

# Torture and Custodial Deaths: Role of the Indian Judiciary and National Human Rights Commission in Building Human Rights Jurisprudence

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## **Abstract:**

This essay explores the pervasive problem of human rights abuses and torture in Indian prisons, exploring the institutional and systemic flaws and changes that allow these abuses to continue. India's reluctance to ratify international treaties, like UNCAT, reveals more serious difficulties in implementing protective measures. The report emphasizes the functions of the NHRC and SHRC while highlighting their shortcomings in the fight against torture, especially in minority groups and underprivileged communities like SC and ST. The research demonstrates how systematic prejudice and insufficient accountability mechanisms impede access to justice through a number of case studies.

The study offers specific reform proposals based on successful international practices, highlighting the need for procedural, instructional, and legal adjustments to enhance institutional accountability and protect human dignity in the Indian correctional system.

**Keywords:** Custodial abuse and accountability

## **1. Introduction:**

Across the country, custodial deaths are a major concern. Detainees frequently die as a result of violent incidents that occur while they are in police custody. Numerous inmates endure serious abuse at the hands of police enforcement, including coercion and torture, which can occasionally lead to suicides. Reforms in police administration are desperately needed, and the topic of deaths that occur while a person is in custody is still a contentious one. Detainees experience physical and psychological maltreatment while in police custody as a result of these deaths, which foster a culture of dread. The term "custodial violence" mostly refers to violence that takes place in both court and police custody.

Incidents of violence against inmates raise serious concerns in a democratic nation like India, where the rule of law is upheld. The spirit is left with severe, frequently irreversible scars from torture, wounds that are difficult to cure. The Indian Constitution's Articles 20, 21, and 22 grant detainees or people in custody certain rights. Protections against handcuffing, the right to a fair and timely trial, and the right to free legal aid are among the rights inherent in Article 21 that the Supreme Court of India recognizes. There is a great deal of distress in society as a result of the prevalence of custodial violence.

Effectively investigating claims of torture and prosecuting those involved are essential components of preventing torture. The low conviction rate for the horrible crime of torture among police officers has on

ly encouraged more people to commit such atrocities.

Therefore, in order to improve criminal jurisprudence and hold police officers accountable for their acts, it is imperative that the topic of custodial torture be carefully examined and analyzed. The importance of medically examining human rights abuses, especially torture, is growing because of the useful role that health experts may play in looking into these crimes. Given their ethical obligations, doctors must protect patients from this kind of abuse by conducting thorough investigations and documenting cases of torture and other cruel treatment in order to hold those responsible for it accountable.

## **2. Constitutional and Legal Framework:**

The legal and constitutional structure of India provides a number of safeguards aimed at preventing violence against inmates. The Indian Penal Code (I.P.C.), the Code of Criminal Procedure (Cr.P.C.), the Constitution, and other statutory measures all provide these protections. Custodial violence does, however, continue to occur, underscoring the pressing need for these rules to be applied and enforced more consistently.

### **a. Relevant Constitutional Provisions (Article 21, 22)**

The Indian Constitution has vital protections against violence in detention:

#### **i Article 21 (Right to Life and Personal Liberty):**

According to this article, no one's right to life or personal freedom may be taken away from them other than by lawful means. It serves as the foundation for legal actions against torture and wrongful detention and requires humane treatment in all custodial settings

#### **ii. Article 22 (Protection Against Arrest and Detention):**

When someone is arrested, they have certain rights outlined in Article 22, including the right to know why they were arrested, the right to speak with legal counsel, and the obligation to appear before a magistrate within 24 hours of their detention. These clauses are intended to protect detainees from maltreatment while in custody and to stop arbitrary detention.

### **b. IPC, CrPC, and Other Statutory Provisions:**

#### **Indian Penal Code (IPC) Provisions**

Certain articles of the IPC make it illegal for law enforcement officials to torture or coerce people:

- i. Section 330 IPC: This section makes it illegal to intentionally cause harm in order to get information or confessions. It penalizes police officers who use physical force to coerce confessions, addressing the use of force to obtain information directly.
- ii. Section 331 IPC: By addressing severe harm caused to coerce information, this section expands on Section 330. It serves as a deterrence against severe acts of torture in detention by enforcing heavier penalties for significant injuries inflicted on detainees.

#### **Code of Criminal Procedure (CrPC) Provisions**

In order to promote openness in law enforcement, the CrPC includes procedural procedures to guarantee the humane treatment of detainees:

- i. Section 176 CrPC: This section requires judicial or magistratal investigations into cases of rape, disappearance, or death in custody. The goal of judicial authorities' engagement in these situations is to offer unbiased evaluations, so improving accountability.

Section 25 of the Indian Evidence Act, which prohibits the use of torture or force to extract confessions, makes statements made to police officers inadmissible in court. By rendering coerced confessions in

court processes invalid, it acts as a deterrent to violence in detention. Among the most important clauses,

**Indian Police Act, 1861:** Police misconduct is subject to disciplinary punishment under Section 29 of the Indian Police Act, 1861. The statute permits police abuse and government overreach, which breeds corruption and erodes public confidence. It also lacks professional standards and accountability, which leads to frequent abuses and ineffective law enforcement. Modern laws that replace it would provide open monitoring, safeguard citizens' rights, and establish a responsible, professional force that is consistent with Indian democracy.

The State Government may demand that a prisoner post a bond if they are released on long-term parole, according to Section 31-B, sub-section (2) of the Prisoners Act, 1900. The bond, which may or may not include a surety, must guarantee that the inmate follows the guidelines. The bond must also comply with the provisions of sections 446, 447, 448, and 449 of the Code of Criminal Procedure, 1973.

**Laws and Reports on Human Rights:** The ACHR, the NHRC, and the Law Commission's 113th, 152nd, and 273rd reports emphasize the necessity of changes and push for India to ratify the UN Convention Against Torture.

**The Indian criminal justice system has been transformed by the newly introduced:**

Sakshya Adhiniyam; Nagarik Suraksha Sanhita; and Nyaya Sanhita (2023). These statutes aim to replace the Evidence Act of 1872, the Penal Code of 1860, and the Code of Criminal Procedure of 1973, which were all passed during the colonial era.

