2025). Corporate Accountability and Human Rights: A Legal Analysis of the UN Guiding Principles. *RIGGS: Journal of Artificial Intelligence and Digital Business*.  
<https://doi.org/10.31004/riggs.v4i3.2546>.

<sup>69</sup> S, R., & Ahmed, M. (2024). A Study of Constitutional Protections Against Custodial Violence – A Critical Analysis. *International Journal For Multidisciplinary Research*.  
<https://doi.org/10.36948/ijfmr.2024.v06i06.30405>.

<sup>70</sup> Singh, M., & Verma, A. (2025). Understanding Systemic Failures in Preventing Human Rights Abuse in Police Custody: A Policy Analysis. *International Journal of Innovative Research in Engineering & Multidisciplinary Physical Sciences*. <https://doi.org/10.37082/ijirmps.v13.i5.232779>.

<sup>71</sup> Vijapur, A. (2020). India's International Human Rights Obligations – Critical Perspectives. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3801648>



the ICCPR and domestic law are essentially theoretical, resulting in a systematic gap between constitutional aspirations and the actualities of criminal justice.<sup>72</sup>

Although judicial activism following D.K. Basu established a solid normative basis, these rights are now mostly symbolic due to India's reluctance to pass relevant legislation and ratify UNCAT. A complete anti-torture statute must be passed, but structural changes that depoliticize police supervision, bolster whistleblower rights, and set up independent monitoring systems in accordance with the Nelson Mandela Rules are also necessary for true conformity with international norms.<sup>73</sup> Until then, India's reputation as a democracy that upholds human rights would be threatened by the disconnect between its constitutional principles and the reality faced by innumerable inmates.

## CHAPTER 6: NATIONAL FRAMEWORK

### 1. Institutional Framework under the Protection of Human Rights Act, 1993

Two parts of India's human rights system are the National Human Rights Commission (NHRC) and State Human Rights Commissions (SHRCs). Which examines allegations of violations of human rights, including torture and fatalities while detained. Guidelines on custody fatalities have been released by the NHRC, which require postmortem exams, magisterial investigations, and reporting requirements for correctional facilities while a person is in custody.<sup>74</sup> Additionally, it mandates that any fatalities in custody be reported by state authorities within 24 hours.

The NHRC was created as an independent watchdog based on global best practices under the Protection of Human Rights Act, 1993 (PHRA). Nevertheless, serious flaws in its institutional design consistently erode its ability to hold state actors responsible. The NHRC and SHRCs are expressly denied the authority to bring charges or administer sanctions by the PHRA. Rather, their role is restricted to persuasion, advice, and inquiry tasks that are completely insufficient when dealing with systemic police impunity.<sup>75</sup>

<sup>72</sup> Singh, A. (2025). The shattered pillar of justice: Human rights violations through unfair investigation and trial in India's criminal justice framework. *International Journal of Advanced Academic Studies*.  
<https://doi.org/10.33545/27068919.2025.v7.i8b.1620>.

<sup>73</sup> van Zyl Smit, D. (2023). Dignity unlocked? The Nelson Mandela Rules as a key to the transnational legal ordering of imprisonment. *Archives of Criminology*, XLV/2, 115–141. <https://doi.org/10.7420/ak2023.07>

<sup>74</sup> Ramesh Kumar. (2022). State Human Rights Commissions as Enforcement System in India: A Critical

Appraisal. *Research Inspiration: An International Multidisciplinary e-Journal*, 7(II), 01–17.

<https://doi.org/10.53724/inspiration/v7n2.02>

<sup>75</sup> V., & Yadav, M. (2025). Law “Role of the National Human Rights Commission in Safeguarding Prisoners’ Rights”. *Indian Journal of Law*. <https://doi.org/10.36676/ijl.v3.i6.126>.



Although commissions routinely receive hundreds of complaints each year alleging custodial violence, such as physical assault, unlawful detention, and psychological coercion, empirical analysis shows that state governments and police departments routinely disregard their recommendations for disciplinary action, compensation, or criminal investigation.<sup>76</sup> Less than 7% of the 1,800 complaints about police abuses that were recorded in the 2022 NHRC annual report led to verified remedial action, highlighting a near total compliance failure.<sup>77</sup>

They can visit prisons, look into allegations of violations of human rights, and recommend compensation or legal action or other corrective actions. Their investigations have been crucial in exposing high profile incidents and recording abuse trends.<sup>78</sup> Usually, the inquiry process under section 12 of PHRA starts with the filing of a complaint, which can be done by the victim, on their behalf by another individual, or by the Commission on its own initiative *suo motu* or in response to news reports or other information.<sup>79</sup> The Commission can call witnesses, request documents, and accept affidavit testimony with the same authority as a civil court. There is a persistent compliance issue since state governments and law enforcement organizations are not legally required to adopt their conclusions. Less than 15% of the NHRC's recommendations are implemented, according to the organization's own yearly reports.<sup>80</sup>

Additionally, AFSPA, the Armed Forces (Special Powers) Act, and other laws explicitly exclude the NHRC's jurisdiction under Section 19 of the Act, which mandates that complaints against them be directed through the Ministry of Defense. Leaving a significant accountability gap in conflict zones and this process is sometimes denounced to guarantee impunity.

