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RIGHT TO LIFE BEHIND BARS AND LEGAL FRAMEWORK TO PREVENT CUSTODIAL DEATH

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ABSTRACT

Custodial death — the loss of human life within state custody — constitutes one of the gravest violations of fundamental human rights in any democratic society. In India, hundreds of deaths occur annually in police lock-ups and judicial remand facilities, yet convictions remain abysmally low, revealing a critical gap between constitutional guarantees and ground-level reality.

This project examines the constitutional, legislative, judicial, and international mechanisms designed to protect the right to life of persons in state custody. Anchored in Article 21 of the Constitution of India, the research traces the historical roots of custodial violence from the colonial era to the present, analyses relevant statutory frameworks (CrPC, IPC, BNSS, PHRA), scrutinises landmark Supreme Court decisions (D.K. Basu, Nilabati Behera, Joginder Kumar), and situates Indian practice within international human rights standards (CAT, ICCPR, Nelson Mandela Rules).

Empirical data from NCRB reports and NHRC documentation reveal that custodial deaths disproportionately affect the poor, Dalits, Adivasis, and religious minorities. The research concludes with concrete recommendations for legal reform and institutional change, arguing that preventing custodial death requires not merely legislative action but a fundamental transformation in law enforcement culture.

Keywords: Custodial Death, Right to Life, Article 21, Police Custody, D.K. Basu Guidelines, Torture, Human Rights, NHRC, Criminal Justice, Accountability.

CHAPTER I: INTRODUCTION

1.1 Background and Statement of the Problem

The relationship between the individual and the state is most sharply defined in custody. Custodial death — the death of an individual in police custody, judicial custody, or any form of state-supervised detention — is one of the most serious human rights violations a state can commit. Unlike extrajudicial killings, custodial deaths occur within the very institutions entrusted with the enforcement of law, making them doubly egregious.

India's constitutional framework guarantees the right to life under Article 21, yet the NCRB reports over 1,700 police custody deaths between 2010 and 2022, with actual figures believed to be significantly higher. The Indian police force, shaped by the punitive colonial model of the Police Act of 1861, perpetuates a culture of coercive interrogation and institutional impunity. Despite progressive judicial pronouncements, significant gaps persist between legal mandate and police practice.

1.2 Objectives and Research Questions

The study aims to (i) examine the constitutional framework for custodial rights; (ii) analyse statutory provisions and their adequacy; (iii) evaluate India's compliance with international standards; (iv) review judicial responses; (v) conduct an empirical analysis of custodial deaths; and (vi) formulate concrete reform recommendations. Key research questions address whether the existing framework adequately protects life in custody, what systemic failures enable impunity, and what reforms are necessary.

1.3 Methodology and Scope

The research employs a doctrinal-analytical methodology supplemented by empirical and comparative analysis, drawing on primary sources (constitutional provisions, statutes, judgments, NHRC reports, NCRB data) and secondary literature. It is primarily limited to Indian police and judicial custody contexts, acknowledging that NCRB data systematically under-reports actual incidences.

CHAPTER II: HISTORICAL BACKGROUND OF CUSTODIAL VIOLENCE IN INDIA

2.1 Colonial Legacy and Torture

The British colonial administration built its police force as an instrument of control, not rights-protection. The Police Act of 1861, enacted after the 1857 War of Independence, created a hierarchical, militaristic force capable of maintaining colonial order. The 1855 Madras Torture Commission documented widespread torture used to extract confessions and revenue, establishing a legacy of state-sanctioned cruelty. At independence, this institutional culture was

inherited rather than dismantled, creating what legal historians call “colonial continuity” in criminal justice.

2.2 Post-Independence and Emergency Periods

Post-independence governments largely subordinated custodial rights concerns to nation-building priorities. The Emergency (1975–1977) dramatically intensified custodial violence; the subsequent Shah Commission confirmed systematic abuse. The post-Emergency period saw active judicial engagement — Sunil Batra (1980), Sheela Barse (1983), Hussainara Khatoon (1979) — marking the beginning of a custodial rights jurisprudence.