After being resubmitted on December 12, 2023, the Nyaya Sanhita Bill of 2023 (BNS) was approved. It was ratified by the Lok Sabha on December 20, 2024, and the Rajya Sabha on December 21, 2023. The Lok Sabha withdrew the original BNS Bill on December 12, 2023, to introduce revised versions that incorporated some of the Standing Committee's recommendations.

The BNS's centralization of explanations represents a significant legal system update in India. The BNS enhances accessibility and comprehension for both the general public and legal professionals by combining and updating various legal definitions. This more effective approach eliminates the ambiguities brought about by the dispersion of definitions across different statutes and prior cases.

### 3. Judicial Declarations on Custodial Torture:

#### a. D.K. Basu v. State of West Bengal<sup>1</sup> (1997) and Guidelines

On August 26, 1986, D.K. Basu, the Executive Chairman of Legal Aid Services in West Bengal, wrote to the Chief Justice of India, initiating the historic case of D.K. Basu v. State of West Bengal. In his letter, Basu highlighted several media-reported incidents of police brutality and deaths in custody. Due to all of the police officers' violations, particularly the torture that occurred in custody and resulted in deaths, the SC classified this as a Public Interest Litigation.

The court sent a notice to all state governments and union territories, asking for their responses and recommending actions to prevent violence in detention in response to the concerning rise in deaths and brutality. The violation of the detainees' fundamental rights, particularly their right to life as protected by Article 21 of the Indian Constitution, had to be the main focus.

A landmark ruling addressing the widespread problem of police misconduct and custody deaths was handed down by the Supreme Court in 1997. The Supreme Court rendered a landmark decision in 1997

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<sup>1</sup> AIR 1997 SC 610

that addressed the widespread problem of police misconduct and custodial deaths.

According to the court, the state has no sovereign immunity against these kinds of fundamental rights abuses, especially those outlined in article 21. The decision made it clear that the state bears responsibility for all the acts of its employees that result in these kinds of fundamental rights violations. The court further emphasized that torture and fatalities that take place in police custody are examples of custodial violence, which seriously violates human rights and threatens the rule of law.

To achieve total non-violence in custody, there are court-established rules that must be followed in order to prevent custodial violence. Penalties, including contempt of court charges, may follow noncompliance with these rules.

#### **Guidelines Issued by the Court:**

1. Police officers who make arrests must be properly identified by name tags and have their information entered into a register.
2. At the time of arrest, a memo of arrest needs to be written, countersigned by the arrestee, and witnessed by a witness, ideally a family member.
3. The apprehended individual has the right to notify a friend or family member of their arrest and incarceration.
4. The arrestee's family or friend must be informed within 8 to 12 hours about the arrest time, location, and custody location.
5. The right to report an arrest must be explained to the person who has been arrested.
6. Upon arrest, the arrestee must be inspected for injuries and a written "Inspection Memo" must be obtained attesting to any injuries.
7. During imprisonment, the arrestee is required to have a medical examination conducted by a qualified physician every 48 hours.
8. All documents, including the memo of arrest, must be sent to the nearest Magistrate for record-keeping.
9. The arrestee must be permitted to meet their lawyer during interrogation.
10. Police control rooms must display information about all arrests within 12 hours of the arrest.

India's human rights and policing were significantly impacted by this decision. Through the 2008 amendment, which went into force in 2010, the Supreme Court's rules were finally included into the Code of Criminal Procedure. This ruling gave civilians the option to stand up for their rights during arrests and encouraged greater responsibility from police officers.

The D.K. Basu case has set a precedent for encouraging accountability and openness in all police operations, bolstering the process of citizens' protection of their fundamental rights under article 21. This had a significant impact on police reforms and had a long-lasting effect on India's human rights protection.

#### **b. Arnesh Kumar v. State of Bihar<sup>2</sup>, (2014) 8 SCC 273**

According to Section 498A of the Indian Penal Code (IPC) and Section 4 of the Dowry Prohibition Act, 1961, Arnesh Kumar was accused of dowry harassment by his wife in the case of Arnesh Kumar v. State of Bihar. According to the wife, her in-laws wanted a car, many household items, and Rs. 8 lakhs. She claimed that she was threatened and eventually evicted from her marital residence when these demands were not fulfilled. After both the session court and the high court refused to grant Arnesh bail, he went

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<sup>2</sup> (2014) 8 SCC 27

to the Supreme Court. The main question was whether or not people should be arrested in these situations without adequate reason, which raised questions regarding possible abuse of section 498A. The Supreme Court's decision in favor of Arnesh Kumar made clear how important it is to take a balanced approach when dealing with domestic abuse issues under section 498A. The court stressed the growing abuse of this law, especially the police's arbitrary arrests in situations of dowry harassment. The purpose of the section was to shield women from abuse, but inadvertently, it led to arbitrary arrests that affected innocent people, including elderly people and family members. Additionally, this resulted in shame and limited personal freedom, neither of which should be taken advantage of. Police officers are prohibited from making arrests just because they are authorized to do so by non-bailable and cognizable offenses such as section 498A.

**Guidelines issued by the court:**

1. Police officers are required to make sure that Section 41 of the CrPC is followed, which states that arrests may only be made when necessary to stop other crimes, guarantee a thorough investigation, or stop the accused from tampering with evidence.
2. In accordance with Section 41, police must keep a checklist outlining the grounds for an arrest. These justifications need to be noted and accepted as legitimate.
3. Before approving any detention, magistrates must carefully review the police record to confirm that an arrest was justified.
4. If an arrest is not required, the police should issue a notice to the accused under Section 41A of the Cr.P.C., asking them to appear before the authorities. An arrest may only be made if the accused fails to comply with the notice and the conditions of Section 41 are satisfied.
5. Discipline will be taken against the concerned officers if the police or magistrates disregard these rules. The ruling has had a significant impact on how section 498A cases are handled, with the goal of avoiding needless arrests and guaranteeing that no one's personal freedom is violated in the process. Police practices have changed as a result of this historic decision, which has increased accountability and safeguarded the rights of the victim and the accused. It ultimately led to a more equitable legal system by increasing judicial scrutiny in arrest cases.

