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CUSTODIAL VIOLENCE UNDER BNSS: CONSTITUTIONAL LIMITS PROCEDURAL SAFEGUARDS AND HUMAN RIGHTS CONCERNS

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Abstract

Custodial violence in India highlights the tension between constitutional safeguards and systemic abuse. Despite protections under Articles 20–22 and procedural measures in BNSS, incidents of torture, deaths, and abuse persist, undermining human rights and public trust. Stronger enforcement, independent oversight, and a Prevention of Torture law are essential to uphold dignity, restore faith in justice, and align India with democratic and global human rights standards. The Supreme Court of India has laid down vital guidelines regarding the custodial violence in the landmark judgement of D.K. Basu V.s State of West Bengal case¹. This case created a framework of procedural safeguards that remain the judiciary’s most powerful tool against abuse. But systemic immunity and poor implementation continue to undermine them. Addressing this crisis requires strict implementation of safeguards, independent oversight, and a Prevention of Torture law to ensure a justice system that is both constitutional and humane. Recommendations from the Law Commission of India and the National Human Rights Commission underscore the urgent need for legislative intervention, independent monitoring mechanisms, and police reforms aimed at professionalizing law enforcement. Custodial violence is not merely unlawful; it corrodes democratic legitimacy and undermines the moral authority of the State. Custodial violence, therefore, is not just unlawful but undemocratic, and its eradication is essential to preserve both justice and humanity.

Keywords: - Custodial Violence, D.K Basu Guidelines, Detention, BNSS safeguards. Human Right Concern, Constitutional Limits.

¹ shri D.K. Basu, Ashok K. Johri vs State of West Bengal, State Of U.P on 18 December, 1996

Introduction

Custodial violence is one of the most talked-about problems in India because it directly challenges basic human rights. The term custodial violence is not defined under any Act but the Latin word '*custodia*' means to keep under watch or care and violence means an act of physical force that causes or is intended to cause harm. The damage inflicted by violence may be physical, psychological, or both. Violence may be distinguished from aggression, a more general type of hostile behaviour that may be physical, verbal, or passive in nature². In Layman's language Custodial violence refers to the abuse, torture, or unlawful treatment of individuals who are detained by law enforcement agencies, prison authorities, or other state institutions. The term custodial violence is not limited to police custody; it extends to judicial custody, prison environments, and detention centres. It encompasses physical torture, psychological intimidation, sexual abuse, denial of medical care, and custodial deaths. The phenomenon of Custodial violence poses one of the most pressing challenges to India's criminal justice system. The Supreme Court, through landmark rulings, has consistently criticised such practices and laid down preventive guidelines. In *Gauri Shanker Sharma etc. v. State of U.P.* the court laid down "*...it is generally difficult in cases of deaths in police custody to secure evidence against the policemen responsible for resorting to third-degree methods since they are in charge of police station records which they do not find difficult to manipulate as in this case*".³ Torture, abuse, and deaths in custody transform individuals into instruments of coercion, stripping them of humanity and reducing liberty to a hollow promise. This makes custodial violence a constitutional, statutory, and human rights crisis that demands urgent attention.

Constitutional Limits:

The Indian Constitution⁴ stands as the supreme safeguard against custodial violence, it promises that no one can be tortured, forced to confess, or locked up without proper reason. These protections are written into the law so that custody doesn't become a place of fear. These protections are written in Articles 14, 20(3), 21, and 22, and the Supreme Court has explained them in many important cases. These constitutional guarantees are designed to ensure that custody does not become a site of abuse but remains subject to the rule of law.

² <https://www.britannica.com/topic/violence>

³ *Gauri Shanker Sharma etc. v. State of U.P.* AIR 1990 SC 709

⁴ Professional's Bare Act, Constitution Of India.

Article 14 of the Constitution of India states “Equality before law” every person must be treated equally before law. Therefore, even prisoners must be treated in a dignified manner before the law.

Article. 20(3) of the Constitution of India “Self-incriminations” it states that “No person accused of any offence shall be compelled to be a witness against himself”. The word self-incrimination means conveying information based upon personal knowledge of the person giving information involving him to be the prime part taken in the offence. This provisions directly limits custodial interrogation methods that rely on coercion and torture. Under this article the right against ex post facto laws, double jeopardy and freedom from self-incrimination are protected.

