

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIALTEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.



Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

JUSTICE UNDER SIEGE: HUMAN RIGHTS IN THE SHADOW OF POLICE TORTURE IN INDIA

AUTHORED BY - DIVYA.M,
LLM, Ist year,
Tamil Nadu Dr. Ambedkar Law University

“...Torture is banned, absolutely and unconditionally, without exception...”

– *United Nations Convention Against Torture*

ABSTRACT

The delicate interplay between safeguarding individual liberties and ensuring state security forms the bedrock of justice systems worldwide. The Latin principles, *Salus Populi Est Suprema Lex* and *Salus Republicae Est Suprema Lex*, underscore that community welfare often takes precedence over individual rights. However, state actions must inherently embody fairness and justice. Torture, by its nature, undermines these values, directly assaulting the core of human rights and human dignity. Such acts signify a societal regression, tarnishing the moral fabric and representing a profound failure of humanity.

Among the most critical human rights violations, torture has been a focal point of global condemnation, addressed extensively in international conventions and declarations. Despite these initiatives, its persistent occurrence calls for a strengthened and comprehensive response. This study advocates for robust legal frameworks, heightened judicial accountability, and reinforced protections to eradicate torture and preserve human dignity.

Keywords: Torture, Human Rights, State Security, Judicial Accountability, Human Dignity

CHAPTER 1

INTRODUCTION

"The modern history of 'torture' is not only a record of the progressive prohibition of cruel, inhuman, and degrading practices. It is also part of a more complex story of the modern secular concept of what it means to be truly human." – Talal Asad¹. Torture, in all its forms, is one of the gravest violations of human rights. Despite its condemnation in international law, it continues to be used by states, often under the pretext of ensuring national security or maintaining law and order. The lack of a precise, universally accepted definition of torture creates significant legal loopholes, enabling states to escape accountability for its practice².

In India, torture is addressed under Sections 330 and 331 of the Indian Penal Code, but the absence of a universally recognized legal definition leaves space for the continued abuse of power³. International human rights instruments such as the *Universal Declaration of Human Rights (UDHR)* and the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)* have defined it in broad terms, but these definitions are often generalized and do not specifically outline what constitutes torture in all cases.

For instance, *the UDHR Article 5* and the Constitution of India prohibit torture, stating that no one shall be subjected to cruel, inhuman, or degrading treatment. Yet, these instruments fail to offer a detailed definition of "torture," leaving it open to interpretation⁴. This lack of specificity allows for various practices, such as physical and psychological abuse, to be categorized as torture in some jurisdictions and not in others. *According to the Convention Against Torture (1984)*, torture is specifically defined as:

*"Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person"*⁵.

While this definition provides some clarity, the application of the term "*severe pain or*

¹ Talal Asad, *The Anthropology of the Body and the Medical Anthropology of 'Torture'* (New York: Random House, 1987), 323.

² Indian Penal Code, Sections 330 and 331.

³ Ibid.

⁴ Universal Declaration of Human Rights (1948), Article 5.

⁵ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1 (1984).

suffering" and the requirement that the act be "*intentionally inflicted*" leaves room for legal and practical ambiguity, especially in cases of psychological or indirect torture. The forms of torture are varied—physical torture includes beatings, suffocation, and electric shocks, while psychological torture may involve threats, isolation, or verbal abuse. These methods not only aim to extract confessions but also aim to dehumanize the individual, thus violating **Article 21 of the Indian Constitution**, which guarantees the right to life and personal liberty⁶.

Torture violates the very essence of human dignity and is inherently incompatible with the **Universal Declaration of Human Rights (UDHR)**. Article 5 of the UDHR explicitly states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment"⁷. Yet, despite these protections, torture persists globally, undermining the universality of human rights. One of the fundamental questions that arises is whether human rights can be suspended for the sake of state protection. While states may argue that such measures are necessary to combat terrorism or organized crime, international law firmly rejects the idea that human rights can be violated in the name of national security. **The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)** makes it clear that no circumstances—be it war, public emergency, or national security threats—can justify torture⁸.

