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CUSTODIAL VIOLENCE AND POLICE TORTURE IN INDIA

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ABSTRACT : Custodial violence remains one of the most serious concerns within the Indian criminal justice system. Even though the Constitution of India guarantees important protections under Articles 20, 21, and 22, incidents of police torture, illegal detention, and custodial deaths continue to be reported across the country. This shows that there is a clear gap between legal provisions and their actual implementation. This research examines custodial violence from both constitutional and human rights perspectives. It highlights how the judiciary has played an important role in expanding the scope of the right to life and personal liberty to include protection against torture and inhuman treatment. Landmark judgments have introduced safeguards related to arrest, detention, and compensation, but their effectiveness remains limited due to weak enforcement.

The study also analyses statutory laws such as the Criminal Procedure Code and the Indian Evidence Act, along with guidelines issued by the National Human Rights Commission. In addition, it considers India's obligations under international human rights instruments like the ICCPR and the Convention Against Torture, pointing out the absence of a specific anti-torture law in India.

Overall, the research finds that custodial violence persists due to structural issues such as lack of accountability, inadequate investigation mechanisms, and institutional weaknesses. It suggests the need for comprehensive legal reforms, stronger oversight bodies, and better policing practices to ensure protection of human dignity and uphold the rule of law.

Keywords: Custodial Violence, Police Torture, Human Rights, Article 21, Fundamental Rights, Criminal Justice System, Police Accountability, Custodial Death, Illegal Detention, Judicial Activism, Constitutional Safeguards, Evidence Act, CrPC Safeguards, NHRC, International Human Rights Law, UNCAT, Police Reforms, State Liability, Compensation Jurisprudence, Rule of Law

CHAPTER 1: INTRODUCTION

1.1 Meaning of Custodial Violence

Custodial violence refers to any form of harm caused to a person while they are under the control of police or other authorities. This harm can be physical, such as beating or injury, or mental, such as threats, humiliation, or psychological pressure. It may occur during arrest, detention, interrogation, or imprisonment.

In simple terms, when a person is in custody, they are completely dependent on the State. Therefore, the State has a duty to ensure their safety. If harm occurs, it is not just misconduct—it is a violation of trust and abuse of power.

1.2 Meaning of Police Torture

Police torture is a specific form of custodial violence where force is used intentionally to extract information or confession. It includes:

- Physical assault
- Sleep deprivation
- Threats and intimidation
- Mental harassment

Even though India does not have a specific law against torture, courts have clearly stated that such practices violate fundamental rights.

1.3 Historical Background

The problem of custodial violence in India has deep historical roots. During British rule, the police system was created mainly to control people rather than protect them. The

Police Act of 1861 focused more on maintaining authority than ensuring justice.

After independence, this system continued with very few changes. As a result, many old practices like forced confessions and coercive interrogation still exist today.

1.4 Constitutional Framework

The Constitution provides strong protection:

- **Article 21** – Right to life and dignity
- **Article 20(3)** – No forced confession
- **Article 22** – Protection from illegal arrest

Despite these safeguards, violations continue, which shows that laws alone are not enough.

1.5 Research Problem

The main question is:

Why does custodial violence continue even when strong legal protections exist?

1.6 Objectives of Study

- To understand legal safeguards
- To analyse court decisions
- To study real-life data
- To suggest practical reforms

1.7 Hypothesis

Custodial violence exists because of weak enforcement, lack of strict laws, and poor accountability systems.

1.8 Research Methodology

This study uses doctrinal research based on:

- Legal provisions
- Court judgments
- NCRB and NHRC reports

- Books and articles

1.9 Scope and Limitations

The research mainly focuses on police custody in India and does not go deep into military laws.

1.10 Sociological and Criminological Understanding

Custodial violence is not just an individual problem—it is a system problem. Police often face pressure to solve cases quickly, which leads to shortcuts like torture.

Social inequality also plays a role. Poor and marginalized people are more likely to face abuse because they lack legal support.

From a criminological view, torture goes against basic principles like:

- Presumption of innocence
- Fair trial
- Voluntary confession

1.11 Psychological Impact

Victims of custodial torture suffer long-term effects like:

- Anxiety and depression
- Loss of dignity
- Fear of authorities
- Social isolation

Many victims do not report abuse due to fear, which allows the cycle to continue.

1.12 Gap Between Law and Reality

Even though laws exist, they are not properly followed. Reasons include:

- Weak accountability
- Delayed justice
- Lack of monitoring

This gap is the main issue this research tries to address.

CHAPTER 2

CONSTITUTIONAL AND STATUTORY FRAMEWORK AGAINST CUSTODIAL VIOLENCE

2.1 Introduction

Custodial violence is not just a problem of police misconduct; it is a serious violation of basic human rights and constitutional guarantees. In India, the legal system provides several protections to individuals who are arrested or detained. These protections are mainly found in the Constitution, various statutes like the Code of Criminal Procedure (CrPC), and judicial decisions.

At first glance, it may seem that India already has a strong legal system to prevent custodial abuse. However, when we look at real-life situations, we notice that such violence still continues. This creates an important question: **If laws exist, why are they not effective in practice?**

This chapter tries to answer that by explaining the legal framework in a simple and clear manner. It shows how different laws are supposed to work together to

protect individuals, and also highlights where they fail.