Article 21 of the Constitution of India Right to life and personal liberty “No person shall be deprived of his life or personal liberty except according to the procedure established by law.” Custodial torture violates the dignity of life. Custodial torture directly violates this principle, as it subjects individuals to pain, humiliation, and degradation. It is not simply a violation of physical integrity but an assault on the moral worth of the person. In *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, the Supreme Court held that “procedure established by law” must be fair, just, and reasonable.⁵ In the landmark case of *Joginder Kumar vs State Of U.P on 25 April, 1994* ⁶ it was stated that Arrest must be routine, must be justified by necessity.

Article 22 (1) of the Indian Constitution states that right to be informed as soon as may be of the ground of arrest and the right to consult and to be represented by a lawyer of his own choice in Article 22(2) the right to be produced before a magistrate within 24 hours and the freedom from detention beyond the said period except the order of the magistrate. These safeguards were reinforced in *D.K. Basu v. State of West Bengal (1997)*, where the Supreme Court laid down practical guidelines curbing custodial violence.

Despite these constitutional guarantees, custodial deaths and torture takes place. NHRC reports hundreds of custodial deaths annually. While constitutional safeguards exist in paper, enforcement mechanisms remain fragile.

⁵ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248

⁶ *Joginder Kumar vs State Of U.P on 25 April, 1994*

Procedural Safeguards

The statutory framework serves as the practical mechanism through which constitutional safeguards against custodial violence are enforced. The scope of BNSS extends to procedural safeguards such as judicial oversight of detention, mandatory production before magistrates, and accountability mechanisms for wrongful confinement.

Bhartiya Nagarik Suraksha Sanhita, 2023⁷

Section.47 of the Bhartiya Nagarik Suraksha Sanhita, 2023 states that the arrested person has right to information of arrest, reasons of arrest and right to bail the arrested person should be made aware of their rights after they have been brought to the police station. This ensures that the process is transparent and prevents misuse of police powers.

Section.48 of the Bhartiya Nagarik Suraksha Sanhita, 2023 states that the arrested person should be immediately informed of the arrest and the location where the individual is detained to a relative, friend, or any other person, the police shall maintain a written record of the fact who all have been informed about the arrest including the grounds of arrest. Such record shall be maintained in an appropriate register at the police station.

Section.53 (1) of the Bhartiya Nagarik Suraksha Sanhita, 2023 states that it is mandatory to examine the arrested person by a government medical officer. Female accused arrested person shall be examined in the supervision of a female medical practitioner.

Section.53(2) of the Bhartiya Nagarik Suraksha Sanhita, 2023 states that the examination report of the accused provided by the government medical officer must include any injuries or abuse and estimate the approximate time of infliction in a proper documented format. This documented report produced by the professional is crucial as it determines the injuries of the accused person are before arrest or during the period of custody.

Section.53 (3) of the Bhartiya Nagarik Suraksha Sanhita, 2023 states that a copy of the documented report must be given to the arrested person and their nominee.

Section.57 of the Bhartiya Nagarik Suraksha Sanhita, 2023 states that the arrested person shall

⁷ Taxman Bare Act: Bhartiya Nagarik Suraksha Sanhita,2023

be mandatory produced before the magistrate within 24 hours without unnecessary delay.

Bhartiya Nyaya Sanhita, 2023⁸

Section.330 of the Bhartiya Nyaya Sanhita,2023 reflects about voluntarily causing hurt to exert a confession.

Section.127 (8) of the Bhartiya Nyaya Sanhita,2023 states that any person wrongfully confines the other individual for exerting confession or information which may lead to arrest of the wrongfully confined person.

Despite these procedural safeguards, custodial violence takes place leading to custodial deaths and harassments. These safeguards should be backed with landmark judgements and the decision should be followed.

Judicial Precedents

*Nilabati Behera v. State of Orissa (1993)*⁹, is a landmark Supreme court case on custodial deaths, in this case, the Court recognized compensation for custodial deaths as a constitutional remedy, affirming that the state bears responsibility for violations of fundamental rights.

*Christian Community Welfare Council Vs. government of Maharashtra (1993)*¹⁰ in this case the Bombay High Court held responsible for custodial atrocity. The court directed CBI to investigate the custodial death, and ordered the state to compensate the victim's family.¹¹

Later The Supreme Court in *State of Maharashtra Vs. Cristian Community Welfare Council of India (2003)*¹², upheld the accountability for custodial deaths. It emphasised that police officers cannot escape liability under the form of performing official duty. The court upheld the Bombay High court's decision for compensation and ordered further investigation into custodial deaths.