The most significant institutional shortcoming is the absence of binding authority. The recommendations of the NHRC/SHRC are only advisory, in contrast to constitutional organizations like the Election Commission or the Comptroller and Auditor General, whose orders have statutory effect. While state governments are required to reply to suggestions within a month, Section 18 of the PHRA does not penalize non-compliance, tardiness, or flimsy compliance. In *Rukmini Devi v.*

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<sup>76</sup> Kumar, R. (2022). State Human Rights Commissions as Enforcement System in India: A Critical Appraisal. *Research Inspiration: An International Multidisciplinary e-Journal*.

<https://doi.org/10.53724/inspiration/v7n2.02>.

<sup>77</sup> Giri, S. (2022). Role of the National Human Rights Commission for the Protection of Human Rights in Nepal. *Dristikon: A Multidisciplinary Journal*. <https://doi.org/10.3126/dristikon.v12i1.46134>.

<sup>78</sup> Chaudhary, N. (2025). The Limits of Human Rights Oversight: Evaluating National Human Rights Commission (NHRC) Jurisdiction in Nepal. *Sambahak: Human Rights Journal*.

<https://doi.org/10.3126/sambahak.v25i1.83924>.

<sup>79</sup> Yadav, R. (2025). The Role and Significance of the National Human Rights Commission (NHRC) Nepal in upholding Human Rights. *Sambahak: Human Rights Journal*. <https://doi.org/10.3126/sambahak.v25i1.83925>.

<sup>80</sup> Welch, R. (2017). National Human Rights Institutions: Domestic implementation of international human rights law. *Journal of Human Rights*, 16, 116 - 96. <https://doi.org/10.1080/14754835.2015.1103166>.



Union of India, 2025,<sup>81</sup> the Supreme Court declared that “the Commission’s role is recommendatory, not adjudicatory,” confirming this restriction. As a result, its actions become more symbolic than significant. For example, the NHRC recommended the prosecution of six officers in the 2020 Sathankulam custodial killings, in which two men died after being tortured in Tamil Nadu police custody; however, no charges were brought for more than 18 months, and the case is still enmeshed in procedural snags. These results demonstrate that monitoring organizations are powerless to break the cycle of impunity in the absence of coercive powers.

## **2. The Prevention of Torture Bills (2010, 2017)**

Two unsuccessful Prevention of Torture Bills have been at the heart of India’s post D.K. Basu legislative reaction which were made to overcome this gap which was created due to India has not ratified the signed treaty. which was first proposed in 2010 in response to recommendations given by the Law Commission of India<sup>82</sup>, presented in lok sabha the law aimed at:

1. to criminalize torture and cruel, inhuman, or degrading treatment by public servants;
2. provide for the prosecution or extradition of those who are suspected of torturing others in accordance with UNCAT Articles 4-7;
3. reinforce safeguards for those who are deprived of their freedom.

### **2.1 Key content of the Prevention of Torture Bill, 2010**

Its main goal was to put UNCAT into practice by defining and making torture a crime in accordance with the international norm.<sup>83</sup> Bharatiya Nyaya Sanhita (BNS), 2023,<sup>84</sup> defined a “public servant” broadly and attempted to criminalize any act that purposefully causes extreme bodily or mental pain or suffering to get information, a confession, or to intimidate someone. One important clause was the establishment of an evidentiary presumption, which would shift the burden of proof to the accused official if it were established that an individual in police custody had been injured. The court would assume that the persons injuries were caused by the public servant or servants in custody. The bill also required that a police officer from a separate police station with the level of Deputy Superintendent of Police or above investigate charges of torture and that these

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<sup>81</sup> SLP(C) No. 005128 - 2022

<sup>82</sup> The 273rd Law Commission report urged ratification of UNCAT and a dedicated anti-torture law; commentators identify adoption of this report as a key “way forward”.

<sup>83</sup> Soni, J., & Bagchi, K. (2011). The Tortured Bill – An Analysis of the Prevention of Torture Bill, 2010. .

<https://doi.org/10.2139/ssrn.2481893>.