2.2 Article 21 – Expanding the Meaning of Right to Life

Article 21 of the Constitution states that no person shall be deprived of life or personal liberty except according to procedure established by law. At first, this provision was interpreted in a very limited way. It only meant that if a law allowed something, then it was valid.

However, over time, the Supreme Court changed this understanding. It said that the procedure must not only exist but must also be **fair, reasonable, and just**. This change was very important because it made Article 21 much stronger.

Today, Article 21 includes many rights such as:

- Right to live with dignity
- Right against torture
- Right to fair investigation
- Right to legal aid
- Right to humane treatment in custody

In simple words, it is no longer just about “living” but about “living with dignity”.

When a person is tortured in custody, it directly violates Article 21 because it attacks both life and dignity. Courts have repeatedly said that custodial torture is unacceptable in any situation.

What is interesting is that Article 21 has become the **foundation** for protecting individuals from police abuse. Even when

there is no specific law against torture, courts use Article 21 to provide protection.

2.3 Article 20(3) – Protection Against Self-Incrimination

Article 20(3) says that no person accused of an offence can be forced to give evidence against themselves. This is very important because it protects individuals during police interrogation.

In many cases, police use force to extract confessions. This goes directly against this provision. The law clearly says that confessions must be voluntary. If a confession is taken through pressure or torture, it is not valid.

The Supreme Court has also clarified that this protection applies not only during trial but also during investigation. This means that even at the police station, the accused has the right to remain silent.

This provision is important because it shifts the burden of proof to the police. Instead of forcing the accused to confess, the police must collect proper evidence.

However, in practice, this principle is often ignored. Many investigations still depend on confession rather than scientific evidence. This increases the chances of torture.

2.4 Article 22 – Safeguards Against Arbitrary Arrest

Article 22 provides basic rights to a person who is arrested. These include:

- The right to know the reason for arrest
- The right to consult a lawyer

- The right to be produced before a magistrate within 24 hours

These safeguards are very important because they prevent misuse of police power.

For example, if a person is not informed about the reason for arrest, they cannot defend themselves properly. Similarly, if they are not taken before a magistrate, they may be kept in custody for longer than allowed.

The Supreme Court has also said that arrest should not be made in a routine manner. There must be a valid reason. This helps prevent unnecessary arrests, which often lead to custodial violence.

Even though these protections exist, many people are not aware of their rights. This lack of awareness makes them more vulnerable to abuse.

2.5 Safeguards under the Code of Criminal Procedure (CrPC)

The CrPC provides detailed procedures for arrest, detention, and investigation. These procedures are designed to ensure fairness and prevent abuse.

Some important provisions include: Section 41 and 41A

These sections regulate arrest. They say that arrest should not always be the first step. In some cases, a notice can be issued instead of arrest.

This is important because unnecessary arrests increase the chances of custodial violence.

Section 50

This section requires that the person must be informed about the reason for arrest and their right to bail.

Section 54

It allows the arrested person to request a medical examination. This helps in identifying injuries caused during custody.

Section 57

It says that a person cannot be kept in police custody for more than 24 hours without being produced before a magistrate.

Section 176(1A)

This section requires a judicial inquiry in cases of custodial death or rape.

These provisions look strong on paper. But in reality, many times they are not properly followed. For example, medical examinations may not be done honestly, or records may be manipulated.

2.6 Indian Evidence Act – Protection Against Forced Confessions

The Indian Evidence Act plays an important role in preventing custodial torture. It makes sure that confessions obtained through force are not used in court.

Key provisions include:

- Confessions made under threat or pressure are invalid
- Confessions made to police officers are not admissible
- Confessions in custody are only valid if made before a magistrate

These rules were made to discourage torture and ensure fair trials.

However, even with these rules, indirect pressure is still used in many cases. For example, threats or mental pressure may be applied without leaving physical evidence.

So, while the law discourages torture, it does not completely prevent it.

2.7 Compensation and Constitutional Tort

One of the most important developments in Indian law is the concept of **constitutional tort**. This means that the State can be held responsible for violating fundamental rights.

Courts have said that if a person suffers custodial violence, they can be given compensation. This is different from normal civil cases. It is a direct remedy under constitutional law.

This concept is important because:

- It recognizes State responsibility
- It provides immediate relief to victims
- It acts as a warning to authorities

However, compensation alone is not enough. It does not prevent future violations unless proper action is taken against guilty officials.

2.8 Police Reforms and Accountability

The issue of police reform is closely linked with custodial violence. If the police system is not accountable, misuse of power becomes common.

The Supreme Court has suggested reforms like:

- Independent police authorities
- Fixed tenure for officers
- Separation of investigation from law and order

These reforms aim to reduce political interference and improve professionalism.

But the problem is that these reforms are not fully implemented. Many states have only partially followed these directions.

This shows that legal reform is not enough—implementation is equally important.

2.9 CCTV Surveillance and Transparency

Technology has been introduced as a solution to reduce custodial violence. Courts have directed installation of CCTV cameras in police stations.

The idea is simple:

- Cameras create transparency
- Officers become more careful
- Evidence can be recorded

However, there are practical problems:

- Cameras may not work properly
- Footage may not be stored
- Monitoring may be weak

So, while technology helps, it is not a complete solution.