2.3 Third Degree Methods and Evolution of Legal Consciousness

Third degree interrogation methods persist despite condemnation by the Gore Committee (1971), National Police Commission (1977–1981), and Ribeiro Committee. Institutionally, results-oriented police culture valorises confessions over process; socially, abuse is directed disproportionately at the marginalised; systemically, incomplete CCTV coverage and perfunctory magisterial oversight create conditions of near-total impunity. Against this background, civil society organisations (PUCL, PUDR, CHRI, ACHR), the NHRC, and an expanding Supreme Court jurisprudence have driven a gradual evolution of legal consciousness around custodial rights.

CHAPTER III: CONSTITUTIONAL FRAMEWORK FOR RIGHTS OF PERSONS IN CUSTODY

3.1 Article 21: Right to Life and Personal Liberty

Article 21’s transformation from a procedural guarantee to a substantive source of rights began with *Maneka Gandhi v. Union of India* (1978), requiring that procedure established by law be fair, just, and reasonable. Subsequent decisions grounded custodial rights in Article 21: *Francis Coralie Mullin* (1981) established the right to live with dignity free from torture; *Paschim Banga Khet Mazdoor Samity* (1996) affirmed the state’s obligation to provide adequate medical care; *M.H. Hoskot* (1978) and *Hussainara Khatoon* (1979) recognised the right to legal aid as integral to Article 21.

3.2 Articles 22, 14, 20 and Directive Principles

Article 22 requires that every arrested person be informed of grounds of arrest, have access to legal counsel, and be produced before a magistrate within 24 hours — protections routinely violated in practice. The “dark period” before judicial production is when torture is most likely. Articles 14 and 15 are violated by the documented discriminatory pattern of custodial violence against Dalits, Adivasis, minorities, and the poor. Article 20(3)’s prohibition on self-

incrimination — extended by Nandini Satpathy (1978) to police interrogation and reinforced in *Selvi v. Karnataka* (2010) to prohibit narco-analysis without consent — undercuts the primary justification for torture. Article 39A's directive for free legal aid and Article 41's affirmative welfare obligations complement these fundamental rights to create a comprehensive, if imperfectly implemented, framework.

CHAPTER IV: LEGISLATIVE FRAMEWORK TO PREVENT CUSTODIAL DEATHS

4.1 Code of Criminal Procedure, 1973 and BNSS, 2023

Key CrPC provisions for custodial protection included: Section 41 (restricting warrantless arrest and requiring written reasons); Section 50A (mandatory notification of family within 24 hours of arrest); Section 54 (medical examination at arrest); Section 57 (24-hour production before magistrate); and Sections 176/190 requiring judicial magisterial inquiry for all custodial deaths. The BNSS (2023) retains these safeguards and adds audio-video recording of evidence (Section 183), potentially enhancing accountability. However, its extension of permissible police custody to sixty days in certain offences has drawn criticism from human rights organisations as regressive.

4.2 Indian Penal Code, 1860

Sections 302, 304, 304A, 330, and 331 IPC are applicable to custodial deaths, with Sections 330–331 specifically criminalising hurt to extract confessions. Yet the conviction rate for custodial death is under one percent, due to witnesses who are fellow officers, compromise of forensic evidence, and the requirement (under Section 197 CrPC) of governmental sanction for prosecution of public servants.

4.3 Protection of Human Rights Act, 1993

The PHRA established the NHRC with powers to investigate complaints, recommend compensation, and set standards. NHRC guidelines require 24-hour reporting of custodial deaths, mandatory magisterial inquiry, video-recorded post-mortems, and notification of families. Significant limitations include the inability to investigate armed forces or to issue binding orders, and the absence of power to prosecute perpetrators.

4.4 Legislative Gap: Prevention of Torture Bill

India's most glaring legislative gap is the absence of a standalone anti-torture law. India signed the UN CAT in 1997 but has not ratified it. A Prevention of Torture Bill was passed by the Lok Sabha in 2010 but lapsed in the Rajya Sabha. Prison Manuals and the Model Prison Manual 2016 provide further regulatory standards, though their adoption and enforcement are uneven across states.