The Arnesh Kumar v. State of Bihar verdict was a significant shift in India's arrest procedures, especially with regard to dowry harassment charges. It made it crucial to balance women's rights while viewing this portion as a shield rather than a weapon.

**c. Sunil Batra v. State (UT of Delhi)<sup>3</sup>, (1978) 4 SCC 409**

In this instance, death row inmate Sunil Batra wrote to a Supreme Court justice to report that a prison warder had cruelly tortured another inmate. A rod was inserted to cause serious anal injuries as part of the torture, which was purportedly done to extract money from the inmate's family. In order to look into the problem, the court turned this letter into a habeas corpus petition.

A court advisor was designated and given authorization to visit the prison, speak with witnesses, and collect all the data needed for an inquiry. The study emphasized the efforts made by prison officials to hide the crime and confirmed the claims of torture. The prison doctor and the detainee were forced to make up stories about the injuries in order to avoid pointing the finger at the investigators. The injuries were attributed to medical issues such as piles and self-rection. This led to court intervention by exposing the malpractice in jail administration.

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<sup>3</sup> (1978) 4 SCC 409



In order to defend the fundamental rights of inmates, the Supreme Court rearmend its authority under Article 32. The court declared that convicts have the right to life and liberty even when they are detained, holding that the rights guaranteed by Articles 14, 19, and 21 of the Constitution also apply to convicted prisoners. The validity of Section 30(2) of the Prisons Act, 1894, which permitted the solitary confinement of death row inmates, was also investigated by the Court. According to the ruling, solitary confinement could not be utilized arbitrarily or as a tool for torturing inmates.

The court made it clear that inmates who are awaiting an appeal or whose death sentence has not yet been finalized should not be placed in prison. Although this clause needed to be monitored to avoid abuse, it was not wholly unconstitutional. The Prisons Act's Section 56, which allowed restrictions for prison discipline, also allowed the Court to clarify the function of prison officials.

However, such acts should never be abusive and could only be carried out with the appropriate license. The decision required accountability in prison administration and urged for the humane treatment of inmates.

#### **Guidelines Issued by the Court:**

1. Random solitary detention of prisoners, particularly those awaiting final appeals, is unacceptable.
2. Torture or brutal treatment of prisoners is forbidden by Article 21.
3. All inmates must have access to the jail handbook, and all punitive actions must adhere to due process under the frequent supervision of session judges.
4. To guarantee the protection of their fundamental rights, all inmates should be eligible for free legal aid.
5. In order to stop future abuses, the court ordered that grievance boxes be placed in prisons and that officials conduct routine inspections of the facilities.
6. To keep an eye on circumstances and guarantee humane treatment, district magistrates were mandated to visit jails once a week.

This historic case made a major contribution to prison reforms by highlighting the importance of protecting inmates' rights. Additionally, it made sure that inmates' fundamental rights under Articles 14, 19, and 21 were respected, which prompted serious criticism and changes to India's penal system.

#### **d. People's Union for Civil Liberties v. State of Maharashtra<sup>4</sup>**

135 accused offenders were killed in 99 encounter killings by the Mumbai Police between 1995 and 1997, which were contested by the People's Union for Civil Liberties (PUCL) in writ petitions filed in the Supreme Court. Claims that the police were using encounters to carry out extrajudicial executions instead of carrying out their legal duties gave rise to these petitions. The consequences for human rights and the absence of accountability in such police acts were questioned.

Given the mounting evidence of police contacts being used to kill suspected criminals without following the proper procedures, the case garnered a lot of public attention. The legal structure governing police contacts and their investigation was established in large part by the court's ruling.

Even as it addressed the police activities against all of the accused offenders, the Supreme Court recognized the critical imperative of upholding the Rule of Law. The court emphasized that all killings must be thoroughly examined to guarantee accountability and that police use of force must be justified. The justices acknowledged that police legitimacy must not be taken for granted and that measures must be in place to stop power abuse.

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<sup>4</sup> (2014) 10 SCC 635

In order to achieve this, the court established a thorough set of rules to guarantee that every instance of a police encounter is thoroughly examined. All of the principles were created to uphold the legal and ethical standards in law enforcement while also fostering transparency and safeguarding individual rights. India's police practices have been significantly impacted by the rules set forth in the Peoples Union for Civil Liberties v. State of Maharashtra case.

They reaffirmed the idea that extrajudicial executions are unacceptable in a system where the rule of law is upheld. By highlighting the need of conducting investigations into police encounters, the court's directions encouraged accountability and increased the transparency of law enforcement procedures.

This historic decision emphasized the importance of respecting due process and human rights, even when dealing with criminal and public safety concerns.

## 5. Incidents of Custodial Deaths and Violence

### a. Well-known cases

In India, brutality and death in custody are unaccountable aspects of law enforcement. It highlights significant problems and concerns regarding the misuse of authority while demonstrating the vulnerability of those detained by the police.

Two notable cases—the Tutuicorin case in Tamil Nadu in 2020 and the Hyderabad case in 2019—basically highlighted the difficulties and complications associated with such catastrophes and the nationwide effects they have.

#### i. Thoothukudi, Tuticorin Custodial Deaths (2020)<sup>5</sup>.

A father-son team named Jayaraj and Benniks were detained in Sathankulam, Tamil Nadu, in June 2020 on suspicion of breaking COVID-19 lockdown rules. A serious and deadly incident of custodial violence occurred at the Sathankulam police station as a result of their minor violation. After conducting an investigation, the CBI discovered copious evidence of cruel torture. Both men were beaten with lathis for hours on end, according to the CBI chargesheet and forensic evidence. The backs and buttocks were found to have been severely injured, which ultimately resulted in internal bleeding and death. Jayaraj and Benniks were allegedly skipped by the involved police officials, who then bound them and beat them brutally.

The post mortem report, which noted 18 severe injuries and attributed their deaths to the blunt trauma they suffered, verified the severity of the torture. The victims were even made to use their own clothing to mop up the blood on the floor, according to the CBI, which served as a sobering reminder of the inequity and dehumanization that occur in prison environments. Although they begged for compassion, the police ignored Bennik's concerns about his father's declining health because of pre-existing medical ailments, and Jayaraj and Bennik were subjected to constant torture.