The defence often put forward by states in cases of torture is that it is necessary for the protection of society. The legal principle *salus populi est suprema lex* is invoked to justify actions that would otherwise be deemed unlawful⁹. However, even under the guise of state protection, torture is an illegal and immoral practice. The Indian Supreme Court, in cases like **D.K. Basu v. State of West Bengal and Nilabati Behera v. State of Orissa**, has made it clear that no state action, including the protection of national security, can justify torture^{10,11}. Torture, whether conducted by police, military, or other state agencies, is a direct assault on human dignity. It is not merely a physical violation but a profound psychological trauma that affects the individual's mental health, perpetuating a cycle of fear, despair, and helplessness that can last long after the act itself ends¹².

⁶ Article 21, Indian Constitution – Right to life and personal liberty.

⁷ Universal Declaration of Human Rights (1948), Article 5.

⁸ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1 (1984).

⁹ *Salus populi est suprema lex* – The welfare of the people is the supreme law.

¹⁰ D.K. Basu v. State of West Bengal, AIR 1997 SC 610.

¹¹ Nilabati Behera v. State of Orissa, AIR 1993 SC 1960.

¹² Raghbir Singh v. State of Haryana, AIR 1980 SC 1087

CHAPTER 2

HISTORICAL PERSPECTIVE OF TORTURE

The practice of torture has a long and complex history, reflecting humanity's struggles with power, control, and justice. From ancient civilizations to modern states, torture has been used as a tool to extract confessions, punish dissent, or maintain social order.

Torture in Ancient Times

The *Code of Hammurabi* (circa 1754 BCE) illustrates one of the earliest known legal systems, where harsh physical penalties were prescribed for offenders, though these were more punitive than interrogative in nature¹³. In ancient Rome, torture was institutionalized as a means of obtaining testimony, especially from slaves, under the assumption that pain would reveal the truth¹⁴.

Torture in the Middle Ages

During the medieval period, torture became widespread, particularly under the Inquisition. Methods like the rack, thumb screws, and iron maidens were used to extract confessions or punish heretics¹⁵. The Inquisition marked the intersection of religion and power, where state mechanisms justified inhumane practices under the guise of divine authority.

The Enlightenment and Decline of Torture

The Enlightenment of the 18th century brought a shift in attitudes toward human rights. Thinkers like *Cesare Beccaria* condemned torture as ineffective and barbaric in *On Crimes and Punishments* (1764), arguing that it often led to false confessions¹⁶. This era also saw democratic ideals advocating for the dignity and rights of individuals, culminating in milestones like the *Eighth Amendment of the U.S. Constitution* (1791), which prohibited cruel and unusual punishments¹⁷.

Modern International Prohibitions

The 20th century saw significant developments in the global condemnation of torture.

¹³ Code of Hammurabi, circa 1754 BCE, Article 8.

¹⁴ Roman Legal Procedures, Torture as a means of obtaining testimony.

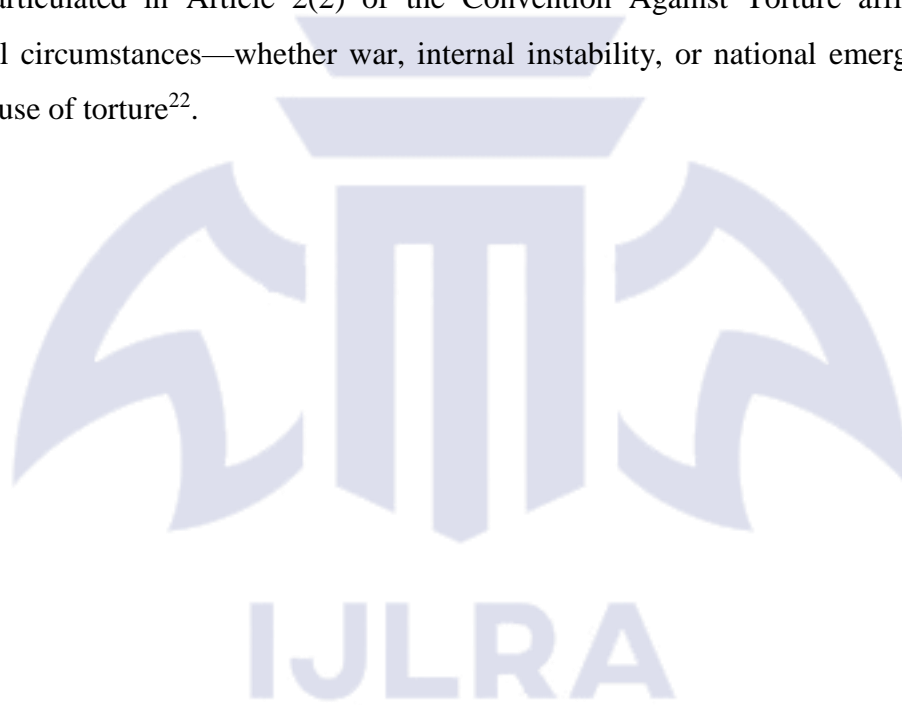
¹⁵ The Inquisition, methods of torture used during the medieval period.