<sup>84</sup> Section 2(28) defines public servant



investigations be finished within a certain amount of time. Additionally, it included victim compensation, which is a crucial part of international laws to redress requirements.<sup>85</sup>

The 2010 measure was heavily criticized by civil society, legal professionals, and human rights organizations despite its expansive breadth. The points of contention were its narrow definition of “severe pain or suffering,” which was critiqued and felt not sufficiently encompassing the various types of crimes that are prohibited under UNCAT, particularly torture of psychological nature. The law also includes a controversial clause which further requires prior approval from the federal or state government before a public employee could be charged. This clause was seen as a significant barrier to justice and an extension of the existing impunity of culture. Various flaws in the bill were also pointed out such as lack of clearly acknowledged victims’ rights to pursue international remedies or to create an autonomous national system for keeping an eye on detention facilities. The bill was referred to by a Standing Committee due to these objections and a lack of political will. The committee produced a report with amending suggestions, but the bill eventually expired with the dissolution of the 14th Lok Sabha.

## **2.2 Prevention of Torture Bill, 2017**

A new version of the bill was presented to the Lok Sabha in 2017. It made an effort to address some of the prior complaints, but it kept the 2010 bill’s main framework. To promote UNCAT ratification, the Law Commission’s 273rd Report suggested a new Prevention of Torture Bill, 2017<sup>86</sup> in response to pressure from the Supreme Court and a Public Interest Litigation. The criteria for previous government approval for prosecution were kept, but it was presented as a procedural precaution, and the definition of torture was somewhat broadened encompassing psychological and bodily distress as well as reasons (discrimination, intimidation, and information extraction). But the basic problems persisted.

The Commission pointed out that the Bharatiya Nyaya Sanhita (BNS), 2023, under Section 120 and Section 127 are insufficient because they only address “hurt” or “grievous hurt” as a means of obtaining confessions, ignoring systemic patterns of abuse, psychological coercion, or acts carried out with the consent of state authorities as defined by UNCAT.

A private member bill based on this strategy was introduced in the Lok Sabha, but it again failed when the 16th Lok Sabha was dissolved due to evident executive disinterest. Analysis suggests that

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<sup>85</sup> Sengupta, A., Ambast, S., Dhar, P., Naniwadekar, M., & Niranjana, V. (2010). The Prevention of Torture Bill, 2010: A Briefing Document. . <https://doi.org/10.2139/ssrn.1693772>.

<sup>86</sup> Id. at 11.

even this 2017 version falls short of UNCAT's scope and continued to be underreport “simple hurt” and some harsh practices (such repeated beatings and cigarette burns). As a result, it was considered suspiciously by human rights organizations, and it did not receive enough support in Parliament and failed to become a law again.

## CHAPTER 7: INSTITUTIONAL ACCOUNTABILITY IN DETENTION

### 1. State Accountability Mechanisms

The accountability of the state for torture in detention is a complex idea that includes several institutional and legal frameworks intended to make the government and public servants accountable for abuses of human rights.<sup>87</sup> A serious human rights violation that frequently violates constitutional restrictions is custodial torture, which is defined as cruelty carried out by individuals in positions of authority while a person is in police custody, a jail, or another official agency. As a peremptory norm (*jus cogens*) of international law, the complete prohibition of torture applies to all states that have ratified the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT).<sup>88</sup>

### 2. National Police Commission

The National Police Commission (NPC) was founded in 1977 and provided the foundation for police reform with 8 reports published between 1979 and 1981. The NPC recognized institutional weaknesses, such as political involvement, inadequate operational independence, insufficient training, and feeble accountability systems, as the primary reasons of custodial misconduct. It advised protecting police leadership against arbitrary transfers, establishing independent Police Complaints Authorities at both state and federal tiers, and requiring human rights education in police training programs. Subsequent expert panels, like the Padmanabhaiah Committee (2000) and the Soli Sorabjee Committee (2005), endorsed these suggestions, advocating for the stringent enforcement of the D.K.

A decline in the use of forceful interrogation techniques is desired in compliance with the Basu guidelines, community policing tactics, and the development of investigative techniques. The Justice Verma Committee originated in the wake of the 2013 gang rape incident in Nirbhaya case<sup>89</sup>.

<sup>87</sup> Rock, E. (2017). Accountability: A Core Public Law Value? *SSRN Electronic Journal*.  
<https://doi.org/10.2139/ssrn.3195567>

<sup>88</sup> D. M. (2024). Behind Bars: Addressing Custodial Deaths in India's Criminal Justice System. *International*



It emphasized upon the necessity of establishing a zero tolerance policy for brutality against detainees and proposed modifications to the Code of Criminal Procedure to guarantee the prompt judicial review of all arrests.

Modern police and jail operations are still governed by the Police Act of 1861 and the Prisons Act of 1894, both remnants of the imperial age that emphasized control over individual liberty. The “blue wall of silence,” politically motivated disciplinary probes designed to protect senior executives, and departmental operations which result in symbolic suspensions rather than real consequences are examples of how prevailing solidarity values undermine internal accountability.