2.10 Role of National Human Rights Commission (NHRC)

The NHRC plays an important role in monitoring custodial violence. It has issued guidelines like:

- Reporting custodial deaths within 24 hours
- Conducting independent inquiries
- Videography of post-mortem

These steps are useful for accountability.

But the NHRC has limited power. It can only make recommendations, not enforce them. This reduces its effectiveness.

2.11 Analytical Observation

After studying all these laws and provisions, one thing becomes very clear:

India does not lack laws—it lacks proper implementation.

The legal framework is quite strong, but:

- Rules are not followed strictly
- Accountability is weak
- Victims face difficulties in getting justice

This creates a gap between law and reality.

CHAPTER 3

JUDICIAL APPROACH TOWARDS CUSTODIAL VIOLENCE IN INDIA

3.1 Introduction

The judiciary in India has played a very important role in addressing the issue of custodial violence. In fact, in the absence of a specific anti-torture law, courts—especially the Supreme Court—have taken the responsibility of protecting individuals from police abuse.

Over the years, the judiciary has expanded the meaning of fundamental rights and has

treated custodial violence not just as a criminal issue, but as a serious violation of human rights. Courts have also developed guidelines, granted compensation, and emphasized accountability.

This chapter focuses on how judicial thinking has evolved over time. It studies important cases and tries to understand how the courts have tried to balance the need for effective policing with the protection of individual rights.

3.2 Evolution of Judicial Approach

In the early years after independence, custodial violence cases were treated like ordinary criminal offences. The courts did not interfere much unless there was clear evidence.

However, things started changing in the late 1970s and 1980s with the rise of Public Interest Litigation (PIL). During this period, the judiciary became more active and started focusing on human rights.

Gradually, the courts developed some important principles:

- Custodial violence is a violation of Article 21
- Compensation can be given for violation of rights
- The State can be held responsible for actions of its officers
- Preventive guidelines can be issued

This shift shows that the judiciary moved from a passive role to a more active and protective role.

3.3 Case Analysis I: Rudul Sah v. State of Bihar

Facts

In this case, the petitioner was kept in jail for around 14 years even after being acquitted by the court. There was no legal reason for his detention, yet he was not released.

Issue

The main question was whether the court could grant compensation for violation of fundamental rights.

Judgment

The Supreme Court held that simply releasing the person was not enough. It ordered the State to pay compensation for the illegal detention.

Analysis

This case is very important because it was one of the first times the court awarded compensation under constitutional law. It introduced the idea that the State must take responsibility for its actions.

Understanding

From a student's point of view, this case shows that justice is not only about stopping the violation but also about repairing the harm caused.

3.4 Case Analysis II: Nilabati Behera v. State of Orissa

Facts

A young man died in police custody. The authorities claimed that he died while trying to escape, but there were clear signs of injury.

Issue

Whether the State is responsible for custodial death and whether compensation can be given.

Judgment

The Supreme Court held that custodial death is a direct violation of Article 21. It ordered compensation to the victim's family.

Legal Principle

The Court clarified that compensation under constitutional law is different from private damages. It is meant to provide immediate relief.

Analysis

This case strengthened the concept of State liability. It made it clear that the government cannot escape responsibility for actions of police officers.

Understanding

This case makes it clear that the State cannot avoid accountability by blaming individual officers.

3.5 Case Analysis III: D.K. Basu v. State of West Bengal

Background

This case was filed as a PIL to address increasing cases of custodial deaths.

Guidelines Issued

The Supreme Court laid down detailed rules, such as:

- Police must wear identification
- Arrest memo must be prepared
- Family must be informed
- Medical check-ups must be done

- Arrest details must be recorded

Legal Importance

The Court made these guidelines binding. It also said that violation of these rules can lead to punishment.

Analysis

This is one of the most important cases in custodial jurisprudence. It focuses on prevention rather than just punishment.

Understanding

From a practical view, this case tries to bring transparency into police procedures. However, its success depends on proper implementation.

3.6 Case Analysis IV: Joginder Kumar v. State of Uttar Pradesh

Core Issue

Whether police can arrest a person without proper reason.

Judgment

The Court said that arrest should not be made in a routine way. There must be a valid reason.

Importance

This case reduced unnecessary arrests, which often lead to custodial violence.

Analysis

The judgment emphasized personal liberty. It reminded authorities that power must be used responsibly.

Understanding

This case shows that preventing wrongful arrest is the first step in preventing custodial violence.

3.7 Case Analysis V: Sheela Barse v. State of Maharashtra

Focus

This case dealt with the rights of women in custody.

Directions Given

- Separate lock-ups for women
- Legal assistance
- Protection from abuse

Analysis

The Court recognized that women are more vulnerable in custody and need special protection.

Understanding

This case highlights the importance of gender-sensitive policing.

3.8 Case Analysis VI: Prakash Singh v. Union of India

Background

This case focused on police reforms. Key

Directions

- Independent police bodies
- Fixed tenure for officers
- Separation of duties

Relevance

Better police structure reduces misuse of power.

Analysis

This case shows that custodial violence is not just about individuals but about the system.

Understanding

Reforming the system can prevent abuse before it happens.

3.9 Case Analysis VII: Paramvir Singh Saini

v. Baljit Singh

Judgment

The Court ordered installation of CCTV cameras in police stations.

