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INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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“CUSTODIAL VIOLENCE IN INDIA: AN CRITICAL ANALYSIS OF LAWS AND ENFORCEMENT MECHANISMS”

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Abstract

Custodial violence remains one of the most persistent and alarming violations of human rights within the Indian criminal justice system. Custodial violence includes various kinds of torture that a person in prison, police custody as well as judicial custody undergoes due to various reasons. Violence is an apparatus is used to impose the one will on another and to feels the power and superiority over other. For that reason, the government has set up a way for the poor and vulnerable victims to get prompt relief through the National Human Rights Commission. The government has also complied with a number of protective standards set forth by international agreements, constitutional provisions, and statutory laws, but the number of cases of violence against inmates is rising daily. The study concludes that the absence of a dedicated anti-torture law, weak oversight mechanisms, and institutional impunity significantly undermine the effectiveness of existing safeguards. It emphasizes the urgent need for comprehensive legal reforms, independent investigative mechanisms, and stronger accountability frameworks to ensure the protection of human dignity and the rule of law.

Keywords: custodial violence, Human rights, torture, constitutional rights, Legal Framework, Judicial Safeguards, police atrocities & cruelty.

1. INTRODUCTION

Custodial violence represents a serious challenge to the integrity of a democratic legal system, as it involves the abuse of power by authorities entrusted with the protection of citizens. It broadly includes physical torture, psychological abuse, sexual violence, and deaths occurring

while a person is under the custody of law enforcement agencies or other state institutions¹. Such acts not only violate individual rights but also erode public confidence in the justice system².

In India, the problem of custodial violence is deeply rooted in historical and structural factors. The policing system, largely inherited from the colonial era, was originally designed to maintain control rather than uphold citizens' rights³. Over time, this framework has continued to influence modern law enforcement practices, often leading to the normalization of coercive methods during investigation. Despite significant legal developments after independence, including constitutional guarantees of life and personal liberty, the persistence of custodial abuse highlights a disconnect between legal principles and their implementation⁴.

The vulnerability of individuals in custody further aggravates the issue. Once detained, a person is placed in an environment where access to legal aid, family support, and external oversight is limited. This creates conditions where abuse can occur with minimal accountability. Although legal safeguards such as procedural protections, judicial oversight, and human rights institutions exist, their effectiveness is often compromised by weak enforcement, institutional bias, and lack of transparency⁵.

This study seeks to examine custodial violence from a legal and analytical perspective by evaluating existing laws, judicial responses, and enforcement mechanisms. It aims to identify systemic deficiencies and propose reforms that can bridge the gap between legal safeguards and actual protection. Addressing custodial violence is not merely a legal necessity but a constitutional obligation to uphold human dignity and the rule of law.

2. THEORETICAL FRAMEWORK IN INDIA

Human Rights Theory:

The **human rights framework** forms the primary theoretical basis of this study. It posits that every individual, regardless of their legal status, possesses **inherent and inalienable rights** that cannot be violated by the state. Custodial violence is viewed as a **fundamental violation of human dignity** as enshrined in:

- The **Universal Declaration of Human Rights (UDHR), 1948**

¹ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1, Dec. 10, 1984.

² *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416

³ K.S. Subramanian, *Political Violence and the Police in India* (Sage Publications 2007).

⁴ INDIA CONST. art. 21; *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

⁵ Protection of Human Rights Act, 1993; National Human Rights Commission Reports.

- The **International Covenant on Civil and Political Rights (ICCPR), 1966**
- The **UN Convention Against Torture (UNCAT), 1984**

This theory demands that the state not only **refrain from violating rights** but also **actively protect** individuals from such violation

Rule of Law Theory:

The **rule of law** principle, as articulated by **A.V. Dicey**, holds that no person shall be subjected to arbitrary action by the state and that **law must govern all actions of state authorities**⁶.

Custodial violence directly challenges the rule of law by demonstrating that:

- ◆ State actors operate **above the law**
- ◆ Victims are **denied equal protection**
- ◆ Impunity undermines the **legitimacy of legal institutions**

Social Contract Theory:

Drawing from **Rousseau, Locke, and Hobbes**, the social contract theory holds that individuals surrender certain freedoms to the state in exchange for **protection of their life, liberty, and security**⁷. Custodial violence represents a **fundamental breach of this contract** the state, instead of protecting the individual, becomes the **perpetrator of violence** against them.