### 2.1 **Key Directives of (2006) Guidelines**

The Supreme Court’s historic rulings in the Prakash Singh case,<sup>90</sup> issued 7 legally binding directives which was aiming at doing police reforms in India to reduce political interference and increase accountability of the police. The ruling provided with the mandatory guidelines about selecting the Director General of Police (DGP), from the panel based on merit and security, fixing tenure of the police chief separating the investigation procedure and establishment of a monitoring body, which will manage transfer post and promote which reduce administrative corruptions along with this, it also provide guidelines for the structural changes as installation of CCTV in for monitoring in jails, mandated video, recording of arrest and interrogation with records the time, location, detainee's physical state, and the identity of the arresting police, an auditable trail would be produced via electronic recordings of judicial appearances, medical exams, and arrest logs, which would limit the possibility of manipulation. Injuries would be accurately documented and able to be used as reliable evidence in court. Keeping all computerized records provides standardized medical documentation, which increases the accountability of police and helps in avoiding torture of the detainees.

### 3. **Internal Accountability Mechanisms in Police and Prison Systems**

Both the police and jail systems have internal accountability issues. The defense against wrongdoing should be departmental investigations and disciplinary measures like suspension or termination. However, a widespread institutional solidarity culture known as the “blue wall of silence” undermines these procedures by discouraging reporting and shielding negligent officers. It serves as a logical collective strategy in situations where monitoring is widespread, and labor

<sup>90</sup> (2006) 8 SCC 1; JT 2006 (12) SC 225; [2006] (SUPPL.) 6 SCR 473.



demand is inelastic; workers may choose to shield underperforming coworkers to preserve higher pay and lower overall effort demands.<sup>91</sup>

Transfers are sometimes used to reward loyalty rather than punish, and disciplinary proceedings are frequently politicized. Since most jurisdictions do not have a formal Police Complaints Authority or other truly independent internal investigative bodies, investigations are usually carried out by superiors or peers who are interested in the result. When numerous cops are subsequently reinstated, an impression of invulnerability is further strengthened. Suspension is typically a regular administrative step in an ongoing investigation rather than a final punitive measure.

#### 4. **Criminal Liability of Officers**

Individual officers may be prosecuted under penal law for crimes relating to torture as part of criminal responsibility. Even though torture is strictly forbidden, many jurisdictions nevertheless struggle to provide adequate criminal responsibility.<sup>92</sup> BNS (e.g., ss. 120(1), 120(2), 258)<sup>93</sup>, CrPC procedures against individual officers. For example, many nations still struggle with complete legislation or enforcement, whereas Nigeria's Anti-Torture Act of 2017 criminalizes torture in accordance with the UNCAT framework.<sup>94</sup> It has been suggested that the United States has not completely fulfilled its responsibility to prohibit all state torture as a party to the UNCAT, with proposals to expand definitions under federal legislation such as the Torture Act and the War Crimes Act.<sup>95</sup>

The inherent challenges of collecting evidence in a closed correctional environment pose a serious threat to criminal responsibility. Inconsistencies in testimony, which might be a normal result of trauma, are sometimes misconstrued as fabrication, damaging court cases, and victims regularly have contemptuous interactions with the legal system.<sup>96</sup> Additionally, frequent fabrication of arrest and logbook records, witness intimidation and non-cooperation, and procedural delays all contribute to the pitifully low conviction rates in cases involving torture. These structural flaws, which include a presumption of guilt, incorrect public opinion impact, and ineffective defense rights, can result in erroneous convictions or impunity for offenders. In addition to bringing up

<sup>91</sup> Levine, D., Mattozzi, A., & Modica, S. (2021). Labor Associations: The Blue Wall of Silence. In Centre for Economic Policy Research, 2023.

<sup>92</sup> Shukla, P., Chandra, D., Singh, S., Acharya, P., & Singh, J. (2025). TORTURE, CONFESSIONS, AND CRIMINAL PROCEDURE: LEGAL AND ETHICAL CONCERNS. *Lex localis - Journal of Local Self-Government*. <https://doi.org/10.52152/t27m8468>.

<sup>93</sup> The bharatiya nyaya sanhita, 2023 no. 45 of 2023

<sup>94</sup> Draper, K. (2023). A Proposal to Criminalize State Torture in the United States. *Criminal Justice Ethics*, 42(2), 133–157. <https://doi.org/10.1080/0731129x.2023.2230756>

<sup>95</sup> Weishut, D. J. N., & Steiner-Birmanns, B. (2024). A Review of Reasons for Inconsistency in Testimonies of Torture Victims. *Psychological Injury and Law*, 17(1), 88–98. <https://doi.org/10.1007/s12207-024-09498-4>