¹⁶ Cesare Beccaria, *On Crimes and Punishments*, 1764.

¹⁷ Eighth Amendment, United States Constitution, 1791.

Instruments like the *Universal Declaration of Human Rights (1948)* and the *International Covenant on Civil and Political Rights (1966)* unequivocally banned torture¹⁸¹⁹. The *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)* offered a comprehensive definition of torture and required states to take active measures to prevent it²⁰.

Despite these international efforts, torture persisted in various forms, often justified under the pretext of national security, especially during the "**War on Terror**" after 2001²¹. The legal principle articulated in Article 2(2) of the Convention Against Torture affirms that no exceptional circumstances—whether war, internal instability, or national emergencies—can justify the use of torture²².



¹⁸ Universal Declaration of Human Rights (UDHR), Article 5, 1948.

¹⁹ International Covenant on Civil and Political Rights (ICCPR), 1966.

²⁰ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Article 1, 1984.

²¹ War on Terror, resurgence of state-sponsored torture after 2001.

²² CAT, Article 2(2).

CHAPTER 3:

CIRCUMSTANCES AND FORMS OF TORTURE

Torture is a blatant violation of human rights and dignity, occurring in various contexts where power is unchecked. This chapter explores the circumstances that enable torture, the forms it takes, and its profound impact on individuals, families, and society. Circumstances of Human Rights Violations

Torture occurs under numerous conditions, including:

1. **Custodial Detentions:**

Torture is often inflicted on individuals in police lockups and prisons during interrogation, resulting in physical and psychological harm²³.

2. **Illegal Handcuffing and Use of Force:**

Practices such as shackling detainees unnecessarily or deploying excessive force during arrests violate the principles of human dignity²⁴.

3. **Extrajudicial Actions:**

State agencies frequently resort to torture during counter-terrorism operations or in situations where the intent is to suppress dissent under the guise of maintaining law and order²⁵.

4. **Vulnerable Victims:**

Marginalized groups such as women, minors, and socio-economically disadvantaged individuals are disproportionately targeted²⁶.

The Bharatiya Nagarik Suraksha Sanhita, 2023, while aimed at reforming criminal law, still lacks adequate safeguards to curb custodial violence²⁷.

Forms of Torture

Torture manifests in the following ways:

1. **Physical Torture:**

- Includes methods such as beating, suffocation, electric shocks, and waterboarding.

²³ D.K. Basu v. State of West Bengal, AIR 1997 SC 610.

²⁴ Bharatiya Nagarik Suraksha Sanhita, 2023.

²⁵ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Article 2(2).

²⁶ Amnesty International, "Torture in India," 2022.

²⁷ Bharatiya Nagarik Suraksha Sanhita, 2023, Chapter 12.

- For instance, in *Raghubir Singh v. State of Haryana*, the victim was subjected to brutal physical assault, resulting in death²⁸.
- 2. **Psychological Torture:**
 - Involves threats, isolation, sleep deprivation, and coercive methods. Victims often suffer lasting mental health issues, including PTSD and depression²⁹.
- 3. **Sexual Violence:**
 - Custodial rape and other forms of sexual abuse occur frequently and disproportionately affect women and children. The Supreme Court in *Smt. Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble* highlighted the need for stricter accountability in such cases³⁰.
- 4. **Verbal and Emotional Abuse:**
 - Insults, humiliation, and racial or communal slurs are employed to demean detainees, stripping them of their dignity and self-worth³¹.
- 5. **Economic Exploitation:**
 - In some cases, detainees are coerced into paying bribes to avoid harsher treatment or false charges³².