Purpose

To increase transparency and prevent abuse.

Analysis

This is an example of using technology to solve legal problems.

Understanding

While helpful, technology alone cannot solve the issue without proper monitoring.

3.10 Judicial Trends Observed

After analysing all these cases, some patterns become clear:

1. Expansion of Article 21

The right to life now includes dignity and protection from torture.

2. Compensation as Remedy

Courts provide financial relief to victims.

3. Preventive Measures

Guidelines are issued to stop violations before they happen.

4. Systemic Approach

Courts recognize that reforms are needed at institutional level.

3.11 Limitations of Judicial Approach

Even though courts have done a lot, there are still problems:

- Guidelines are not properly followed
- Conviction rates are very low
- Investigations lack independence
- Victims face delays

This shows that judicial action alone is not enough.

3.12 Critical Evaluation

The judiciary has transformed custodial violence into a constitutional issue. It has expanded rights, introduced compensation, and created safeguards.

However, most judicial actions happen after the violation has already occurred. Prevention requires:

- Strong laws
- Better enforcement
- Institutional reforms

CHAPTER 4

INTERNATIONAL HUMAN RIGHTS PERSPECTIVE AND COMPARATIVE ANALYSIS

4.1 Introduction

Custodial violence is not only a national issue but also a global human rights concern. Across the world, torture and ill-treatment in custody are considered serious violations of human dignity. Modern legal systems

recognize that even a person accused of a crime has basic rights which cannot be taken away.

International human rights law clearly states that torture is completely prohibited. This means it is not allowed under any circumstances, even during emergencies or war. Therefore, countries are expected to follow strict standards to prevent such practices.

India, being a democratic country and a member of the United Nations, is expected to follow these international standards. However, there is often a gap between international commitments and domestic implementation.

This chapter discusses major international human rights instruments, India's position regarding them, and compares India's system with other countries. It helps in understanding where India stands globally and what improvements are needed.

4.2 Universal Declaration of Human Rights (UDHR)

The Universal Declaration of Human Rights (1948) is one of the most important documents in human rights history. It was adopted after World War II to ensure that such violations do not happen again.

Two important provisions related to custodial violence are:

- **Article 3** – Right to life, liberty, and security
- **Article 5** – No one shall be subjected to torture or cruel treatment

Even though the UDHR is not legally binding, it has strong moral value. It has influenced many countries, including India, in developing their constitutional laws.

Indian courts often refer to the UDHR while interpreting fundamental rights. For example, the idea of dignity under Article 21 is similar to the principles of the UDHR.

From a practical point of view, the UDHR acts as a basic guideline for all countries to respect human rights.

4.3 International Covenant on Civil and Political Rights (ICCPR)

The ICCPR (1966) is a legally binding treaty. India ratified it in 1979, which means India agreed to follow its provisions.

Important articles include:

- **Article 7** – Prohibits torture and inhuman treatment
- **Article 9** – Protection against arbitrary arrest
- **Article 10** – Humane treatment of prisoners

These provisions clearly state that even people in custody must be treated with dignity.

The ICCPR is important because it creates legal obligations. Countries that sign it are expected to:

- Prevent torture
- Investigate violations
- Provide remedies to victims

However, in India, these obligations are not always fully implemented. Courts sometimes use ICCPR principles to interpret

laws, but there is still no direct enforcement mechanism.

From a student's understanding, ICCPR strengthens the idea that custodial violence is not just illegal but also against international commitments.

4.4 United Nations Convention Against Torture (UNCAT)

The UNCAT (1984) is the most important international treaty specifically dealing with torture. It provides:

- A clear definition of torture
- Obligation to criminalize torture
- Requirement of fair investigation
- Protection of victims

India signed this convention in 1997 but has not ratified it yet. This means India agrees in principle but has not made it legally binding.

This is a major issue because:

- There is no specific anti-torture law in India
- Enforcement becomes weak
- International accountability is limited

The Law Commission has also recommended passing a law based on UNCAT, but it has not been implemented.

From a practical perspective, this shows that India accepts global standards but has not fully adopted them in its legal system.

4.5 Law Commission of India Recommendations

The Law Commission of India has played an important role in highlighting the issue of custodial violence.

In its 273rd Report, it recommended:

- A specific law to prevent torture
- Clear definition of custodial violence
- Strict punishment for offenders
- Compensation for victims

The report also suggested that India should ratify UNCAT and align its laws with international standards.

However, despite these recommendations, no comprehensive law has been passed yet.

This shows that awareness exists, but action is still lacking.

4.6 Comparative Analysis – United Kingdom

The United Kingdom has a more structured system to deal with custodial violence.

Key features include:

- Torture is a specific criminal offence under law
- Strong independent bodies investigate complaints
- Police are monitored by external agencies

For example, the UK has independent organizations that investigate police misconduct without interference.

This ensures:

- Transparency
- Accountability
- Fair investigation

Compared to India, the UK system is more organized and less dependent on judicial intervention.

From a learning perspective, this shows how strong institutions can reduce abuse.

4.7 Comparative Analysis – United States

The United States also provides strong legal safeguards.

Important protections include:

- **Fifth Amendment** – Protection against self-incrimination
- **Eighth Amendment** – No cruel punishment

One of the most famous cases is *Miranda v. Arizona*, where the court said that:

- The accused must be informed of their rights
- They have the right to remain silent
- They have the right to a lawyer

These are known as **Miranda Rights**.