CHAPTER V: INTERNATIONAL HUMAN RIGHTS FRAMEWORK

5.1 UDHR and UN Convention Against Torture (CAT)

The UDHR (1948) establishes foundational norms: Article 3 (right to life and security), Article 5 (prohibition of torture), and Article 9 (prohibition of arbitrary detention). The CAT (1984) defines torture comprehensively, requires states to criminalise it, conduct independent investigations, exclude torture-obtained evidence, and provide effective remedies. India's non-ratification — despite signing in 1997 — means it falls outside the Committee Against Torture's monitoring mechanism and has been consistently criticised in successive Universal Periodic Reviews.

5.2 ICCPR and Nelson Mandela Rules

India acceded to the ICCPR in 1979. Articles 6 (right to life), 7 (prohibition of torture, non-derogable), 9 (liberty and security), 10 (humane treatment in custody), and 14 (fair trial) create binding obligations directly applicable to custodial situations. The UN Human Rights Committee has in its Concluding Observations recommended India ratify the First Optional Protocol to the ICCPR and enact anti-torture legislation. The Nelson Mandela Rules (2015 revision) provide comprehensive standards on medical care, CCTV oversight, solitary confinement limits, and family communication rights. While not binding, Indian courts have cited these Rules as interpretive benchmarks. Overall, India's compliance is mixed — improved prison manuals and active judicial jurisprudence on the positive side; non-ratification of CAT, persistent impunity, and low prosecutions on the negative side.

CHAPTER VI: JUDICIAL RESPONSE TO CUSTODIAL DEATHS

6.1 D.K. Basu v. State of West Bengal (1997)

The Supreme Court held that custodial death is “perhaps one of the worst crimes in a civilised society governed by the rule of law” and that Article 21 confers an absolute right to dignity in custody. The Court formulated twelve binding guidelines, including: visible identification of arresting officers; a contemporaneous arrest memo; notification of family/friend within 8–12 hours; recording of pre-existing injuries; medical examination every 48 hours; copies of arrest documents sent to the magistrate; and access to legal counsel during interrogation. These guidelines were subsequently codified in the CrPC (2008 amendment). The judgment also affirmed state liability for compensation for fundamental rights violations, independently of criminal prosecution.

6.2 Nilabati Behera v. State of Orissa (1993)

The Supreme Court awarded compensation of Rs. 1,50,000 for death in police custody, rejecting sovereign immunity and establishing that unexplained death in custody raises a presumption of state responsibility. Constitutional compensation under Articles 32/226 is a remedy distinct from civil damages, awarded for the violation of the constitutional right itself.

6.3 Joginder Kumar (1994) and Other Landmark Decisions

Joginder Kumar established that the existence of the power to arrest is distinct from its justification: arrest without warrant must be individually justified and contemporaneously recorded. Sheela Barse (1983) mandated female- only interrogation and housing for women in custody. Sunil Batra (1980) rejected the civil death theory and confirmed that convicted prisoners retain fundamental rights. State of A.P. v. Challa Ramkrishna Reddy (2000) overruled Kasturilal (1965) to confirm that sovereign immunity cannot shield the state from liability for fundamental rights violations. The NHRC supplemented these decisions with administrative guidelines, including mandatory CCTV installation and videographed post-mortems.

CHAPTER VII: EMPIRICAL ANALYSIS OF CUSTODIAL DEATHS IN INDIA

7.1 Statistical Overview

NCRB data (2010–2022) records approximately 1,888 police custody deaths and over 15,000 judicial custody deaths — a combined average of four custodial deaths per day. Civil society organisations (ACHR) estimate actual figures are two to three times higher, as many deaths are falsely attributed to natural causes, suicide, or accident. States with the highest reported police custody deaths include Uttar Pradesh, Gujarat, Maharashtra, Andhra Pradesh, and Tamil Nadu. The NHRC received over 1,700 police custody and 3,200 judicial custody death complaints in 2021–22 alone.

7.2 Causes, Patterns, and Vulnerable Groups

Custodial deaths fall into three categories: direct physical violence (beating, stress positions, use of electricity); medical neglect (failure to treat illness or injury); and deaths attributed to suicide, some of which are disguised killings. Critically, most police custody deaths occur within the first 48 hours — before judicial production — strongly implicating interrogation practices. Dalits, Adivasis, religious minorities (particularly Muslims), women, and undertrial prisoners (over 75% of India’s prison population) are dramatically over-represented among victims, reflecting caste discrimination, communal targeting, and social vulnerability within policing institutions.