This case sparked outrage not only in Tamil Nadu but also throughout India, rekindling the debate concerning torture in detention and the police officials' frequent impunity. Protests across the country called for structural changes in police enforcement and justice. Although one sub inspector eventually passed away from COVID-19, the seriousness of the issue resulted in the arrest of the police officers implicated in the crime. Even with the charges, this case serves as a sobering reminder of the systemic shortcomings in holding law enforcement to account as well as the fatal outcomes that can result from custodial brutality.

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<sup>5</sup> <https://www.indiatoday.in/india/story/tuticorin-custodial-deaths-father-son-jayaraj-benniks-brutally-tortured-blood-walls-cbi-forensic-report-1735390-2020-10-27>

## ii. The 2019 Hyderabad Encounter <sup>6</sup>3

Four guys who were accused of raping and killing a veterinarian in Hyderabad were slain in an alleged "encounter" with the police in December 2019, resulting in yet another contentious police action case. Following the accused's arrest for the heinous crimes of suffocating the woman, burning her body, and trying to dispose of it, the occurrence took place. Similar to the 2012 Delhi gang rape case, the incident itself caused widespread indignation throughout India, and the public demanded prompt justice.

According to the Hyderabad police, the accused tried to flee by stealing police guns during an evidence-gathering visit to the crime scene, which resulted in a gunfight in which all four men were slain. Although many applauded the police for providing what seemed to be immediate justice, questions were raised over the accuracy of the police's account of what happened. Human rights organizations claimed that the police were circumventing the legal system by conducting extrajudicial killings.

A three-member probe commission led by retired Justice V S Sirpurkar was appointed by the Supreme Court when it became involved. According to the commission's 2022 report, the accused were shot with the intention of killing them. The investigation turned up no proof that the accused had attacked the police. Given that the accused were not given a fair opportunity to defend themselves in a court of law, it suggested that the implicated police officers face criminal charges.

### What impact did it make on India?

Significant attention was drawn to the problem of police misconduct in India as a result of these two cases. The Tuticorin case brought attention to the widespread problem of custodial violence, in which people in police custody frequently endure cruel treatment. Deep-seated problems with India's law enforcement system were made clear by this case, including a culture of impunity that permits police personnel to use excessive force without fear of repercussions, a lack of accountability, and poor training.

The Hyderabad incident highlighted the risks associated with the public's desire for immediate justice, especially when rape or other terrible crimes are involved.

Given the savagery of the murder, many people believed that the police intervention was warranted. The case also sparked debate about the rule of law and the risks associated with extrajudicial killings. In order to ensure that accused people are treated properly in court, the inquiry commission's findings emphasized the necessity for the justice system to operate within the bounds of the law.

### Soni Sori<sup>7</sup>

An important turning point in India's continuous fight against police impunity and custodial violence, especially in conflict-affected areas like Chhattisgarh, is represented by the circumstances surrounding Soni Soori, a devoted Adivasi rights activist. Significant problems with police misconduct, court delays, and the vulnerable position of activists within India's legal system were highlighted by Sori's experience. Her case, characterized by brutal custody torture, stands as a clear example of the pervasive use of violence to stifle dissent and oppress vulnerable people including adivasi villages embroiled in the Maoist conflict zone.

The supreme court intervention in Sori's case was crucial, as it introduced judicial inquiry into circumstances of custodial mistreatment. This case was significant because it required medical assessments on torture in custody to hold the government responsible. The court's action raised

<sup>6</sup> <https://www.hindustantimes.com/india-news/all-4-accused-in-rape-murder-of-telangana-vet-killed-in-encounter-while-trying-to-flee-police/story-IqeIVpoCCKtcOG772WvvO.html>

<sup>7</sup> <https://main.sci.gov.in/jonew/judis/41210.pdf>



awareness of the issue nationwide and emphasized the judiciary's responsibility to protect human rights by advocating for stronger safeguards against violence in detention. This demonstrated how crucial the judiciary is to maintaining police accountability in India. Discussions about police reforms were spurred by Sori's case, which called for the creation of stringent rules governing the treatment of prisoners and enhanced judicial supervision of custodial procedures. Her predicament served as a focal point for activists calling for measures of accountability and openness, such as independent forensic investigations, required CCTV installations at police stations, and prompt legal action on claims of torture.

Custodial violence became a national conversation subject as a result of her plight, which inspired civil society and garnered extensive media coverage. Her experience was brought to light by human rights organizations to emphasize the need for legislative reforms, which led to legislation such as the National Human Rights Commission (NHRC) mandating prompt investigations into police abuses. Since then, Sori's fight has been referenced in instances involving activists and detainees, setting a standard for recording abuses in detention and advocating for changes to safeguard basic human rights in areas of conflict. The persecution that India's tribal people face—often caught between insurgent groups and governmental authorities—is illuminated by Sori's story.

Through its advocacy for independent human rights authorities to look into abuses and its emphasis on the need for better protections against custodial brutality, the Soori case had a considerable impact on Indian society and policy. It has spurred further attempts to keep an eye on the treatment of detainees and protect activists, highlighting how crucial it is to preserve human rights, particularly in regions that are prone to insurrection.

#### **iv. Shetye - mumbai<sup>8</sup>**

Manjula Shetye's tragic death in custody on June 23, 2017, at Mumbai's Byculla Women's Jail, highlighted the harsh conditions and mistreatment that Indian prisoners—particularly women—face. Shetye, a prisoner serving a sentence for murder, died at the state-run JJ Hospital after allegedly being tortured by jail authorities. One of the most heinous cases of brutality against inmates, this tragedy provoked public indignation and led to calls for improvements in prison system safeguards and reforms. According to reports, Shetye's death came after a fight over the prison's food distribution. She was attacked by jail officials using lathis, striking her head and body, according to witnesses, mostly fellow prisoners. Shetye passed away from her wounds in the hospital a few hours after being stripped and subjected to serious sexual torture, including the purported insertion of a lathi into her intimate areas, according to several witnesses.