Foucault's Theory of Power and Discipline:

Michel Foucault's seminal work *Discipline and Punish (1975)* provides a critical theoretical lens to understand custodial violence. Foucault argued that **prisons and detention centers are instruments of power** through which the state disciplines, controls, and punishes bodies. His concept of "**bio-power**"⁸ the state's control over physical bodies explains how custodial violence is not an aberration but a **systemic tool of state control**, especially over marginalized populations.

Critical Legal Studies (CLS) Approach:

The **Critical Legal Studies** movement argues that law is not a neutral instrument but reflects existing **power structures and inequalities**. Applied to custodial violence, CLS reveals that:

- The law **protects the powerful** (police, prison officials) over the powerless (detainees)
- Legal safeguards exist on paper but are **systematically undermined** in practice.

⁶ A V Dicey, *Introduction to the Study of the Law of the Constitution (10th edn, Macmillan 1959)*.

⁷ Jean-Jacques Rousseau, *The Social Contract (1762)*.

⁸ Michel Foucault, *Discipline and Punish: The Birth of the Prison (Alan Sheridan tr, Vintage 1977)*.

- Marginalized communities Dalits, minorities, the poor disproportionately bear the **burden of custodial violence.**

3. INDIAN LAWS DEALING WITH CUSTODIAL VIOLENCE

Constitutional Provisions Pertaining to Custodial Violence

- Article-14: Equality before law-Under this article accused shall be treated as equal as other person before law. This is the duty of state i.e. guards of laws, shall not deny to any person equality before the law.
- Article-19: Protection of right regarding to speech and expression etc. Here authorities, guards of laws are suspended their freedom of speech.
- Article-20: It provides protection in respect of conviction for offences under sub-section (1), (2) & (3) of article 20.
- Article-21 Right to Life: Protection from torture is recognized as a fundamental right under article 21. Article 21 of the constitution which reads that; no person should be deprived of his life or personal liberty except according to procedure established by law. This procedure not only refers to the enacted law but also extends to the principles of natural justice.
- Article-22: Protection against arrest and detention in certain cases-Article-22(1) No Person is arrested shall be detained in custody without being informed as soon as may be of the grounds for such arrest nor shall he be denied the right to consult and to be defended by, a legal practitioner of his choice

Indian Penal Code, 1860

- Section-330, 331,342 & 348 these sections designed to deter the police officer, those who have power to arrest a person and investigate him and during investigation of offence prevents any kind of third-degree method which causing torture.

Code of Criminal Procedure, 1973

- Section-41 of the Criminal Procedure Code (CrPC) was amended in 2009 to introduce safeguards under sections 41A, 41B, 41C, and 41D. These provisions ensure that arrests and detentions for interrogation are based on reasonable grounds and follow documented procedures.
- Section-46 & 49 of code protect the person who under the custody and not the accused of offence of punishable with life imprisonment and death, from torture.

- Section-76 of the Code of Criminal Procedure (Cr. P.C.).
- Section-54 of code, when an allegation is made by a person on police person or other official in whose custody, its magistrate duty to examine that person's body and maintain the record of examination.
- Section-176 of code, where a mandatory inquiry take place by magistrate on the death of accused in police custody.
- Section-167 & 309 of code, object behind the taking the accused before magistrate, so safeguard the rights and interest of that person.

The Police Act, 1861

Section 29 of the Act provides that if police personnel inflicts violence on a person in his custody, he shall be liable to a penalty not exceeding 3 months of pay or imprisonment not exceeding 3 months or both.