This system ensures that the accused is aware of their rights from the beginning.

However, even in the US, cases of police brutality still occur. So, having laws is not enough—implementation is equally important.

4.8 Comparative Observations

When we compare India with countries like the UK and USA, some clear differences appear:

1. Legal Framework

- UK & USA → Specific laws against torture
- India → No separate anti-torture law

2. Accountability

- UK → Independent investigation bodies
- India → Often internal investigation

3. Enforcement

- Foreign countries → Better enforcement
- India → Weak implementation

4. Dependence on Judiciary

- India → Heavy reliance on court judgments
- Others → Strong statutory system

This comparison shows that India's system is strong in theory but weak in practice.

4.9 Role of International Law in Indian Courts

Indian courts have often used international law to fill gaps in domestic law.

The Supreme Court has said that:

- International principles can be used if they do not conflict with Indian law
- Courts can rely on global standards to interpret rights

This approach helps in strengthening human rights protection.

For example, courts have used international

conventions to expand Article 21.



From a student's understanding, this shows that international law acts as a support system when domestic law is incomplete.

4.10 Critical Evaluation

India presents a mixed situation. Positive Aspects

- Strong constitutional protections
- Active judiciary
- Recognition of human rights

Negative Aspects

- No specific anti-torture law
- Weak enforcement
- Low accountability

Even though India supports international human rights, practical implementation is still lacking.

This creates a gap between what India promises globally and what happens locally.

CHAPTER 5

STATISTICAL ANALYSIS, NCRB DATA AND GROUND REALITIES

5.1 Introduction

While laws and judicial decisions provide a theoretical framework to prevent custodial violence, the real situation can only be understood through data and ground-level analysis. In simple words, it is not enough to know what the law says—we also need to see what actually happens in practice.

Institutions like the National Crime Records Bureau (NCRB) and the National Human Rights Commission (NHRC) publish data

related to custodial deaths and police misconduct. These reports help us understand patterns, trends, and weaknesses in the system.

This chapter focuses on analysing such data and connecting it with real-life conditions. It tries to answer an important question: **Do legal safeguards actually work in practice, or are they just limited to theory?**

5.2 NCRB Data on Custodial Deaths

The NCRB publishes an annual report called *Crime in India*, which includes statistics on custodial deaths. These figures show that every year, several people die while in custody.

One important observation is that custodial deaths are reported under two categories:

- **Police custody deaths**
- **Judicial custody deaths**

Although judicial custody deaths are usually higher in number, police custody deaths raise more concern. This is because police custody involves direct interrogation, where the chances of torture are higher.

Another important point seen in the data is the gap between:

- Number of deaths reported
- FIRs registered
- Charge sheets filed
- Convictions achieved

This gap clearly shows that even when deaths occur, legal action is often weak or incomplete.

From a student's perspective, this indicates that reporting alone is not enough— accountability is equally important.

5.3 Judicial Custody vs Police Custody

Understanding the difference between these two types of custody is very important.

Police Custody

This happens during the investigation stage. The accused is under direct control of the police and is usually questioned or interrogated.

In such cases, allegations of torture are more common because:

- Police are trying to gather evidence quickly
- There is pressure to solve cases
- Interrogation methods may not always be legal

Judicial Custody

This occurs when a person is sent to jail after being produced before a magistrate. The person is no longer under direct police control.

Deaths in judicial custody are often due to:

- Illness
- Poor living conditions
- Overcrowding
- Suicide

However, even in judicial custody, negligence can still lead to violations of rights.

Understanding

From an analytical point of view, police custody raises more serious constitutional

concerns because it involves active control and questioning by authorities.

5.4 Conviction Rate of Police Personnel

One of the most concerning aspects revealed by data is the extremely low conviction rate of police officers accused of custodial violence.

Even when cases are reported:

- FIRs may not be properly registered
- Investigations may be biased
- Evidence may be weak
- Witnesses may turn hostile

There are several reasons behind this:

1. Departmental Bias

Investigations are often conducted by police officers themselves, which creates a conflict of interest.

2. Fear of Retaliation

Victims and witnesses may hesitate to speak against police due to fear.

3. Legal Barriers

In some cases, prior permission from the government is required to prosecute police officials.

4. Lack of Evidence

Torture is often done in ways that leave minimal physical proof.

Understanding

This low conviction rate reduces the fear of punishment and indirectly encourages misuse of power.

5.5 Role of the National Human Rights Commission (NHRC)

The NHRC has established guidelines to monitor custodial violence. These include:

- Mandatory reporting of custodial deaths within 24 hours
- Independent inquiry into such cases
- Videography of post-mortem

These guidelines aim to ensure transparency and accountability.

However, in practice:

- Reporting is sometimes delayed
- Investigations are not always independent
- Recommendations are not strictly followed

Understanding

The NHRC plays an important role, but its effectiveness is limited because it does not have strong enforcement powers.

5.6 Structural Causes Identified Through Data

Data analysis shows that custodial violence is not random—it is linked to deeper systemic issues.

1. Pressure for Quick Results

Police are often under pressure to solve cases quickly, which leads to shortcuts like forced confessions.