Violence broke out in Byculla Jail after her death as prisoners protested the alleged abuse. Authorities responded quickly to this, and six inmates—including a jailor—were charged with sexual assault and murder.

The judicial processes in Shetye's case exposed systematic shortcomings in handling complaints in overcrowded jails and addressing inmates' rights. According to the SIT study, Maharashtra's jails frequently held more than 400 percent of their capacity, which exacerbated tensions and resulted in poor living conditions.

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<sup>8</sup> <https://timesofindia.indiatimes.com/city/mumbai/blow-by-blow-account-of-jail-inmates-killing/articleshow/67067663.cms>

Calls for independent monitoring organizations to keep an eye on custodial conditions and conduct routine audits of prison facilities in order to stop future abuses have arisen as a result of the Shetye case's increased prominence.

Manjula's case brought attention to the necessity of a nationwide reform of India's penal system and the significance of providing inmates with decent treatment while they are in custody. Her death has become a symbol of the urgent need for justice and reform, influencing policy debate on custodial rights and highlighting the human rights of inmates, notwithstanding the glacial pace of structural change. This case serves as a constant reminder to India of its need to protect everyone's safety and dignity, regardless of their social standing.

#### **b. NCRB Data and Trends in Custodial Violence**

The National Human Rights Commission (NHRC) had recorded a total of 914 deaths in police and judicial custody in the year 2020, while according to the 'India: Annual Report on Torture 2019, over five persons were killed every day in police custody in the year 2019 with total of 1731 people losing their life in custody. Further, the Status of Policing in India Report 2019 showed that 427 persons died in police custody during the period (2016-2019), and the report published by the Asian Centre for Human Rights (ACHR) in June 2018, claimed that around 1674 custodial deaths were witnessed from 1st April 2017 to 28th February 2018.<sup>9</sup>

In India, custodial violence is still a serious human rights problem that undermines democratic principles and welfare. Although there were 1,727 documented deaths in custody, only 26 police officers were found guilty of custodial assault between 2001 and 2018, according to data from the National Crime Records Bureau (NCRB). The National Human Rights Commission's (NHRC) statistics, which reveals hundreds of incidents of custodial death, many of which are still pending, further demonstrates this lack of accountability. A backlog and institutional inertia are shown by the fact that, of the 178 cases of judicial custodial deaths that were recorded in April 2021, 3029 cases are still ongoing.

Examining custodial deaths from 2015 to 2019 in greater detail reveals alarming trends: 36% of deaths in police custody are suicides, whereas just 6% of instances involve physical violence. Concerns over the standard of detainee treatment and possible cover-ups are also raised by the fact that 40% of fatalities in custody are ascribed to "hospitalization, illness, or natural causes."

IPC Sections 330 and 348, as well as protections added to the Criminal Procedure Code (CrPC) with modifications like 41A–41D that highlight documented arrests, inmate transparency, and access to legal counsel, are among the laws in India that are intended to prevent torture in detention. Nevertheless, despite these safeguards, ongoing incidents of violence in custody point to problems with execution, a lack of severe penalties for offenders, and difficulties preserving court independence from police interference.

In the end, NCRB data indicates systemic issues: repeated deaths in custody indicate deficiencies in accountability, detainee protection, and systemic compliance, as does a failure to process complaints promptly. According to this study, custodial rights are supported by India's legal framework, but in order to fully address and reduce custodial violence, better enforcement, more transparency, and training are essential.

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<sup>9</sup> <https://www.livelaw.in/law-firms/law-firm-articles-/custodial-violence-rule-of-law-indian-evidence-act-national-human-rights-commission-184197>

## 6- Lack of Accountability and Institutional Failures

Guidelines and the National Human Rights Commission (NHRC)

The Protection of Human Rights Act (1993) created the National Human Rights Commission (NHRC), which is dedicated to upholding and advancing human rights in India. Although it operates independently, its primary responsibility is to make suggestions; it has no authority to impose them, which restricts its capacity to deliver workable answers.

Numerous cases of deaths in custody, including notable ones connected to the godhra violence, have been looked into by the NHRC. Although it has offered compensation and made recommendations, its enforcement powers are limited, and its implementation primarily depends on government action.

The NHRC's efforts to address the socioeconomic problems that lead to human rights abuses, such as farmer suicides in Maharashtra, demonstrate its commitment to societal issues that go beyond prison matters. Nonetheless, the commission's limited capacity to bring about systemic change is reflected in the consistently high suicide rates.

The NHRC's ability to enforce regulations and hold those accountable for torture and fatalities in detention is hampered by its reliance on collaboration from both the federal and state governments. Furthermore, it frequently has trouble getting local authorities to fully assist its investigations, which can compromise the comprehensiveness and efficacy of its inquiries.

It would be beneficial to expand the NHRC's authority to impose its recommendations as binding in cases of human rights abuses and torture in detention in order to close accountability gaps. Transparency may be greatly increased by strengthening custodial supervision procedures, such as conducting routine inspections and making sure the NHRC has access to video recordings of custodial encounters.

### Key Incidents Highlighting Failures and Impact:

**i. Violence in Kalinganagar and Nandigram:** The NHRC has come under fire for failing to adequately address instances of torture in detention in cases such as the violence in Kalinganagar and Nandigram. The NHRC has frequently failed to hold police malfeasance accountable or to pursue prosecution for torture in detention, even though it has acknowledged these incidents and suggested financial compensation for victims.

In addition to continuous anguish and financial difficulties that highlight the long-term effects of these incidents, victims' relatives have experienced intimidation, which has exacerbated sentiments of injustice.

**ii. Punjab Mass Cremation Case (1984–94):** This case, which is marked by the illegal cremation of thousands of suspected militants without sufficient information and paperwork, exposes grave human rights abuses during counter-insurgency operations.

The SC ordered an NHRC investigation in 1996 after human rights activist Jaswant Singh Khalra exposed 6,000 covert cremations. Despite confirming 2097 illegal cremations, the NHRC's investigation was restricted to particular areas, ignoring the more general problems of enforced disappearances and arbitrary deaths.