Impacts of Torture

The consequences of torture ripple through every aspect of life, affecting individuals, families, and society:

1. **On Individuals:**
 - Physical injuries often result in permanent disabilities or chronic pain.
 - Mental health deteriorates due to trauma, with victims experiencing nightmares, depression, and suicidal tendencies³³.
2. **On Families:**
 - Families of victims face emotional anguish, economic strain, and social stigma. In *Nilabati Behera v. State of Orissa*, the victim's mother had to seek legal intervention to secure justice for her son's custodial death³⁴.

²⁸ Raghubir Singh v. State of Haryana, AIR 1980 SC 1087.

²⁹ Human Rights Watch, Broken System: Torture in Custody, 2021.

³⁰ Smt. Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble, AIR 2003 SC 4567.

³¹ A.S. Anand, VIIIth International Symposium on Torture, (1999), SCC (Journal) p. 11.

³² Transparency International, "Corruption and Custodial Practices in India," 2020.

³³ People's Union for Civil Liberties (PUCL) v. Union of India, AIR 1997 SC 568

³⁴ AIR 1993 SC 1960.

3. **On Society:**

- Torture undermines public trust in law enforcement, perpetuates a culture of fear, and erodes the legitimacy of the state.
- Reports from the *National Crime Records Bureau (NCRB)* reveal rising instances of custodial deaths, reflecting systemic failures³⁵.

Torture not only destroys the lives of victims but also disrupts the social fabric by fostering resentment and perpetuating cycles of violence and mistrust.



³⁵ National Crime Records Bureau (NCRB), Crime in India Report, 2022

CHAPTER 4

LEGISLATIVE AND JUDICIAL PROVISIONS

Legislative Provisions:

In India, torture is addressed through several legislative provisions, primarily within the *Indian Penal Code (IPC)*, the *Criminal Procedure Code (CrPC)*, *Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023* and the *Indian Constitution*. These laws aim to provide safeguards against torture, though gaps in implementation still allow for the persistence of custodial violence and abuse.

1. Indian Penal Code (IPC):

- *Section 330* of the IPC criminalizes the *voluntary causing of hurt* to extort a confession or to compel a person to restore stolen property. It specifically prohibits the use of torture for extracting confessions.
- *Section 331* similarly addresses causing hurt to extract a confession or compel an accused person to provide information for the purposes of investigation.
- While these provisions criminalize torture, they focus primarily on the *physical* aspects of abuse and do not comprehensively address *psychological torture* or other less direct forms of violence. Furthermore, the standards for proving the crime remain high, making it difficult to prosecute offenders effectively³⁶.

2. Criminal Procedure Code (CrPC):

The CrPC contains several provisions that are aimed at preventing torture and ensuring that arrested individuals are treated fairly.

- *Section 46* regulates the *arrest* of individuals, ensuring that it is carried out without unnecessary force or harm.
- *Section 50* mandates that an arrested person must be informed of the reasons for their arrest and be given the right to bail if the offense is bailable. The *right to consult a legal practitioner* and the right to *be presented before a magistrate* within 24 hours (under *Section 57*) are also constitutional safeguards designed to prevent torture³⁷.

³⁶ Indian Penal Code, 1860, Sections 330 and 331

³⁷ Criminal Procedure Code, Sections 46, 50, 57.

3. **Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023:**

- The **BNSS, 2023** introduces critical reforms aimed at protecting the fundamental rights of citizens and preventing torture. This law strengthens accountability for law enforcement agencies, making them liable for acts of **custodial torture**. It mandates that **custodial deaths** be investigated thoroughly, and if found guilty, the police personnel involved face legal action. The law also stresses the importance of **medical examinations** and mandates that individuals in custody receive regular health checks to prevent abuse³⁸.
- **Section 88 of the BNSS, 2023** holds that any **torture or mistreatment** of detainees is a punishable offense. It further emphasizes the **right to fair treatment** in police custody, which aligns with international human rights standards³⁹.