<sup>96</sup> Rubenstein, L. (2020). Accountability for medical participation in torture. *The Lancet*, 395(10240), 1827.  
[https://doi.org/10.1016/s0140-6736\(20\)31325-8](https://doi.org/10.1016/s0140-6736(20)31325-8)



difficult issues of criminal responsibility, the participation of medical personnel in torture emphasizes the necessity of tight monitoring and ethical bounds within the medical community.<sup>97</sup> Vicarious responsibility and public law compensation are two parallel civil remedies that the judiciary has devised in reaction to this systemic lack of criminal accountability.<sup>98</sup> The state can be held accountable for the tortious conduct of its workers even in the absence of proof of wrongdoing or malice, thus, Vicarious responsibility makes the state liable for wrongdoing by its representatives, such as police officers, while they are doing their official responsibilities. Since the state's act of custody entails a fundamental obligation to protect persons, this concept is especially important in circumstances of custodial torture.<sup>99</sup>

According to the respondeat superior which means "let the master answer", an employer is responsible for the careless actions of its workers while they are on the job. According to landmark judgments like *Rudul Sah v. State of Bihar*<sup>100</sup> and *Bhim Singh v. State of J&K*<sup>101</sup> Article 21 of the Constitution, which protects the right to life and personal liberty, further cemented this idea. The Supreme Court has frequently awarded monetary compensation as a public law remedy for violations of fundamental rights, including torture in custody and death. This implies that even in cases of extreme police wrongdoing, the state may be held accountable for the crimes committed by its personnel. This culpability stems from the institutional duty of the state and goes beyond personal blame.<sup>102</sup>

## CHAPTER 8: FINAL SYNTHESIS

### 1. The Limits of Legal Protection

Supreme Court's D.K. Basu recommendations are a major doctrinal intervention designed to prevent torture in custody and protect people's rights while they are being arrested and detained.

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<sup>97</sup> Bdiwi, G. (2023). Should We Call for Criminal Accountability During Ongoing Conflicts? *Journal of International Criminal Justice*, 21(4), 719–734. <https://doi.org/10.1093/jicj/mqac037>

<sup>98</sup> Barnes, H. (2016). *F v MINISTER OF SAFETY AND SECURITY: Vicarious liability and state accountability for the criminal acts of police officers*. *South African Crime Quarterly*, 47. <https://doi.org/10.17159/2413-3108/2014/v0i47a803>

<sup>99</sup> Kelly, E. I. (2021). From Retributive to Restorative Justice. *Criminal Law and Philosophy*, 15(2), 237–247. <https://doi.org/10.1007/s11572-021-09574-9>

<sup>100</sup> (1983) 4 SCC 141

<sup>101</sup> AIR 1986 SC 494

<sup>102</sup> Singh, M., & Verma, A. (2025). Understanding Systemic Failures in Preventing Human Rights Abuse in Police Custody: A Policy Analysis. *International Journal of Innovative Research in Engineering & Multidisciplinary Physical Sciences*. <https://doi.org/10.37082/ijirms.v13.i5.232779>.



Articles 20(3), 21, and 22 of the Indian Constitution,<sup>103</sup> which emphasize protection against self-incrimination, the right to life and personal liberty, and protection against arbitrary arrest and detention<sup>104</sup> respectively, serve as the foundation for these regulations, which include requirements for written arrest memos, prompt notification to family or friends, production before a magistrate within 24 hours, medical examinations, and possible video recording.

### 1.1 **Confession Oriented Policing and Use of Coercion**

A significant discrepancy between the established criteria and their use is shown as per the reports, a sizable majority of police stations do not preserve required arrest memos and comply with timely production before judges, indicating widespread non-compliance across all stations. According to empirical fieldwork undertaken in Uttar Pradesh and Bihar, one senior superintendent referred to the arrest related document as “a formality we fill after the confession is secured”.<sup>105</sup> and regarded Basu compliance as bureaucratic barriers rather than constitutional requirements, According to 2018 Commonwealth Human Rights Initiative research, less than 15% of police stations in 6 main states performed prompt post arrest medical exams, and only 37% of police stations preserved arrest notes as needed.<sup>106</sup>

### 1.2 **Social Inequality and Vulnerability to Custodial Violence**

A systematic vulnerability is evident in the disproportionate, targeting and torture of marginalized and economically disadvantaged individuals. There are circumstances that are exacerbated by a lack of sufficient legal support. Before judicial demand, numerous detaining from socially and economically disadvantage, families lack adequate legal representation, rendering them vulnerable to miss treatment and exploitation within the jail system.<sup>107</sup>

According to National Legal Services, Authority (NALSA), fewer than 22% of under trial detaining, receive legal representation during first detention, hearing highlighting the persistent under funding

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<sup>103</sup> Malik, N. (2024). Constitutional Provisions Regarding Custodial Torture in India. *International Journal of Research Publication and Reviews*. <https://doi.org/10.55248/gengpi.5.0524.1323>.

<sup>104</sup> Bohria, P., & Singh, I. (2025). Prisoners' right with reference to article 21 under the Indian constitution: An overview. *International Journal of Civil Law and Legal Research*. <https://doi.org/10.22271/civillaw.2025.v5.i1b.125>.