Due to psychological damage and a strong need for accountability, some families are still seeking justice even when they have received some recompense. This circumstance highlights how urgently significant reforms are required to protect justice and human rights.

In conclusion, the NHRC's attempts to combat human rights violations and custodial torture show its commitment to tackling these concerns, but its efficacy is constrained by its advisory role, dependence on official cooperation, and difficulties in conducting investigations. It is essential to strengthen the

NHRC's jurisdiction and create more transparent accountability structures in order to better address custodial torture and protect human rights in India.

### **b State Human Rights Commissions (SHRCs)**

Established by the 1993 Protection of Human Rights Act, State Human Rights Commissions (SHRCs) are charged with looking into state-level human rights abuses. Despite having a broad mission, SHRCs face many obstacles because their recommendations are not legally binding, which restricts their capacity to hold offenders responsible.

Making SHRC decisions legally enforceable could improve victim justice, the Madras High Court has noted. Many SHRCs, however, suffer from high vacancy rates, which can reach 44.3%. This causes delays and unsolved cases, particularly those involving torture in detention. These problems are made worse by irregular state funding, which makes it difficult for SHRC to operate, leading to a lack of staff, antiquated equipment, and little public involvement. With eight commissioners resolving fewer than 60% of complaints in 2020–21 and over 33,000 cases remaining unresolved at the end of 2021, SHRC frequently struggles to handle their caseloads.

SHRCs' objectivity is compromised by their reliance on official support and limited legal authority, especially in high-profile law enforcement cases.

Because state institutions lack the authority to enforce SHRC's conclusions, torture in detention and other abuses can persist. Additionally, a lack of diversity and gender representation among SHRCs may result in prejudices that impede their ability to advocate for underrepresented groups. Even while there have been some encouraging developments, such the recent compensations given for torture in Tamil Nadu's jails, the structural constraints of SHRCs frequently keep them from having a big influence.

These difficulties show how urgently binding authority, sufficient funding, and structural change are required to improve the efficacy of SHRCs in defending human rights in India.

### **c. Police Impunity and Abuse of Power**

Police impunity and a pervasive culture of power abuse are at the heart of India's custodial torture problem. Even with several reforms and human rights safeguards in place, law enforcement frequently functions with minimal accountability. Because there is no oversight, police officers can act without fear of consequences, which leads to serious human rights abuses such extrajudicial killings and torture. One such instance is the case of Shahbaz, who was allegedly tortured to death in Meerut, Uttar Pradesh, in 2017. Shahbaz suffered serious injuries associated with torture, according to postmortem records, despite the police's original allegation that he died of a heart attack. The local police were accused by activists and the family of misbehavior that resulted in a fatality.

The fight against police abuse of power and impunity is closely related to the fight for torture in detention. Victims will continue to suffer and public confidence in law enforcement will decline in the absence of significant reforms that promote accountability and openness. To build a police force that truly respects the rule of law and defends the rights of all citizens, a strong legal framework is necessary, but it also needs to be vigorously enforced. Only then can we hope to create a justice system that protects human dignity and stops abuse, two vital functions.

Although judicial oversight is essential for preventing police abuses, there have been cases where courts have thwarted human rights organizations' efforts.

India's police abuse of authority and impunity expose structural problems that threaten public trust, accountability, and human rights. Section 197 of the Criminal Procedure Code is one example of a legal provision that shields cops from prosecution, allowing misbehavior like excessive force and violence in

custody to go unpunished. Victims are further deterred from reporting abuse by inefficient internal disciplinary procedures, which feeds the cycle of unbridled power.

## 7. Police Accountability and Reforms

### a. Status of Police Reforms (Prakash Singh Case)<sup>10</sup>

Current initiatives to improve accountability and reduce political meddling in law enforcement are highlighted by the state of police reforms in India, particularly in the wake of the historic Prakash Singh case. The Supreme Court of India issued orders outlining crucial reforms to create a more accountable, transparent, and community-oriented police force in 2006 in response to the Prakash Singh lawsuit. By establishing supervision procedures to hold police personnel responsible for any misbehavior, these changes aimed to stop abuses of authority. Reorganizing police organizations to encourage professionalism and reduce political influence was one of the notable proposals, which would enable officers to function more independently and impartially.

However, there are several obstacles in the way of putting these reforms into practice. Since a police force is usually used to serve political agendas, political resistance is a substantial obstacle to the achievement of law enforcement autonomy. Reform initiatives are also slowed down by internal cultural resistance inside police organizations; changing training and misbehavior policies that are essential for successful reform frequently involves doing away with practices and hierarchical conventions.

Public skepticism is pervasive, and many communities see the police as essentially defective organizations. This can hinder efforts to increase accountability and foster confidence.

Reforms have advanced in certain areas. For instance, the Khyber Pakhtunkhwa Police Act of 2017 placed a strong emphasis on accountability and openness in an effort to bring procedural improvements into compliance with international norms. Globally, events such as the US case of Eric Garner have highlighted the necessity of transparent, unambiguous procedures in cases of police-involved deaths, sparking calls for systemic change.

Even though progress has been made, India's journey towards significant police reform is still ongoing. Integrating accountability principles into police operations will need addressing political opposition, organizational culture, and public mistrust in order to guarantee that law enforcement really fulfills its role as a protector of citizens' rights.

### b. Challenges in Implementation and Structural Issues

India confronts many obstacles in implementing significant reforms in a variety of sectors, from a lack of funding to problems with structure and governance. For instance, the Prakash Singh case has brought attention to the need for an independent and accountable police force in law enforcement, which has faced several challenges. Political meddling is a significant obstacle since state governments still have a say in police promotions, transfers, and appointments even after the Supreme Court issued orders calling for independent scrutiny. By lowering police morale and encouraging a culture of deference to political bodies, this political engagement threatens the foundation of merit-based systems and impedes impartial law enforcement.

Effective implementation is further hampered by resource limitations such as limited funding, poor training, and antiquated technology. Police personnel frequently work long hours, have few resources, and are unable to receive continuous training in community relations, ethics, and contemporary

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<sup>10</sup> Prakash Singh & Ors v. Union of India (Writ Petition (civil) 310 of 1996)



enforcement methods. These shortcomings make it more difficult for them to interact with communities in a proactive manner, which results in the persistence of antiquated, reactionary methods rather than a community-focused policing approach.