4. **Indian Constitution:**

- **Article 21** of the **Indian Constitution** is the cornerstone of legal protections against torture, stating that **no person shall be deprived of his life or personal liberty** except according to **procedure established by law**. This Article has been interpreted to extend to safeguarding individuals against torture and cruel, inhuman, or degrading treatment⁴⁰.
- **Article 22** provides further protections for individuals against arbitrary arrest and detention. It mandates that detained individuals must be informed of the reasons for their detention and be allowed to consult a legal practitioner. This serves as an additional safeguard against custodial abuse⁴¹.

International Conventions:

India, as a signatory to various international human rights instruments, is bound by several conventions aimed at preventing torture and ensuring the protection of fundamental rights.

1. **Universal Declaration of Human Rights (UDHR), 1948:**

- **Article 5** of the UDHR explicitly prohibits torture, stating that **no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or**

³⁸ Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, Section 88.

³⁹ Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, Section 88.

⁴⁰ Article 21, Indian Constitution – Right to life and personal liberty.

⁴¹ Article 22, Indian Constitution – Protection against arrest and detention.

punishment. While the UDHR is not legally binding, it has been widely recognized as setting international human rights standards⁴².

2. **Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984:**

- India ratified the *CAT* in 1997, which provides a more detailed definition of *torture* and places clear obligations on states to prevent its occurrence.
- *Article 1* of the *CAT* defines torture as *any act by which severe pain or suffering, whether physical or mental*, is intentionally inflicted for purposes such as obtaining a confession, punishment, or coercion. The *CAT* also mandates that no exceptional circumstances, including war or national security concerns, may justify torture⁴³.
- *Article 2(2)* of the *CAT* emphasizes that *no circumstances justify torture*, further cementing the legal framework against the practice.

3. **International Covenant on Civil and Political Rights (ICCPR), 1966:**

- *Article 7* of the *ICCPR* reiterates the prohibition of torture, stating that *no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment*. India is a signatory to the *ICCPR*, and it serves as an international legal framework for promoting human rights, including protection from torture⁴⁴.

Judicial Provisions and Activism:

The Indian judiciary has played an essential role in upholding constitutional protections against torture, particularly in cases of custodial violence. Various landmark rulings have significantly advanced the legal framework surrounding torture and its prevention.

1. **D.K. Basu v. State of West Bengal (1997):**

- In *D.K. Basu v. State of West Bengal*, the *Supreme Court* took a proactive stance in protecting individuals' rights during arrest and detention. The Court issued guidelines aimed at preventing custodial violence, including ensuring that detainees are informed of their rights, that arrests are recorded, and that medical examination is carried out on individuals in custody⁴⁵.

⁴² Universal Declaration of Human Rights, Article 5, 1948.

⁴³ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1 (1984).

⁴⁴ International Covenant on Civil and Political Rights, Article 7 (1966).

⁴⁵ AIR 1997 SC 610.

- This case marked a significant step in the judicial oversight of police conduct, leading to the establishment of *mandatory procedures* to protect detainees from torture and abuse.
2. **Nilabati Behera v. State of Orissa (1993):**
- In *Nilabati Behera v. State of Orissa*, the Supreme Court highlighted the *right to compensation* for victims of custodial death and abuse. The Court emphasized that when a person's fundamental rights are violated by state action, compensation should be provided as a form of redress⁴⁶. This case set a precedent for holding the state accountable for human rights violations committed by its agencies.
3. **People's Union for Civil Liberties (PUCL) v. Union of India (1997):**
- In *PUCL v. Union of India*, the Supreme Court reinforced the importance of safeguarding *human dignity* by declaring that *no circumstances*, including national security, could justify the use of torture. This case extended the protection of *Article 21* of the Constitution to cases involving state-sponsored torture⁴⁷.
4. **Judicial Activism and the Right to Life:**
- The role of the judiciary in India has been characterized by *judicial activism* in human rights cases. The judiciary has often taken an expansive view of *Article 21* to protect individuals from torture, reinforcing the idea that *life and personal liberty* cannot be violated under any circumstances. The Court's proactive stance has been instrumental in expanding the scope of constitutional protections against torture⁴⁸.