4. CHALLENGE IN IMPLEMENTATION IN CUSTODIAL VIOLENCE JUDICIAL RESPONSES

D.K. Basu v. State of West Bengal 1997⁹

The executive Chairman of Legal Aid Services, which is a non-political organization registered under the Societies Registration Act, wrote a letter to the Chief Justice of India, to raise concern over the matter of recent deaths and violence which were being reported in the police custody and lockups. The letter was treated as a writ petition when it was filed before the Supreme Court of India. Shri Ashok Kumar Johri addressed the letter to the Chief Justice of India by highlighting the death of a person named Mahesh Bihari of Aligarh in Police custody. In this case, petitioners also raised concerns over the police powers. Compensation should be given to people if there is any infringement of their rights mentioned in Articles 21 and 22 of the Constitution. Supreme Court held that Custodial violence is an attack on human dignity. Court also recognized that even after several recommendations and policies custodial violence cases are still increasing. Apex Court mandated to follow certain guidelines adhering to Articles 21 and 22(1): -

- i. Police officer must accurate and correct information about the accused and also all particulars of the police official who handle the investigation.
- ii. Memo of arrest shall be signed by a witness who can be either family member of the arrestee or any locality person with sign of arrested person with date and time.

⁹ D.K. Basu v. State of West Bengal 1997 (1) SCC 416.

- iii. Arrest details shall be informed to family member, relatives or friends. If they live outside the town then they shall be informed through Legal Aid Organisation in district or police station within 8 to 12 hours after arrest.
- iv. The arrestee shall be aware of his right and reason of his arrest also arrestee is entitled to meet his lawyer.
- v. Medical examination of arrestee shall be conducted every 48 hours by a certified doctor appointed by Director Health Services of State or Union.
- vi. Diary of entries maintained must contain the name and details of nearest friend of the arrestee.
- vii. Police control room should be provided at all district and state headquarters where information regarding the arrest and the place of custody of arrestee shall be communicated by the officer causing the arrest within 12 hours of arrest and it should be displayed on notice board.

Rudul Shah v. State of Bihar, 1983¹⁰

Petitioner was kept illegally in jail for 14 years habeas corpus writ was filed and his immediate release was demanded this case is important because for the very first time Supreme Court realized that if by any state any individuals constitutional rights is been violated then the individual will get compensation.

Saheli v. Commissioner of Police, 1989¹¹

In this case police along with the zameendar misbehaves with the rented mother and her 9 year old child which lead to the death of the child. Supreme Court compensated the mother by awarding Rs75000 also court gave an option to Delhi Administration to recover the amount by the police officer who is responsible for the incident.

Nilabati Behera v. State of Orissa, 1993¹²

In this case Suman Behera was arrested by police and the very next day her body was found on railway track with multiple injuries and the petitioner was awarded by a compensation of Rs 1,55,000.

Joginder Singh v. State of UP 1994¹³

¹⁰ Rudul Sah v. State of Bihar, (1983) 4 SCC 141.

¹¹ Saheli v. Commissioner of Police, 1989 AIR 513 SCR 488.

¹² Nilabati Behera v. State of Orissa, AIR 1993, SC 1960

¹³ Joginder Singh v. State of UP 1994 AIR 1349 SCC (4) 260.

Supreme Court held that if any arrest is made without any justification, then it will be an illegal act, there must be reasonable justification for arrest.

5. CONCLUSION:

Custodial violence continues to be a critical concern in India, reflecting a significant gap between the ideals of the legal system and the realities of its enforcement. While the Constitution and various statutory provisions provide strong safeguards against arbitrary detention and torture, their practical implementation remains inadequate. Judicial interventions have played an important role in recognizing and addressing custodial abuse, yet they have not been sufficient to eliminate the problem.

The persistence of custodial violence can largely be attributed to structural issues such as lack of accountability, inadequate training of law enforcement personnel, reliance on outdated investigative methods, and the absence of an independent mechanism to investigate complaints against state authorities. Additionally, the failure to enact a specific anti-torture law and the limited powers of oversight bodies weaken the overall framework of protection.

The study highlights that marginalized and economically weaker sections of society are disproportionately affected, indicating that custodial violence is not only a legal issue but also a social justice concern. Addressing this problem requires a multi-dimensional approach that includes legal reform, institutional accountability, technological intervention, and a shift in policing culture.

In conclusion, ensuring the protection of individuals in custody is essential to maintaining the legitimacy of the criminal justice system. Effective implementation of safeguards, establishment of independent oversight mechanisms, and commitment to human rights principles are crucial steps toward eliminating custodial violence and strengthening the rule of law in India.

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