Despite the remedies proposed in the Prakash Singh case, custodial torture in India underscores persistent problems with police accountability and structural difficulties. Since there are no clear rules against torture, which makes enforcement more difficult, legal and institutional flaws create doubt.

A lack of training renders many officers unable to enforce human rights standards, which leads to abuses during detentions, and political meddling frequently impedes unbiased investigations into custodial violence. A culture of impunity among police forces is fostered by structural flaws such as antiquated legal systems, a lack of independent control, and inefficient reporting procedures.

By supporting the creation of police complaints authorities, improved training initiatives, and independence from political pressure, the Prakash Singh case laid a vital basis for police accountability. However, progress has been rather slack, so ongoing oversight, civil society involvement, and strong political will are needed to establish full accountability and end torture in detention.

## 8. Effect on Disenfranchised Groups

### a. Violence against Minorities and SC/ST in Custody

The criminal justice system (CJS) in India frequently fails to protect the rights of minority groups due to ingrained prejudices, antiquated laws, and insufficient accountability. This results in pervasive prejudice, especially against indigenous people, Christians, Muslims, and Sikhs. With roots in colonial-era legislation, India's CJS has upheld repressive powers through laws such as the police act and the criminal procedural code (CrCP), which regularly allow police excess and unfairly impact protesters and minorities.

Muslims frequently experience heightened surveillance and profiling, according to the 2005 Sachar Committee, which raised awareness of institutional biases and police abuse. Other studies, like the Vohra committee's conclusions on the "criminalization of politics," show how law enforcement and political power are linked, impeding important reforms and sustaining prejudice.

These systemic shortcomings are further demonstrated by historical occurrences. The CJS's incapacity to safeguard minorities is demonstrated by notable occurrences such as the 1984 anti-Sikh riots, the 2002 Gujarat riots that targeted Muslims, and the 2008 Kandhamal violence against Christians. Important improvements are still mostly neglected in spite of suggestions from national and international organizations.

The following are a few examples:

1. The 1984 Anti-Sikh Riots: Widespread violence against the Sikh community broke out when Prime Minister Indira Gandhi was killed by her Sikh bodyguards. Numerous Sikhs were relocated, businesses and houses were damaged, and thousands of Sikhs were slaughtered. Many officials were accused of complicity in the violence, and the government's response was criticized for allowing it to worsen. The inability of the CJS to safeguard minorities in times of communal crisis was demonstrated by this occurrence.
2. Gujarat Riots (2002): One of India's most well-known instances of state cooperation in communal violence was the violence against Muslims in Gujarat in 2002 after the Godhra train incident. Over a thousand people were killed, many were displaced, and property was destroyed as a result of the violence, which was reportedly caused by police inaction, biased investigations, and political

meddling. Investigations revealed structural weaknesses in the CJS that hindered victims' access to prompt justice.

3. Kandhamal Riots (2008): Violence against Christians in Orissa's Kandhamal district resulted in the damage of homes and places of worship, as well as the eviction of thousands of people. Authorities were accused of neglecting to safeguard vulnerable minority groups in conflict-ridden areas and of ignoring mob attacks, despite the fact that law enforcement mostly disregarded the violence.

#### **b Intersection of Caste, Class, and Policing**

The convergence of caste, class and policing in India creates a troubling environment for custodial torture and systemic violence against marginalized communities, particularly Scheduled castes, Schedule tribes and minorities. The historical legacies of caste discrimination and socio-economics hierarchies perpetuate cycles of injustice, resulting in a law enforcement system that disproportionately targets and brutalises those at the lower ends of social and economic strata.

A profoundly embedded social structure, the caste system influences how police view and interact with marginalized groups. Casteist biases in law enforcement frequently increase the risk of violence, arbitrary imprisonment, and torture in detention for Dalits and Adivasis. For instance, caste-based discrimination is visible in policing procedures in the 2020 custody death of a Dalit man in Uttar Pradesh, which instills fear and mistrust among marginalized communities that lack protection and redress. These vulnerabilities are made worse by class, since those from low-income families face more barriers to pursuing justice or confronting injustices.

These communities are isolated due to a lack of resources and legal choices, which makes it more difficult for them to demand responsibility or oppose state-sanctioned violence. Colonial legacies have affected Indian policing methods, which frequently operate with unbridled authority over marginalized communities. Under the guise of upholding law and order, extrajudicial operations like encounter killings commonly target members of lower castes and those who are economically dispossessed. Vulnerability is increased by socioeconomic marginalization since these communities lack the social capital and political clout to bring law enforcement to account.

Additionally, for marginalised women, the intersection of caste, class, and gender intensifies vulnerability, as those face both caste-based and gender-based violence. The interplay of these factors creates a repressive environment where law enforcement acts as an extension of social hierarchies rather than a source of protection. To address this issue, systemic reforms are crucial, focusing on dismantling casteist and classist biases in policing and ensuring legal access to legal resources for marginalised communities. Establishing an equitable and just system necessitates policy reforms, judicial oversight, and a cultural shift toward recognizing the rights and dignity of all citizens, aiming to dismantle the deeply rooted structures of caste and class that perpetuate abuse in India's law enforcement practices.

### **9. India's Position on International Treaties**

#### **a. UN Convention Against Torture (UNCAT) and Non-Ratification**

One important international human rights treaty that was adopted in 1984 and went into force in 1987 is the UN Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (UNCAT), which aims to stop torture everywhere. India has not yet ratified the convention, despite having signed it in 1997.

The Indian government gives a number of explanations for its refusal to ratify, with a primary emphasis on the consequences for legal systems and internal security. There are worries that ratification would

have an impact on how law enforcement operates, especially in areas where there is conflict. Concerns regarding conformity with UNCAT rules are also raised by the Indian legal system's lack of specific statutes defining torture.