2. Lack of Resources

Many police stations lack proper infrastructure, forensic tools, and trained personnel.

3. Overburdened System

Police officers often handle multiple cases at once, leading to stress and inefficiency.

4. Weak Oversight

There are limited independent bodies to monitor police actions.

Understanding

These factors show that custodial violence is not just a legal issue but also an administrative and institutional problem.

5.7 Underreporting of Custodial Torture

One of the biggest challenges is that many cases of custodial violence are never reported.

Reasons include:

- Fear of police retaliation
- Lack of awareness of rights
- Social and economic pressure
- Lack of legal support

In some cases, injuries may not be properly recorded, or medical reports may be manipulated.

Understanding

This means that actual cases of custodial violence are likely much higher than official data suggests.

5.8 Role of Media and Civil Society

Media and human rights organizations play a key role in exposing custodial violence.

They help by:

- Reporting cases
- Creating public awareness
- Filing PILs

- Pressuring authorities

However, media attention is often limited to high-profile cases. Many smaller cases go unnoticed.

Understanding

Civil society acts as a bridge between victims and the justice system, but it cannot replace institutional accountability.

5.9 Technology and Transparency Measures

Courts have suggested the use of technology to reduce custodial violence. This includes:

- CCTV cameras in police stations
- Audio-video recording of interrogation
- Digital records of arrest

These measures aim to increase transparency.

However, practical issues remain:

- Cameras may not function properly
- Data may not be stored securely
- Monitoring may be weak

Understanding

Technology can help, but it is not a complete solution without proper supervision.

5.10 Regional Variations

Data shows that custodial violence varies across different states.

Some states report higher numbers due to:

- Weak implementation of reforms
- Poor administrative control
- Lack of accountability

Other states perform better due to:

- Better governance
- Strong oversight
- Effective police reforms

Understanding

This shows that improvement is possible if proper measures are taken.

5.11 Analytical Inference

After analysing all the data and observations, some clear conclusions can be drawn:

- Legal safeguards exist but are not effectively implemented
- Accountability mechanisms are weak
- Conviction rates are very low
- Institutional reforms are incomplete

Most importantly, custodial violence is not just a legal problem—it is a **systemic issue involving governance, administration, and social attitudes.**

CHAPTER 6 CRITICAL EVALUATION AND SYSTEMIC FAILURES

6.1 Introduction

In the previous chapters, it was seen that India has a strong constitutional framework, detailed statutory safeguards, and an active judiciary that has taken several steps to prevent custodial violence. However, despite all these protections, incidents of police torture and custodial deaths still continue.

This creates a serious concern. If laws and safeguards already exist, then why is the problem not reducing?

This chapter tries to answer that question by critically examining the system. It focuses on identifying the deeper issues that weaken the effectiveness of legal protections. Instead of just looking at laws, this chapter looks at how the system actually works in reality.

It can be understood that custodial violence is not just a legal issue—it is a structural and institutional problem.

6.2 Gap Between Law in Books and Law in Action

One of the most important problems in India is the gap between what the law says and what actually happens in practice.

On paper, India has:

- Strong fundamental rights
- Detailed CrPC safeguards
- Judicial guidelines
- NHRC monitoring

But in real life:

- Arrest procedures are not always followed
- Medical examinations may be manipulated
- Victims face difficulty in filing complaints

This shows that the issue is not the absence of law but the failure of implementation.

Understanding

From a practical point of view, laws are only effective when they are properly enforced. If

rules are ignored, even the best legal system cannot protect individuals.

6.3 Weak Criminal Prosecution of Police Personnel

Another major problem is the weak prosecution of police officers involved in custodial violence.

Even when incidents are reported, very few cases lead to conviction. This happens due to several reasons:

1. Lack of Independent Investigation

Most investigations are conducted by police officers themselves. This creates bias and reduces fairness.

2. Requirement of Government Sanction

In some cases, permission is required before prosecuting a public servant. This can delay or block legal action.

3. Fear Among Victims

Victims and witnesses may hesitate to speak due to fear of harassment or retaliation.

4. Lack of Evidence

Torture may not always leave visible marks, making it difficult to prove in court.

Understanding

This weak prosecution system reduces accountability and creates a sense of immunity among officials.

6.4 Failure of Departmental Inquiry System

Apart from criminal cases, police officers may face departmental inquiries. However, these inquiries also have serious limitations.

Problems in Departmental Inquiries

- Lack of transparency
- Influence of senior officers
- Minor punishments instead of strict action

Since these inquiries are conducted within the same department, there is a high chance of bias.

Understanding

Instead of acting as a strong accountability mechanism, departmental inquiries often become a formality.

6.5 Political Interference and Institutional Pressure

Political influence is another major issue in the policing system.

Police officers often face:

- Pressure from political authorities
- Frequent transfers
- Expectations to show quick results

This affects their independence and decision-making.

For example, solving a case quickly may become more important than following proper procedures. This can lead to the use of illegal methods like torture.

Understanding

When policing becomes influenced by politics, professionalism decreases and misuse of power increases.

6.6 Legislative Vacuum: Absence of Anti-Torture Law

One of the biggest weaknesses in the Indian legal system is the absence of a specific law against torture.

Even though:

- India has signed international conventions
- Law Commission has recommended legislation

There is still no clear law defining and punishing custodial torture.