⁸ Taxman Bare Act Bhartiya Nyaya Sanhita,2023

⁹ Smt. Nilabati Behera Alias Lalit Behera vs State Of Orissa And Ors on 24 March, 1993

¹⁰ Christian Community Welfare Council Vs. government of Maharashtra (1993)

¹¹ <https://www.casemine.com/judgement/in/5609ade7e4b0149711412805>

¹² State of Maharashtra Vs. Cristian Community Welfare Council of India (2003)

*Paramvir Singh Saini v. Baljit Singh (2020)*¹³ In this case the Supreme Court of India in a 3-judge bench passed strict orders on installation of CCTV cameras in every part of the Police Stations and laying down the duties and composition of Oversight Committees.¹⁴

Judicial Directions: D.K. Basu Principles

In *D.K. Basu v. State of West Bengal (1997)*¹⁵, the Supreme Court laid down 11 mandatory guidelines to prevent custodial torture, including arrest memos, medical examinations, and informing relatives of arrests. There are specific requirements and procedures that the police and other agencies have to follow for the arrest, detention and interrogation of any person.

The principles are stated as¹⁶:

1. Police arresting and interrogating suspects should wear “accurate, visible and clear” identification and name tags, and details of interrogating police officers should be recorded in a register.
2. A memo of arrest must be prepared at the time of arrest. This should: Have the time and date of arrest. be attested by at least one witness who may either be a family member of the person arrested or a respectable person of the locality where the arrest was made. be counter-signed by the person arrested containing time and date of arrest.
3. The person arrested, detained or being interrogated has a right to have a relative, friend or well-wisher informed as soon as practicable, of the arrest and the place of detention or custody. If the person to be informed has signed the arrest memo as a witness this is not required.
4. Where the friend or relative of the person arrested lives outside the district, the time and place of arrest and venue of custody must be notified by police within 8 to 12 hours after arrest. This should be done by a telegram through the District Legal Aid Authority and the concerned police station.
5. The person arrested should be told of the right to have someone informed of the arrest, as soon as the arrest or detention is made.
6. An entry must be made in the diary at the place of detention about the arrest, the name of the person informed and the name and particulars of the police officers in whose custody the person arrested is.

¹³ *Paramvir Singh Saini v. Baljit Singh (2020)*

¹⁴ <https://ijalr.in/volume-3-issue-3-2023/case-analysis-of-paramvir-singh-saini-v-baljit-singh-sneha-sakshi/>

¹⁵ *shri D.K. Basu, Ashok K. Johri vs State of West Bengal, State Of U.P on 18 December, 1996*

¹⁶ <https://www.csfhr.com/guidelineforHR/D.k%20Basu%20Guideline%20on%20Arrest.pdf>

7. The person being arrested can request a physical examination at the time of arrest. Minor and major injuries if any should be recorded. The "Inspection Memo" should be signed by the person arrested as well as the arresting police officer. A copy of this memo must be given to the person arrested.
8. The person arrested must have a medical examination by a qualified doctor every 48 hours during detention. This should be done by a doctor who is on the panel, which must be constituted by the Director of Health Services of every State.
9. Copies of all documents including the arrest memo have to be sent to the Area Magistrate for his record.
10. The person arrested has a right to meet a lawyer during the interrogation, although not for the whole time.
11. There should be a police control room in every District and State headquarters where information regarding the arrest and the place of custody of the person arrested must be sent by the arresting officer. This must be done within 12 hours of the arrest.¹⁷

The case arose from a writ petition highlighting increasing custodial deaths and torture in India. The Supreme Court recognized custodial violence as a violation of Articles 21, 22, and 32 of the Constitution and issued binding guidelines to regulate arrests and detentions. These guidelines were designed to curb torture, illegal detention, and custodial deaths. They remain binding law under Article 141 of the Constitution. They form the basis of police accountability and human rights protection in India.

