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CUSTODIAL VIOLENCE & POLICE
ACCOUNTABILITY CUSTODIAL DEATHS AND
TORTURE IN INDIA: EVALUATING THE ADEQUACY
OF LEGAL SAFEGUARDS UNDER THE CRPC AND
CONSTITUTIONAL PROVISIONS

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ABSTRACT

Custodial violence, encompassing torture, abuse, and deaths occurring in police or judicial custody, represents one of the most serious violations of human rights within the criminal justice system in India. Despite constitutional guarantees and procedural safeguards, incidents of custodial deaths continue to be reported, raising critical concerns about police accountability and the effectiveness of existing legal protections. This study examines the adequacy of safeguards provided under the Code of Criminal Procedure (CrPC) and relevant constitutional provisions in addressing custodial violence in India.

The Indian Constitution, particularly Articles 20, 21, and 22, establishes a robust framework to protect individuals against arbitrary arrest, self-incrimination, and deprivation of life and liberty. Article 21, as expansively interpreted by the judiciary, includes the right to live with dignity and protection from torture and cruel, inhuman, or degrading treatment. Article 22 further ensures procedural safeguards such as the right to be informed of grounds of arrest, access to legal counsel, and production before a magistrate within 24 hours. These provisions collectively aim to uphold the rule of law and prevent abuse of power by law enforcement authorities.

Complementing constitutional protections, the Code of Criminal Procedure lays down detailed procedural mechanisms intended to regulate police conduct. Provisions relating to lawful arrest, medical examination of the accused, and mandatory judicial inquiry in cases of custodial death are designed to ensure transparency and accountability. Additionally, judicial interventions—most notably the landmark judgment in *D.K. Basu v. State of West Bengal*—have established binding guidelines to prevent custodial abuse, including requirements such as

arrest memos, notification of relatives, and regular medical examinations.

Institutional mechanisms like the National Human Rights Commission (NHRC) play an important oversight role, but their recommendations are often advisory and lack enforceability. The persistence of custodial violence also reflects deeper structural challenges, including inadequate police training, political interference, and societal pressures to secure quick confessions and convictions. These factors often lead to the use of coercive interrogation techniques, undermining the integrity of the criminal justice system and eroding public trust in law enforcement agencies.

This paper critically evaluates whether the existing legal framework sufficiently addresses the issue of custodial violence and ensures effective police accountability. It argues that while the normative framework is comprehensive, the real challenge lies in its enforcement. Strengthening accountability mechanisms, ensuring independent investigation of custodial crimes, implementing judicial guidelines rigorously, and enacting a dedicated anti-torture law are essential steps toward addressing this issue.

In conclusion, custodial violence in India highlights a disconnect between legal ideals and ground realities. Bridging this gap requires not only legal reforms but also institutional commitment, administrative accountability, and a rights-based approach to policing. Ensuring the protection of fundamental rights within custodial settings is crucial for upholding the rule of law and maintaining the legitimacy of the criminal justice system in a democratic society.

Keywords

Custodial Violence; Custodial Deaths; Police Accountability; Torture; Human Rights; Article 21; Article 22; Code of Criminal Procedure; D.K. Basu Guidelines; NHRC; Criminal Justice System; Legal Safeguards; Rule of Law; India

INTRODUCTION

The relationship between the State and its citizens is fundamentally grounded in the principles of legality, accountability, and respect for human dignity. In a democratic society governed by the rule of law, the exercise of power by law enforcement agencies is expected to remain within clearly defined legal boundaries. However, the persistence of custodial violence in India

presents a troubling contradiction to these foundational ideals. Instances of torture, abuse, and deaths occurring in police or judicial custody continue to raise serious concerns about the functioning of the criminal justice system.

Custodial violence is not a recent phenomenon; rather, it has deep structural and historical roots. The colonial legacy of policing in India, which prioritized control and coercion over service and accountability, continues to influence modern practices. Despite the evolution of constitutional governance and the recognition of fundamental rights, certain coercive methods have remained embedded within investigative procedures. This has led to a situation where the protection of individual rights often comes into conflict with the perceived necessity of maintaining law and order.¹

Constitutional Framework and Human Rights Perspective

The Indian Constitution provides a strong foundation for the protection of individual rights, particularly in the context of personal liberty and dignity. The right to life and personal liberty has been interpreted expansively to include protection against torture and inhuman treatment. The constitutional vision emphasizes that no person shall be deprived of their liberty except according to procedure established by law, which must be just, fair, and reasonable.