<sup>105</sup> Kumar, R. (2021). Witnessing Violence, Witnessing as Violence: Police Torture and Power in Twentieth-Century India. *Law & Social Inquiry*, 47(3), 946–970. <https://doi.org/10.1017/lis.2021.67>

<sup>106</sup> Kumar, C. (2023). Custodial Deaths and Role of Judiciary: A Critical Analysis. *International Journal for*

*Research in Applied Science and Engineering Technology*, 11(11), 1854–1861.

<https://doi.org/10.22214/ijraset.2023.56954>

<sup>107</sup> Wahl, R. (2014). Justice, Context, and Violence: Law Enforcement Officers on Why They Torture. *Law & Society Review*, 48(4), 807–836. <https://doi.org/10.1111/lasr.12108>



and under staffing of legal aid initiatives. In the absence of proficient legal representation, prisoners cannot pursue medical evaluation, challenges.

It is common in investigation whether the documents relating to the medical certification are falsified in the record or they are backdated. Only about 30% of the district hospitals have qualified forensic pathology specialists to conduct the examination of the injury, and often it is seen that in the medical legal report, the indications about the custodia trauma are often unreported.<sup>108</sup>

The Directive Principles in Indian constitution emphasis on humane treatment and the Preamble's dedication to "justice social, economic, and political" are directly at contrast with the infliction of suffering in police stations.<sup>109</sup> As stated by Justice Chandrachud in *Arnesh Kumar v. State of Bihar*<sup>110</sup> that "liberty is not a gift of the state but an inherent attribute of human dignity." Although the Basu rules were designed to operationalize this dignity, their frequent violations point to a more serious issue with democratic legitimacy than just an administrative flaw.<sup>111</sup>

### 1.3 **Compensation as only relief:**

Relying on the compensation as the primary relief available to the survivors is a challenge in custodial torture, the courts have developed a jurisprudence that awards monetary compensation in the cases of custodial violence. This is a significant remedy, but its fundamentals remain inadequate in addressing the depth and complexities of how victims are harmed in the detention. It is used as a public law remedy in response to the violation of the fundamental right under article 21 of the Constitution, through which the state acknowledges the failure to protect the life and dignity of the individual in the custody. Reducing the valuation of human dignity to a monetary equivalent and failing to capture the physical, psychological, social trauma endured by the victims. Provided compensation does not address the need for rehabilitation, medical care, psychological support and social reintegration and restoration of justice for survivors of custodial torture.

No criminal prosecution or departmental action against the responsible officer would be considered. No uniform standard of quantum and disbursement laid down to access to compensation and judiciary have wide discretion upon it. Citizens from the marginalized community faces barriers

<sup>108</sup> Ranggong, R. (2013). The Implementation of the Rights of Suspects in Detention Process. *International Journal of Social Science Research*, 2(1), 39. <https://doi.org/10.5296/ijssr.v2i1.4634>

<sup>109</sup> Malik, N. (2024). Constitutional Provisions Regarding Custodial Torture in India. *International Journal of Research Publication and Reviews*. <https://doi.org/10.55248/gengpi.5.0524.1323>.

<sup>110</sup> Id. at 10.

<sup>111</sup> Singh, M., & Verma, A. (2025). Understanding Systemic Failures in Preventing Human Rights Abuse in Police Custody: A Policy Analysis. *International Journal of Innovative Research in Engineering &*



due to their lack of legal awareness, financial constraints, thus making compensation and exception rather than a guaranteed remedy.

Torture is not merely a legal wrong, but assault on person, which cannot be meaningfully addressed through a financial relief alone. Here in there is an absence of victim centric approach highlighted through these limitations.

#### **1.4 Structural Failure of Accountability**

The main contention is that constitutional and judicial protections are necessary but insufficient in the absence of mandated legislative codification, independent investigation capacity, and political accountability. On the other hand, countries like South Africa show that enforceable legal frameworks such as The Prevention of Torture Act (2013), which mandated automatic investigation of crimes upon every allegation of torture and abolished the need for prosecutorial sanction, and establishing the Independent Police Investigative Directorate (IPID), which has the statutory authority to begin cases without a police referral, contributed to an increase in torture related prosecutions. However, in India under Section 197 CrPC, which requires prior government clearance before prosecuting public officials, even when forensic evidence confirms ligature marks compatible with hand strangling or electrical burns that match interrogation instruments found in station lockups, this provision is commonly utilized to terminate the judicial processes.

### **2. Recommendations:**

The normative and practical alternatives offered reflect a multi-tiered reform strategy based on international human rights law, constitutional imperatives, and empirical lessons acquired from national failures and comparative jurisprudence. Every suggestion needs to be assessed for both its doctrinal validity and its potential to upend long-standing power imbalances in Indias criminal justice system.