Problems Due to This Gap

- No clear definition of torture
- No specific punishment
- Difficulties in prosecution
- Lack of legal clarity

Understanding

Without a strong law, enforcement becomes weak. Courts have tried to fill this gap, but judicial decisions cannot replace proper legislation.

6.7 Limitations of Judicial Intervention

The judiciary has played a very important role in protecting rights. However, it also has certain limitations.

1. Reactive Nature

Courts act only after a violation has occurred. They cannot prevent every incident.

2. Lack of Monitoring

It is not possible for courts to monitor all police stations across the country.

3. Limited Enforcement

Even when guidelines are issued, implementation depends on authorities.

Understanding

Judicial intervention is important but not sufficient. It must be supported by administrative and legislative action.

This mindset creates a dangerous situation where:

- Torture is justified
- Human rights are ignored
- Abuse becomes normalized

Understanding

A strong legal system requires public support for human rights. Without this, reforms cannot be fully successful.

6.8 Technological Measures: An Incomplete Solution

Technology, such as CCTV cameras, has been introduced to reduce custodial violence.

While this is a positive step, it has limitations:

- Cameras may not work properly
- Recordings may be tampered with
- Monitoring may not be independent

Understanding

Technology can help increase transparency, but it cannot replace accountability. Without proper oversight, it becomes ineffective.

6.9 Societal Attitudes and Public Perception

Another important factor is the attitude of society. In many cases, people believe that strict or harsh methods are necessary to control crime. This leads to acceptance of “third- degree methods”.

6.10 Economic and Institutional Constraints

There are also practical challenges faced by the police system:

1. Lack of Manpower

Police forces are often understaffed, leading to excessive workload.

2. Poor Infrastructure

Many police stations lack proper facilities and technology.

3. Limited Training

Officers may not be properly trained in modern investigation methods.

4. Delay in Forensic Support

Scientific investigation tools are not easily available.

Understanding

These constraints make it difficult for police to follow proper procedures, sometimes leading to shortcuts like coercion.

6.11 Structural Nature of Custodial Violence

After analysing all factors, it becomes clear that custodial violence is not just an individual problem. It is a structural issue caused by:

- Colonial policing system
- Weak accountability
- Political influence
- Social acceptance

This means that punishing individual officers alone will not solve the problem.

Understanding

Real change requires reforming the entire system, not just targeting individuals.

6.12 Analytical Conclusion

This chapter clearly shows that custodial violence continues due to multiple interconnected problems.

Key reasons include:

- Weak enforcement of laws
- Low conviction rates
- Lack of independent oversight
- Absence of anti-torture law
- Institutional and social challenges

From an overall understanding, it can be said that:

Custodial violence is not just a failure of law—it is a failure of the system as a whole.

CHAPTER 7

SUGGESTIONS, REFORM FRAMEWORK AND POLICY RECOMMENDATIONS

7.1 Introduction

After analysing the legal framework, judicial approach, statistical data, and systemic failures in the previous chapters, it becomes clear that custodial violence is not caused by a single factor. Instead, it is the result of multiple issues such as weak implementation of laws, lack of accountability, political interference, and absence of proper institutional mechanisms.

This means that solving the problem cannot be done through one simple solution. It requires a **comprehensive and multi-dimensional approach** that includes legal reforms, administrative changes, technological improvements, and changes in societal mindset.

This chapter focuses on providing practical suggestions and policy recommendations. These suggestions are based on the gaps identified earlier and aim to improve both prevention and accountability.

7.2 Enactment of a Comprehensive Anti-Torture Law

One of the most important reforms required in India is the introduction of a specific law dealing with custodial torture.

Currently, there is no clear legal definition of torture in Indian law. Although certain provisions of the Indian Penal Code may apply, they are not sufficient to deal with the seriousness of custodial violence.

What the Law Should Include

- A clear and detailed definition of torture (both physical and psychological)
- Strict punishment for offenders
- Special provisions for custodial death cases
- Time-bound investigation process
- Protection and compensation for victims

The law should also include a presumption against authorities in cases of custodial injury or death, unless proven otherwise.

Understanding

A specific anti-torture law will remove ambiguity and make prosecution easier. It will also show India's commitment to human rights at both national and international levels.

7.3 Establishment of Independent Police Complaints Authority

Another major reform is the creation of independent bodies to handle complaints against police officers. Although the Supreme Court has already directed the establishment of Police Complaints Authorities, their functioning is still weak in many states.

Key Features Required

- Independence from police and political control
- Adequate funding and resources
- Power to investigate and recommend action
- Transparent procedures

Understanding

Independent oversight is necessary to ensure fairness. When complaints are handled within the same department, there is always a risk of bias.

7.4 Strengthening Arrest and Interrogation Safeguards

The guidelines laid down by courts, especially in *D.K. Basu*, are very important. However, their implementation needs to be strengthened.

Suggested Measures

- Digital recording of arrest procedures
- Automatic notification to family members
- Mandatory audio-video recording of interrogation
- Regular judicial inspections of police stations

Understanding

These measures will reduce the chances of misuse of power and increase transparency.

7.5 Effective Implementation of CCTV and Body Cameras

The use of CCTV cameras and body cameras is an important technological reform. However, simply installing cameras is not enough.