Although India has not ratified UNCAT, it does have laws that address torture and violence in custody. For example, the Indian Penal Code (IPC) contains provisions on unlawful detention and causing harm, although it does not specifically outlaw torture. The Supreme Court has said that torture in detention is unacceptable and has recognized it as a breach of fundamental rights under Article 21 (right to life and personal liberty) of the constitution.

Ratification is hampered by a number of issues, such as political opposition, especially from law enforcement, and worries about possible obstacles to counterterrorism initiatives. Furthermore, there may not be enough pressure for ratification if the general population is unaware of the consequences of torture and human rights violations. Significant repercussions of India's non-ratification include international censure, which damages diplomatic ties and upholds a system of impunity for abuses such as torture in detention.

India might launch public awareness campaigns about the value of human rights safeguards, participate in conversation to resolve concerns surrounding UNCAT, and outlaw torture through special legislation in order to conform to international standards.

#### **b. India's Commitments under Universal Human Rights Frameworks**

International treaties and agreements that promote and protect human rights worldwide are included in universal human rights frameworks. These frameworks are based on the 1948 Universal Declaration of Human Rights (UDHR). India has ratified a number of significant international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), which covers civil and political rights like the freedom of speech and the right to life. The International Covenant on Economic, Social, and Cultural Rights (ICESCR), which emphasizes rights pertaining to employment, education, health, and a reasonable standard of living, has also been ratified. India also aims to end discrimination against women by becoming a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

India has passed a number of laws to bring its domestic laws into compliance with international human rights norms. These include the Protection of Human Rights Act, which establishes the NHRC to look into abuses, and the RTI, which promotes accountability and transparency. The SC and ST (Prevention of Atrocities) Act aims to protect underprivileged groups from violence and discrimination.

Notwithstanding these pledges, India still has a long way to go in successfully putting the human rights framework into practice. The effectiveness of human rights organizations, which usually lack the required funding and power, is typically constrained by institutional flaws. The realization of universal human rights is further hampered by social and economic inequalities that have their roots in caste, gender, and religion. Political opposition may also prioritize security measures over human rights, which could lead to abuses. Both domestic and foreign critics have criticized India's human rights record, especially with regard to freedom of expression, as concerns about free speech are raised by restrictions on the media and opposition. The rights of residents are not adequately protected, as evidenced by reports of brutality in custody.

India should strengthen human rights organizations like the NHRC by giving them enough funding and power, engage civil society organizations to raise awareness and hold violators accountable, and develop

comprehensive policies that specifically address the rights of marginalized groups, making sure their voices are heard and their rights are protected.

## **10. Recommendations**

a. By ratifying the UNCAT and implementing a customized strategy to handle security issues, India would align with global human rights norms and strengthen its legal safeguards against torture. In addition to this ratification, India might establish a commission for prisoners and execute a National Preventive Mechanism (NPM) under the UNCAT framework, akin to programs implemented by nations such as Argentina and Germany. In order to find and report circumstances that could result in custodial violence, these procedures do surprise inspections of detention facilities. India would show its commitment to combating torture in detention while bolstering institutional deterrents by bringing its domestic laws into compliance with UNCAT criteria and putting in place efficient inspection procedures.

b. Requiring legal counsel from the time of arrest, as is the case in the US and some EU nations, can provide inmates with crucial assistance in avoiding coercive tactics. In France, for example, people who are detained are guaranteed the right to counsel within a day of their detention.

c. To represent prisoners during first interrogations, local legal aid attorneys may be added to a local court panel in a given jurisdiction. Unless otherwise required by law, the police are not allowed to question somebody without an attorney present. The creation of a nationwide on-call network could expand this privilege to underserved populations. As seen in Norway, where medical exams document injuries sustained while in police custody, detainees should also get independent medical evaluations soon after their arrest. By promoting a transparent procedure, these safeguards would greatly lower the possibility of exploitation.

d. CCTV installation is required In cases of custodial violence, cameras in police stations, lockups, and interrogation rooms that provide safe, real-time surveillance by an impartial entity may help with prosecution and prevention. This tactic is modeled after best practices in South Korea and Japan, where real-time surveillance is used in detention settings to monitor interrogations and stop misconduct. Accountability would also be improved if officers were required to wear body cameras during arrests and questioning, as is the case in Australia. To prevent tampering, these records should be kept in India using tamper-proof technology, like block chain, and subject to routine audits. Penalties for breaking the law or altering surveillance film should serve as a powerful deterrence.

a. Conducting unbiased investigations into cases of torture in custody requires an independent custodial monitoring structure that is not influenced by the police. In the UK, complaints against the police are handled by the Independent Office for Police Conduct (IOPC), which is separate from other law enforcement organizations. In a similar vein, Brazil has set up state-level ombudsman offices to handle abuse accusations that are run separately from the police. By establishing state-level Custodial Oversight Commissions that operate independently of local police departments and answer to a central, independent National Custodial Oversight Commission, India might follow similar patterns. In order to improve accountability and deter abuse, these organizations would look into claims of torture, fatalities that occur while a person is in custody, and misconduct trends.

f. Comprehensive Training for Special Executive Magistrates (SEMs), which aimed to stop automatic remand procedures by assessing every case for judicial or magistratal detention. This evaluation

emphasizes the effects of the custodial trauma and might be given priority by customized evaluations. Regularly increasing the number of soft skills sessions is essential for dealing with prisoners.

G. In order to identify any instances of custodial mistreatment, all magistrates may be instructed to carefully examine the case diary entries and the review records on detainees.

## **11. Conclusion**

This article concludes by highlighting how urgently India must address torture in detention and improve human rights safeguards in its legal system, especially for underprivileged groups. India's adherence to international human rights standards is jeopardized by the findings, which reveal pervasive problems with accountability, institutional slowness, and barriers to justice. India may enact considerable reform to address these issues by implementing global best practices, such as strengthening human rights commissions, providing specialized training for law enforcement to prevent misbehavior, and establishing open supervision systems.

These steps have the potential to promote an accountable and human rights-respecting culture inside the legal system if they are truly implemented. India can fortify its democratic principles, set an example for the region, and advance a more just and humane approach to law enforcement that really upholds the rights and dignity of every individual by supporting these reforms.