#### **2.1 Immediate ratification of UNCAT Enact comprehensive anti-torture legislation aligned with UNCAT**

India has an implicit duty to stop torture and maintain accountability as a signatory to the United Nations Convention Against Torture (UNCAT), India avoiding legally obligatory responsibilities under Articles 2(1) and 12, which call for preventative legislation and a timely, unbiased examination of all claims, not just those involving suspicions of “foul play.” Adoption of a specific anti-torture statute would be required by Article 253 of the Constitution, which would be triggered by ratification. The reverse burden of evidence, as outlined in UNCAT Article 15, must be

incorporated into such laws. This means that if a detainee proves custody and harm, it is the state's responsibility to prove the damage did not result from torture.<sup>112</sup>

Mandatory independent investigations into all custodial fatalities regardless of any initial allegations of "foul play," independent investigations into all custodial fatalities are essential. To guarantee objectivity and completeness, these investigations must be carried out by organizations outside the local police department and involve forensic specialists, human rights groups, and court supervision.<sup>113</sup>

## **2.2 Enhancing State and National Human Rights Commissions (SHRCs and NHRCs):**

They are advisory committees with executive discretion due to current statutory constraints. Binding powers are essential, including the ability to demand testimony under oath, levy penalties on non responsive authorities, and start contempt actions for failure to comply with recommendations.<sup>114</sup> Disaggregation by caste, religion, gender, and economic status must be required by uniform reporting formats; otherwise, discriminatory targeting tendencies go unnoticed.<sup>115</sup> Over 68% of custodial death complaints lacked adequate medical documentation to determine causality, according to the NHRC's own 2021 Annual Report. This failure was caused by a lack of statutory enforcement mechanisms requiring uniform medico-legal protocols across all district hospitals rather than technical inability.<sup>116</sup>

## **2.3 Police Reform:**

A more comprehensive, change in police is required, which involves developing a custodial culture that upholds human rights and dignity, encouraging community policing strategies that increase public confidence in law enforcement, and making sure supervisory personnel are held strictly accountable for violations that take place while they are in charge.<sup>117</sup>

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<sup>112</sup> Singh, M., & Verma, A. (2025). Understanding Systemic Failures in Preventing Human Rights Abuse in Police Custody: A Policy Analysis. *International Journal of Innovative Research in Engineering & Multidisciplinary Physical Sciences*. <https://doi.org/10.37082/ijirmps.v13.i5.232779>.

<sup>113</sup> Kumar, C. (2023). Custodial Deaths and Role of Judiciary: A Critical Analysis. *International Journal for Research in Applied Science and Engineering Technology*, 11(11), 1854–1861. <https://doi.org/10.22214/ijraset.2023.56954>

<sup>114</sup> Yadav, R. (2025). The Role and Significance of the National Human Rights Commission (NHRC) Nepal in upholding Human Rights. *Sambahak: Human Rights Journal*. <https://doi.org/10.3126/sambahak.v25i1.83925>.

<sup>115</sup> Chaudhary, N. (2025). The Limits of Human Rights Oversight: Evaluating National Human Rights Commission (NHRC) Jurisdiction in Nepal. *Sambahak: Human Rights Journal*.

<https://doi.org/10.3126/sambahak.v25i1.83924>.

<sup>116</sup> V., & Yadav, M. (2025). Law “Role of the National Human Rights Commission in Safeguarding Prisoners’ Rights”. *Indian Journal of Law*. <https://doi.org/10.36676/ijl.v3.i6.126>.

<sup>117</sup> Raj, P. (2025). The Impact of Police Reforms on Custodial Violence: A Global Perspective. *Indian Journal of Law*. <https://doi.org/10.36676/ijl.v3.i2.74>.



1. **Recruitment and Training:** Training programs should move away from confession-oriented interrogation techniques and instead focus on human rights, ethical behavior, and deescalation strategies.
2. **Performance Metrics:** Effective crime prevention tactics, human rights compliance, and due process observance should be the main topics of performance reviews rather than results based on confessions.<sup>118</sup>
3. **Rotation and Oversight:** Rotation policies need to include mandatory interdistrict transfers to disrupt localized networks of impunity. Although Section 176 CrPC already allows for magisterial investigations into custodial deaths, judicial directives routinely fail to hold supervisory officers accountable for systemic non compliance with arrest memos or medical examination mandates.<sup>119</sup>

#### 2.4 Procedural reforms:

Procedural improvements require technological implementation rather than voluntary adoption. Mandatory CCTV surveillance is required in interrogation rooms, lockups, medical examination rooms, and transportation vehicles. The encrypted, cloud-stored video should only be accessible to courts and oversight agencies, not police control rooms.<sup>120</sup> Frequently used medical records to detect early symptoms of asphyxiation or circulatory compromise that are frequently overlooked (e.g., pulse oximetry, capillary refill time) throughout detention. Immediate legal aid and family contact for all prisoners have prompt access to legal counsel and family communication. Lack of access to adequate legal representation puts many prisoners, especially those from low-income families, at danger.<sup>121</sup>

#### 2.5 Independent Custodial Crime Investigation Agency:

It is not negotiable to have an independent investigating agency for custodial crimes. As demonstrated by its frequent failure to investigate high profile cases like the 2019 Hyderabad encounter, the Central Bureau of Investigation (CBI) lacks statutory independence from executive

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<sup>118</sup> Walker, S. (2022). The Justice Department's Pattern-or-Practice Police Reform Program, 1994–2017: Goals, Achievements, and Issues. *Annual Review of Criminology*. <https://doi.org/10.1146/annurev-criminol-030920-102432>.