Improvements Required

- Proper maintenance of equipment
- Secure storage of recordings
- Independent monitoring of footage
- Strict penalties for tampering

Understanding

Technology can act as a strong deterrent, but only if it is properly implemented and monitored.

7.6 Promotion of Scientific and Forensic Investigation

One of the main reasons for custodial torture is the reliance on confession-based investigation.

To change this, there is a need to promote scientific methods such as:

- DNA analysis
- Fingerprint technology
- Cyber forensics
- Digital evidence collection

Additional Measures

- Establishing well-equipped forensic labs
- Training police officers in modern techniques
- Reducing workload on officers

Understanding

When investigations depend on evidence rather than confession, the need for coercion automatically reduces.

7.7 Mandatory Human Rights Training for Police Personnel

Changing laws alone is not enough. There is also a need to change the mindset of law enforcement officials.

Training Should Include

- Constitutional rights
- Human dignity and ethics
- Proper interrogation techniques

- Stress management

Understanding

Regular training will help officers understand that respecting human rights is not a weakness but a professional responsibility.

7.8 Protection of Victims, Witnesses, and Whistleblowers

Many cases of custodial violence go unreported because victims and witnesses are afraid of retaliation.

Suggested Measures

- Witness protection programs
- Legal aid for victims
- Confidential complaint mechanisms
- Psychological support

Understanding

When people feel safe, they are more likely to report abuse. This improves accountability.

7.9 Establishment of Fast-Track Courts

Delay in justice is another major problem. Cases of custodial violence often take years to resolve.

Solution

- Special fast-track courts for custodial violence cases
- Time-bound trial procedures
- Dedicated judges and prosecutors

Understanding

Quick justice increases deterrence and builds public trust in the system.

7.10 Reform of Compensation Mechanism

Compensation is an important remedy, but the current system lacks consistency and speed.

Suggested Improvements

- Standard guidelines for compensation
- Interim relief for victims
- Recovery of compensation from guilty officials (after due process)
- Rehabilitation support

Understanding

Compensation should not just be symbolic—it should provide real relief to

victims.

7.11 Ratification of UN Convention Against Torture (UNCAT)

India has signed but not ratified UNCAT. Ratification will:

- Make international obligations binding
- Encourage legal reforms
- Improve global credibility

Understanding

This step will align India with international human rights standards and strengthen domestic laws.

7.12 Institutional Culture Reform

Long-term change requires transformation in police culture.

Key Measures

- Reducing political interference
- Ensuring fixed tenure for officers
- Merit-based promotions

- Transparent transfer policies

Understanding

A professional and independent police force is essential to prevent misuse of power.

7.13 Integrated Reform Framework

To effectively address custodial violence, all reforms must work together.

Area	Reform Needed
Legislation	Anti-torture law
Oversight	Independent complaints authority
Investigation	Scientific methods
Transparency	CCTV and body cameras
Accountability	Fast-track courts
Training	Human rights education
International	Ratification of UNCAT

A combined approach is necessary because focusing on only one area will not solve the problem completely.

8 CONCLUDING REMARKS

Custodial violence remains one of the most serious challenges within the Indian criminal justice system. Throughout this research, it becomes clear that although India has a strong constitutional framework and progressive judicial interpretations, the problem still continues in practice. This clearly shows that the issue is not merely about absence of law, but about the failure of proper implementation and accountability.

The Constitution of India, especially through Articles 20, 21, and 22, provides significant protection to individuals against abuse of power. Over time, the judiciary has also expanded these rights and played an

active role in protecting human dignity. Landmark judgments such as *D.K. Basu v. State of West Bengal*, *Nilabati Behera v. State of Orissa*, and *Joginder Kumar v. State of Uttar Pradesh* have contributed greatly in establishing safeguards against custodial violence. These decisions show that the judiciary has taken a strong stand in recognizing custodial torture as a violation of fundamental rights.

However, despite these developments, the reality on the ground presents a different picture. Data from NCRB and reports from NHRC highlight that custodial deaths and torture are still reported across the country. The low conviction rate of police officials, delays in investigation, and lack of independent oversight mechanisms weaken the effectiveness of the legal system. It can be understood that the gap between “law in books” and “law in action” is one of the biggest reasons behind the continuation of custodial violence.

Another important finding of this research is the absence of a specific anti-torture law in India. While international conventions like the UN Convention Against Torture clearly prohibit such practices, India has not yet fully implemented these standards into domestic law. This legislative gap creates difficulties in prosecution and reduces accountability.

The research also highlights that custodial violence is not just a legal issue but a structural problem. Factors such as political interference, lack of training, pressure on police to solve cases quickly, and social acceptance of harsh methods all contribute to the problem. Therefore, focusing only on punishment of individual officers is not sufficient. There is a need for broader institutional reforms.

From an overall perspective, it can be said that the judiciary has laid a strong foundation, but sustainable change requires legislative action, administrative reforms, and societal awareness.

The introduction of a comprehensive anti-torture law, strengthening of independent oversight bodies, use of technology for transparency, and proper training of police personnel are essential steps in this direction.

In conclusion, addressing custodial violence is necessary not only for protecting individual rights but also for maintaining public confidence in the justice system. A system that fails to protect those in its custody loses its moral authority. Therefore, it is important for India to move towards a more accountable, transparent, and rights-based policing system where human dignity is respected at all times.

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