Despite these guidelines laid by the Supreme Court of India in the landmark judgement of *D.K Basu V. State of West Bengal*,¹⁸ which laid down the rights of detainees and to prevent the custodial abuse, the custodial deaths etc. The shocking custodial deaths of *Jayaraj and Bennix in 2020*¹⁹ took place. These horrific custodial killings make clear that judicial directions, however progressive, lose their force when they are not rigorously followed, monitored, and enforced at the ground level. These cases unfold that still the principles are not followed, it shows that violations still occur and it underscores the urgent need for strict action, independent monitoring, victim centric reforms.

¹⁷ <https://www.csfhr.com/guidelineforHR/D.k%20Basu%20Guideline%20on%20Arrest.pdf>

¹⁸ *shri D.K. Basu, Ashok K. Johri vs State of West Bengal, State Of U.P on 18 December, 1996*

¹⁹ <https://indiankanoon.org/doc/128466247/>

Human Rights Concern

Custodial death is the one of the worst long standing human rights violations in the world and India is one among them. The National Human Rights Commission has made its efforts to prevent it to all its extent but is not achieved yet in India. Lack of stringent Laws and their weak implementation: India lacks stringent legislation to effectively punish individuals responsible for custodial violence. Right to life and personal liberty is an inalienable right but the large number of cases of custodial violence and deaths shows the contrary. The National Human Rights Commission (NHRC)²⁰ has consistently reported alarming figures of custodial deaths, underscoring the persistence of this issue despite constitutional guarantees and judicial safeguards.

The reports of police atrocities on the detained prisoners are on the rise. Increasing number of such incidents has brought the eyeballs the entire country to the data of custodial deaths and violence depicting the brutality faced by detainees and an infringement of rights by those who are expected to protect it. Reports suggests that there have been 4,484 deaths in custody in just the last two years, that makes around 6 custodial deaths each day. The official data shows 2152²¹ and 155 deaths in judicial and police custody respectively. This is a matter of serious concern. Victims and their families suffer from anxiety and depression by which the survivors often experience flashbacks, nightmares and hypertensions. Victims may stop resisting or reporting abuse, believing nothing will change, Justice will be denied. Victims will have lack of trust from the Indian Justice System. Torture and violence aim to strip dignity, autonomy and self-worth, leaving long term scars on personality. A constant fear of custodial abuse will linger on the mind of the victim, which may lead to all these emotional distresses. Regardless of the offence committed by an individual, every person in custody must be treated with dignity and humanity, and custodial violence or torture should be strictly avoided.

Custodial violence is not only a violence of individual rights but also a phenomenon with deep sociological consequences. It reflects the imbalance of powers between state and its citizens. The impact of custodial violence extends beyond the immediate victim to families and communities. Victims often feel isolated and constant are in a fear of separation in a sense of marginalised and suffering from constant fear and disbelief. Families of victim often suffer

²⁰ National Human Rights Commission of India, Annual Report 2020–2022

²¹ <https://nhrc.nic.in/>

trauma, injuries, anxiety, depression, psychological imbalance, physical pain, experiencing grief, economic hardship, etc. sociologically, custodial violence thus destabilizes the social fabric, creating division between citizens and the institutions meant to protect them. The result is a society where certain communities live under constant fear of state institutions, perpetuating cycles of isolation and mistrust.

Conclusion

Custodial violence is not only a legal failure but also a profound moral lapse. It is one of the most significant issues facing the Indian court system. It is a failure of constitutional fundamental rights and basic human rights. Custodial violence, despite constitutional safeguards, exposes systemic immunity and demands urgent reforms and a Prevention of Torture law to uphold human dignity and global human rights standards. It is no doubt that custodial violence deserves no legitimacy in a democracy such as ours. Despite an increase in the number of such incidents, we see no increase in convictions.

When institutions that are meant to protect citizens become perpetrators of harm, the credibility of the justice system is fundamentally undermined and it weakens public trust in the police and the justice system, and affects the poor and marginalized the most. Tackling this problem requires strong laws against torture, independent oversight, strict enforcement of guidelines, and police training based on human rights.

The use of excessive force, torture, and other forms of abuse by law enforcement officials not only inflicts physical and psychological harm on individuals but also erodes public trust in the justice system and undermines the rule of law. Custodial violence is not merely a violation of law but a denial of democracy itself, and its eradication is essential for a justice system that is both constitutional and humane.

Even though there are various constitutional limits and procedural safeguards present in our country, yet many new cases arise of custodial violence and deaths of victims in custodial torture and abuse. These cases reflect the need of strict action and enforcement of these statutory safeguards systematically and rigorously.