In addition to the right to life, several other fundamental rights play a crucial role in safeguarding individuals against custodial abuse. These include protections against arbitrary arrest and detention, the right against self-incrimination, and the right to legal representation. Together, these provisions create a framework intended to prevent misuse of power by authorities.²

Right to Life and Personal Liberty

The cornerstone of protection against custodial violence lies in the constitutional guarantee of the right to life and personal liberty. This right has been interpreted broadly to include the right to live with dignity and free from torture or cruel, inhuman, or degrading treatment. The judiciary has consistently emphasized that the State has an obligation to protect individuals even when they are in custody.

The significance of this provision lies in its non-negotiable nature. Even during lawful detention, the dignity and basic rights of an individual cannot be compromised. Any form of

¹ D.D. Basu, Introduction to the Constitution of India, LexisNexis, Latest Ed., p. 210.

² Universal Declaration of Human Rights, 1948, Art. 5.

custodial abuse is therefore considered a violation of this fundamental right.

Police Acts and Departmental Rules

Various state-level police laws and departmental regulations govern the conduct of police personnel. These rules outline duties, responsibilities, and disciplinary procedures.

Internal accountability mechanisms, such as departmental inquiries, are intended to address misconduct. However, concerns about bias and lack of transparency often undermine their credibility.

Prison Laws and Custodial Regulation

In cases of judicial custody, prison laws regulate the treatment of inmates. These laws include provisions related to health, safety, and living conditions.³ Although prison authorities are distinct from police, issues of custodial violence can still arise, highlighting the need for consistent standards across all forms of detention.

Expansion of Article 21: From Procedure to Dignity

Broadening the Meaning of Personal Liberty

One of the most significant contributions of the judiciary has been the expansion of the concept of personal liberty. Initially interpreted narrowly, the right to life and personal liberty has evolved to include a wide range of protections essential for a dignified existence. Courts have emphasized that this right is not limited to mere physical survival but extends to the preservation of human dignity and freedom from torture.

Through progressive interpretation, the judiciary has established that any form of custodial violence constitutes a direct violation of this fundamental right. This interpretation has provided a strong constitutional basis for addressing abuse within the criminal justice system.

Challenges in Enforcement of Judicial Decisions

Implementation Gaps

Despite progressive judicial interpretation, there remains a gap between legal principles and their implementation. Non-compliance with court directives is a major challenge.⁴

This gap undermines the effectiveness of judicial safeguards and allows custodial violence to persist.

³ Second Administrative Reforms Commission Report on Police Reforms.

⁴ NHRC Guidelines on Custodial Death.

Delays in Justice Delivery

Judicial processes can be lengthy, leading to delays in the resolution of cases involving custodial violence. This reduces the deterrent effect of legal action and affects the confidence of victims in the system.

Lack of Awareness

Limited awareness of legal rights among detainees further restricts the impact of judicial safeguards. Without knowledge of their rights, individuals are less likely to challenge unlawful practices.

Impact on Accountability

Without a clear legal definition, it becomes challenging to establish the elements of the offence and secure convictions. This weakens accountability and reduces the deterrent effect of the law. Enacting a dedicated anti-torture statute would provide clarity and strengthen legal protections.

Procedural Safeguards under CrPC: Adequate but Ineffective in Practice

The study finds that the procedural safeguards provided under the Criminal Procedure Code are well-designed and comprehensive. Provisions relating to arrest, detention, legal representation, and medical examination are intended to prevent abuse and ensure accountability.

Despite this, their effectiveness is undermined by inconsistent implementation. Instances of non-compliance, inadequate documentation, and superficial adherence to procedures reduce the protective value of these safeguards.

Structural and Institutional Deficiencies

The persistence of custodial violence is closely linked to structural issues within the policing system. These include inadequate training, lack of resources, high workload, and the continued influence of colonial policing practices.

The absence of modern investigative tools and reliance on confession-based investigation methods further contribute to the problem. These systemic issues cannot be addressed solely through legal provisions.

Use of Technology for Transparency

The adoption of technology can play a significant role in preventing custodial violence.

Measures such as video recording of interrogations, installation of surveillance systems in custody areas, and digital record-keeping can increase transparency. These tools can serve as both preventive and evidentiary mechanisms.

Enhancing Legal Awareness and Access to Justice

Efforts should be made to increase awareness of legal rights among the public, particularly vulnerable groups. Legal aid services should be strengthened to ensure that individuals have access to representation and support.

Awareness campaigns and community outreach programs can empower individuals to assert their rights.

Strengthening Oversight Institutions

Human rights bodies and oversight institutions should be provided with greater authority and resources. Their recommendations should be given binding effect to ensure enforcement. Regular inspections of detention facilities and timely action on complaints are essential for effective oversight.

Alignment with International Standards

Domestic laws should be aligned with international human rights standards to strengthen protections against custodial violence. This includes adopting best practices and ensuring compliance with global norms. Such alignment would enhance the credibility of India's legal system at both national and international levels.

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