National Crimes Record Bureau (NCRB) Data:

Despite the legislative safeguards and judicial activism, *torture and custodial violence* persist as significant issues in India. According to data from the *National Crimes Record Bureau (NCRB)*, there have been numerous instances of *custodial deaths* and allegations of *torture* by police. The NCRB's annual reports highlight the ongoing problem of *police brutality* and *lack of accountability*, with many cases going unpunished, reflecting systemic issues in the law

⁴⁶ AIR 1993 SC 1960

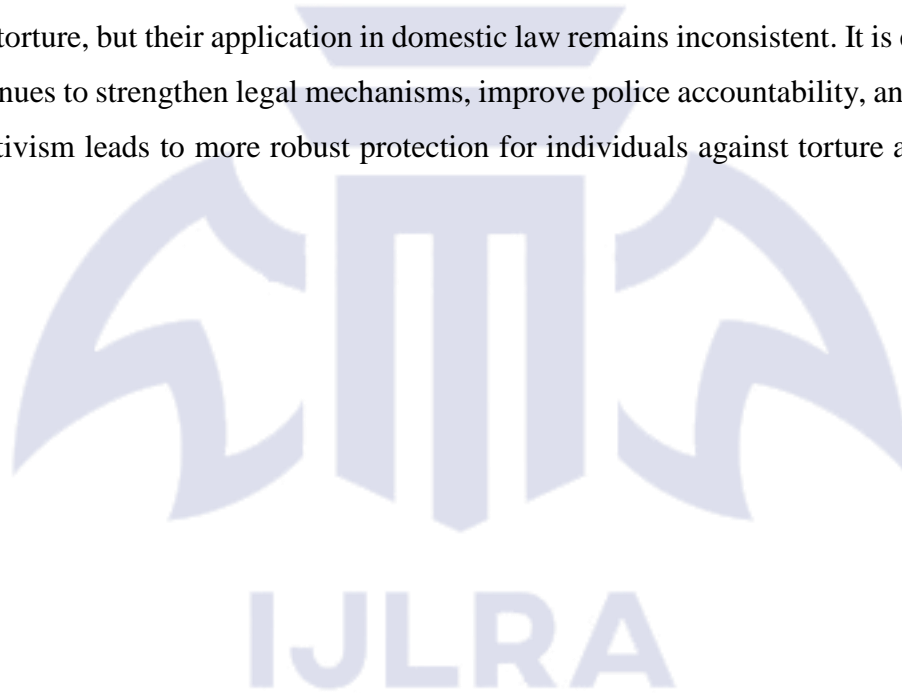
⁴⁷ AIR 1997 SC 568

⁴⁸ J.S. Verma, "Judicial Activism and its Impact on Criminal Justice System," Speech delivered on 26th April, 1997 at Sardar Vallabhbhai Patel National Police Academy, Hyderabad, in *New Dimensions of Justice*, p. 85-86 (2000 Edn., Universal Law Publishing Co. Pvt. Ltd., Delhi).

enforcement agencies⁴⁹.

India's legal framework against torture is extensive, but there remains a significant gap between law and practice. Legislative provisions under the **IPC**, **CrPC**, and the **Constitution** provide a foundation for protecting individuals from torture, but issues of implementation, lack of accountability, and systemic abuse persist. The **judicial provisions**, especially the **Supreme Court's rulings**, have made important strides in curbing torture, but challenges remain in holding perpetrators accountable.

International conventions such as the **CAT** and **ICCPR** further strengthen India's obligations to prevent torture, but their application in domestic law remains inconsistent. It is essential that India continues to strengthen legal mechanisms, improve police accountability, and ensure that judicial activism leads to more robust protection for individuals against torture and custodial violence.



⁴⁹ National Crimes Record Bureau (NCRB) Annual Report, 2018.

CHAPTER 5

REASONS FOR THE EXISTENCE OF TORTURE AND CUSTODIAL VIOLENCE

The prevalence of *torture* and *custodial violence* in India is influenced by a complex set of factors, including *structural issues* within law enforcement, *political motivations*, and *societal attitudes* toward justice and human rights. While India has a robust legal framework in place to protect against such practices, *torture* continues to persist in various forms due to *systemic weaknesses*.