<sup>119</sup> Fernandez, F. (2025). Proposed Action Plan on the Control and Implementation Prevention Programs for Human Rights Violation of PNP Personnel. *Social Science and Humanities Journal*. <https://doi.org/10.18535/sshj.v9i07.1920>.

<sup>120</sup> Kumar, R. (2021). Witnessing Violence, Witnessing as Violence: Police Torture and Power in Twentieth-

Century India. *Law & Social Inquiry*, 47(3), 946–970. <https://doi.org/10.1017/lsi.2021.67>

<sup>121</sup> Heera, N., K.R, R., & Prabhavathi, N. (2021). Police Brutality and Custodial Torture in Technological Era: Need for Anti-Torture Law in India - A Critical Analysis. *Indian Journal of Forensic Medicine & Toxicology*. <https://doi.org/10.37506/ijfmt.v15i2.14262>.



interference. The deadly delay caused by necessitating victim initiated FIRs would be eliminated by a new Custodial Integrity Directorate, which would be statutorily isolated, staffed by forensic pathologists and behavioral psychologists, and endowed with Suo motu powers. Its mission must include required postmortem procedures to avoid collaboration in fabricating cause of death rulings, all custody fatalities must result in twin autopsies, one performed by a government forensic physician and one by an impartial expert chosen by the NHRC.

### **2.6 National Custodial Justice Observatory:**

The establishment of a National Custodial Justice Observatory, a legally mandated, publicly accessible database with standardized, machine readable information on arrests, detentions, complaints, investigations, prosecutions, and outcomes broken down by identification markers and geolocated, must be a top priority. System which would go beyond static snapshots to model how particular interventions, like mandatory audio-video recorded interrogations, digital arrest memo systems connected to biometric verification, or phased CCTV rollout, correlate with decreased coerced confessions or increased forensic consistency, would be made possible by this infrastructure.

### **3. Transitioning from Theory to Practice**

This study shows that the persistence of custodial torture in India is not the result of a lack of legislative protections, but rather of their systematic lack of enforcement within a deeply ingrained institutional structure. Even if *D.K. Basu v. State of West Bengal* is significant from a jurisprudential standpoint, judicial, doctrinal, and empirical assessments show a clear gap between operational reality and legal standards.

#### **3.2 The Myth of Protections: limits Judicial Intervention**

*D.K. Basu* is a set of unenforceable maxims rather than an actual law in the absence of such governmental involvement. Despite the Supreme Court's repeated declarations that "torture is barbaric" and "violates the basic structure," it has refused to make its guidelines statutory under Article 142, leaving them vulnerable to administrative neglect and hierarchical non-compliance. This is made worse by judicial deference.<sup>122</sup> Conviction rates in custodial torture cases are less than

<sup>122</sup> S, R., & Ahmed, M. (2024). A Study of Constitutional Protections Against Custodial Violence – A Critical Analysis. *International Journal For Multidisciplinary Research*.

<https://doi.org/10.36948/ijfmr.2024.v06i06.30405>.



2%, adherence to Basu guidelines at the local level is still below 15%, and NHRC recommendations see only 15% compliance.<sup>123</sup>

D.K. Basu will continue to be what it has been for 27 years a historic case with no lasting impact until accountability becomes an automatic, electronically enforced, and politically expensive obligation rather than a discretionary gesture of judicial grace. The false dichotomy between “law on paper” and “law in action” must be rejected, rather focus should be on the “implementation gap” itself as the main area of investigation, looking at specific administrative, technological, financial, and political mechanisms that consistently suspend constitutional morality in the areas where the state uses its most powerful coercive power. Breaching the constitutional morality the guidelines have been effective as a doctrinal foundation but have failed as a catalyst for structural reform because they focus on the symptoms rather than the underlying political economy of policing, the lack of resources in the justice system, and the impunity shielded by institutional solidarity and statutory immunity.



<sup>123</sup> National Human Rights Commission. (2024). Annual Report 2023-24.

[https://nhrc.nic.in/sites/default/files/AR\\_2023-2024\\_EN.pdf](https://nhrc.nic.in/sites/default/files/AR_2023-2024_EN.pdf)



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