7.3 Case Studies

The deaths of P. Jayaraj and J. Bennix (Tamil Nadu, 2020), allegedly tortured to death after a COVID-lockdown violation, sparked nationwide protests and Supreme Court suo motu cognizance. The death of Rohit Tandon in Enforcement Directorate custody (2016) highlighted vulnerabilities in quasi-judicial agency detention. Systematic encounter killings in Uttar Pradesh, Andhra Pradesh, and Telangana represent a related form of custodial violence. The death of George Floyd (USA, 2020), while outside Indian jurisdiction, reinforced global discourse and renewed Indian calls for police reform and anti-torture legislation.

CHAPTER VIII: RECOMMENDATIONS AND CONCLUSION

8.1 Legislative Recommendations

The following legislative reforms are urgently required:

- Enact a comprehensive Prevention of Torture Act defining torture in conformity with the CAT, establishing a reverse burden of proof in custody deaths, and removing the sanction requirement for prosecuting public servants accused of torture.
- Ratify the UN Convention Against Torture to bring India within the Committee Against Torture's monitoring framework and fulfil obligations undertaken upon signing in 1997.
- Amend the BNSS to reverse the provision extending police custody to sixty days, which creates additional opportunities for custodial abuse inconsistent with Article 22(2).
- Grant statutory force to the Model Prison Manual, 2016 so that minimum custodial standards are binding across all states.
- Accede to the First Optional Protocol to the ICCPR to enable individual complaints to the UN Human Rights Committee.
- Restructure custodial death investigations so that cases are mandatorily transferred to an independent agency (such as the CBI or a dedicated state human rights investigation unit), eliminating the current conflict of interest.

8.2 Institutional Reforms

Alongside legislative action, the following institutional reforms are essential:

- Mandatory comprehensive CCTV surveillance in all police stations, lock-ups, and interrogation rooms; automatic preservation of footage for at least six months; criminalisation of tampering.
- Independent Police Complaints Authorities in each state, chaired by a retired High Court judge with civil society representation, empowered to issue binding recommendations.
- Post-mortem examinations in all custodial death cases conducted by a board of at least

three medical officers, including one from an independent institution, with mandatory video-recording.

- Mandatory legal aid from the moment of arrest, with legal aid lawyers stationed at police stations above a specified detainee threshold.
- Fundamental reform of police training to incorporate human rights education, non-coercive interrogation techniques, and awareness of the legal consequences of custodial violence.
- Active judicial oversight: magistrates before whom arrested persons are produced must meaningfully examine the person's physical condition, inquire about custodial conditions, and immediately refer any signs of abuse for medical examination.
- A presumption of state responsibility for unexplained death or injury in custody, shifting the burden to the state to demonstrate the absence of state action — as recognised by the European Court of Human Rights and the UN Human Rights Committee.

8.3 Conclusion

This research has confirmed that custodial death in India is not an aberration but a systemic failure, rooted in colonial institutional culture, inadequate legal frameworks, and the structural absence of effective accountability. The right to life guaranteed by Article 21 is violated in the most irrevocable way when a person dies in state custody; yet the legal system's response has been consistently inadequate to prevent recurrence or secure meaningful accountability.

The constitutional framework provides a strong textual foundation, progressively interpreted by the Supreme Court. The legislative framework, while containing relevant provisions, suffers from the glaring absence of standalone anti-torture legislation and India's non-ratification of the CAT. The empirical evidence reveals a structured pattern of victimisation concentrated among the poor and marginalised, occurring most frequently in the pre-production hours when judicial supervision is absent.

The recommendations of this research — anti-torture legislation, CAT ratification, independent investigation mechanisms, mandatory CCTV, independent complaints authorities, reformed forensics, strengthened legal aid, and comprehensive police training — are grounded in comparative experience, Supreme Court jurisprudence, and international human rights standards. What is required is not the invention of new solutions but the political will to implement existing ones.

A democracy that cannot protect the lives of those in its custody cannot claim to be governed by the rule of law. As the Supreme Court stated in *D.K. Basu v. State of West Bengal*: “the expression of concern by courts about torture and custodial deaths is not enough. Action is

needed.” That call — issued nearly three decades ago — remains as urgent and as unanswered today as it was then.

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