Factors Contributing to Torture and Custodial Violence:

1. *Inefficiencies in Law Enforcement:*

According to the *National Crimes Records Bureau (NCRB)*, a substantial number of *custodial deaths* are reported annually, despite the presence of legal safeguards⁵⁰. The failure to *properly investigate* and *prosecute* police officers involved in such abuses creates a culture of impunity. Many law enforcement agencies still operate with inadequate training in human rights, and *brutality* is often seen as an acceptable method of *extraction of confessions* or *investigation*.

2. *Judicial Delays and Lack of Accountability:*

The delay in *trials* and *investigations* into custodial violence exacerbates the problem. *Judicial delays*, as reported by the *National Institution for Transforming India (NITI Aayog)*, often lead to a lack of accountability for police actions⁵¹. *Undertrial prisoners* who remain in detention for long periods, coupled with the absence of effective oversight, further contribute to the abuse of power by law enforcement.

3. *Political Pressure:*

In some cases, law enforcement agencies are *directed* or *pressured* by political leaders to suppress dissent or extract information from certain individuals, leading to *torture*. For instance, *terrorism-related cases* or *criminal investigations* often see an uptick in allegations of custodial violence, as authorities feel justified in employing *coercive* methods to extract information under the guise of *national security*⁵².

4. *Weak Institutional Safeguards:*

Despite provisions in the *Indian Penal Code (IPC)* and the *Criminal Procedure Code (CrPC)* to prevent *torture*, these laws are frequently violated due to weak

⁵⁰ National Crimes Records Bureau (NCRB), Annual Report 2019

⁵¹ NITI Aayog, India's Criminal Justice System Report, 2020

⁵² Indian Penal Code, Sections 330, 331.

implementation. Internal reviews and supervisory mechanisms within police forces are often insufficient, and cases of custodial abuse remain largely *unpunished*⁵³.

Government Data on Custodial Violence:

According to the *NCRB* reports, *custodial deaths* and *allegations of torture* continue to be a persistent issue in Indian jails and police stations. The 2019 *NCRB report* highlighted that *1,674 deaths* occurred in judicial custody, with a notable percentage of them being *attributed to police brutality*. Additionally, the *NITI Aayog's* 2020 report noted that *access to justice* remains a significant problem for *victims of custodial violence*, as many victims do not have the means to *pursue legal remedies*⁵⁴⁵⁵.



⁵³ Criminal Procedure Code, Sections 46, 50, 57.

⁵⁴ Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023.

⁵⁵ Universal Declaration of Human Rights (1948), Article 5.

CHAPTER 6

LESSONS FROM INTERNATIONAL PRACTICES

While *India* continues to grapple with issues of *custodial violence* and *torture*, lessons can be drawn from international practices, particularly from countries like the *United Kingdom*, *United States*, and *Germany*, which have made strides in addressing such abuses.

1. United Kingdom (UK)

The UK has made substantial progress in curbing *police brutality* and ensuring accountability for *custodial violence* through measures such as:

- **Independent Oversight:**

The *Independent Office for Police Conduct (IOPC)* ensures that complaints against police officers are thoroughly investigated, fostering greater accountability within law enforcement agencies⁵⁶.

- **Clear Guidelines on Detention and Interrogation: The Police and Criminal Evidence Act (PACE) 1984**

outlines strict rules for detention, interrogation, and the treatment of detainees. It mandates the presence of legal representation during police questioning, providing a safeguard against *coercive interrogation practices*⁵⁷.

2. United States (US)

The US has implemented several measures to combat *police violence* and ensure that *torture* is not used in the name of law enforcement:

- **Miranda Rights:**

The *Miranda v. Arizona (1966)* decision established that suspects must be informed of their rights before being interrogated, including the right to remain silent and the right to an attorney, to avoid forced confessions⁵⁸.

- **The Torture Victim Protection Act (1991):**

This act holds individuals, including government officials, liable for acts of torture and extrajudicial killings committed under colour of law. It provides a legal avenue for victims of *state-sponsored violence* to seek justice⁵⁹.

⁵⁶ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1 (1984).

⁵⁷ Police and Criminal Evidence Act (PACE), 1984, United Kingdom.

⁵⁸ 384 U.S. 436 (1966), United States.

⁵⁹ The Torture Victim Protection Act, 1991, United States.

3. Germany

Germany has been successful in minimizing instances of *police brutality* through a series of reforms:

- **Comprehensive Training:**

German police officers undergo extensive training in human rights, and they are regularly updated on the legal limitations of their power to arrest and detain individuals⁶⁰.

- **Independent Police Complaints Commission:**

An independent body in Germany allows citizens to report abuse without fear of retaliation, ensuring a *transparent* investigation into complaints of *custodial violence*⁶¹.

Lessons for India:

India can benefit from implementing similar practices, including:

- Establishing independent *oversight bodies* like the *IOPC* to investigate complaints of *custodial violence*.
- Strengthening the *training* of law enforcement officers to respect human rights during *interrogations* and *detentions*.
- Ensuring that *legal representation* is available at all stages of *custodial processes*, as is mandated in the *UK* and *US*.

⁶⁰ German Federal Police Act, 2008.

⁶¹ Independent Police Complaints Commission, Germany.

CHAPTER 7

FINDINGS AND SOLUTIONS

Based on the examination of *Indian laws, international practices*, and the *current state of custodial violence* in India, the following findings and solutions can be drawn:

Findings:

1. Despite the existence of robust *constitutional safeguards* and *statutory provisions*, there are *implementation gaps* that allow custodial violence to persist.
2. There is often *insufficient oversight* of law enforcement agencies, and *internal mechanisms* for accountability are weak.
3. Political pressures sometimes lead to the justification of *torture* under the guise of *national security* or the *fight against terrorism*.
4. *Police training* is insufficient when it comes to *human rights* and *custodial safeguards*, leading to violations during *interrogations* and *detentions*.

Solutions:

1. Create *independent oversight bodies* to monitor police actions, ensuring transparency and accountability in cases of *custodial violence*.
2. Implement international standards, such as those outlined in the *Convention Against Torture* (CAT), and ensure they are followed by law enforcement agencies.
3. Provide regular *human rights training* for police officers, including instruction on *legal safeguards* and *ethical interrogation methods*.
4. Raise awareness about *citizens' rights* in custody and provide *legal aid* to victims of *torture* to ensure access to justice.

CHAPTER 8

CONCLUSION

Torture and custodial violence continue to be significant issues in India despite strong *legal protections*. *Judicial activism* has played a crucial role in addressing these violations, but there remains a pressing need for more effective *implementation* of laws. The *Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023*, along with lessons from international practices, provides a pathway for India to ensure that *torture* becomes a thing of the past. Through stronger *accountability, training, and oversight*, India can align itself with global standards and uphold the *fundamental human rights* of all its citizens.



CHAPTER 9:**REFERENCES**

1. Krishnamurti.k, "Police Diaries, Statements, Reports, Investigations, Prosecutions, Arrests, Etc.", The Law Book Company(P) Ltd, Allahabad, Sixth Edition, 1998.
2. Jagadish Swarup, "Constitution of India", Modern Law Publications, Second Edition, Volume-1.
3. Ashutosh, "Rights of Accused", Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2009 Edition, ISBN : 978-81-7534-738-0.
4. Nitya Ramakrishnan, "In Custody Law, Impunity and Prisoner Abuse in South Asia", Sage Publications India Pvt Ltd, New Delhi, 2013, ISBN : 978-81-321-0946-4(HB)
5. David Weissbrodt & Cheryl Heilman, "Defining Torture and Cruel, Inhuman, and Degrading Treatment." 29 Law & Inequality: J. Theory & Practice 343 (2011).
6. A.S. Anand, "Judicial Activism and Human Rights Jurisprudence in India", Supreme Court Cases (Journal), Vol. 7, 1999, pp. 9–15.
7. Yogesh K. Tyagi, "The Indian Police and Human Rights: A Synoptic View", Indian Institute of Public Administration Journal, April 1992, pp. 45–60.
8. Dr. P.J. Alexander, "Some Recommendations from the Law Commission of India on Arrest and Detention", Article 2 Journal (Human Rights Issues), Vol. 1, Issue 2, 2001.