

Role of Judiciary in Tracking the Custodial Torture: A Study of the Indian Penal Justice System

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Abstract

Custodial torture remains a serious violation of human rights despite constitutional safeguards under Articles 20, 21, and 22 of the Constitution of India. The research analyzes the causes, forms, and legal implications of custodial violence and evaluates the effectiveness of judicial interventions in safeguarding the rights of detainees. Particular emphasis is placed on landmark Supreme Court decisions such as *D.K. Basu v. State of West Bengal* and *Nilabati Behera v. State of Orissa*, which established important safeguards against custodial abuse and recognized state liability for violations of fundamental rights. The study also examines the provisions of the Bharatiya Nyaya Sanhita, 2023, Bharatiya Nagarik Suraksha Sanhita, 2023, and Bharatiya Sakshya Adhiniyam, 2023, in relation to the prevention and prosecution of custodial torture.

CHAPTER – 1 INTRODUCTION

GENERAL INTRODUCTION

‘The true measure of a society is how it treats its most vulnerable members.’

-Mahatma Gandhi

Custodial torture remains one of the gravest human rights violations within the Indian criminal justice system. Despite constitutional guarantees and procedural safeguards, instances of physical abuse, psychological harassment, and even custodial deaths continue to emerge from police stations and detention centres across the country. Often hidden behind the closed doors of law enforcement institutions, custodial torture not only undermines the rule of law but also erodes public trust in the justice delivery system. India's constitutional framework, particularly Articles 20, 21, and 22, ensures the protection of life, liberty, and the rights of arrested individuals. However, these ideals are frequently challenged in practice due to systemic issues such as police impunity, delayed judicial processes, and lack of political will.

In this context, the judiciary has emerged as a crucial pillar in the fight against custodial torture. Through judicial activism, Public Interest Litigations (PILs), and landmark rulings, courts in India have not only acknowledged the prevalence of custodial violence but have also laid down guidelines to prevent it. **The Supreme Court's verdicts in cases such as *D.K. Basu v. State of West Bengal*¹ and *Nilabati Behera v. State of Orissa*² underscore the proactive role the judiciary has played in setting legal precedents for accountability and reparation.**

In democracies like India, where upholding the law is essential, custody torture is a crucial issue. Custodial torture and abuse by law enforcement agencies is a grave concern that resonates across society. Torture inflicted while being in custody upon individuals not only causes physical harm but also deeply wounds the human spirit. A wide range of abuses fall under the category of custodial torture,

from serious crimes like murder by law enforcement officers to coercing confessions and tampering with evidence. In the contemporary

¹ (1997) 1 SCC 416.

² (1993) 2 SCC 746.

understanding of the 'humane' treatment of offenders, the approach of using inquiry and invasive methods to detect violent acts disregards fundamental human rights. Efforts towards a more humane justice system should prioritise safeguarding individuals' rights, ensuring fair treatment, and prohibiting any form of torture or abuse within custodial settings. **Upholding the rule of law involves not only punishing wrongdoers but also safeguarding the rights and dignity of all individuals, irrespective of their status as offenders or suspects.**³

According to Geoffery Robertson, torture is banned because it treats human beings as less than human. It is the ultimate corruption of the relationship between the state and the individual. Prevention of custodial torture comes out in the view from the clash between the State's power to restrict and deprive the liberty of a man who allegedly have committed a crime and the presumption of innocence in his favour.⁴ **In attempt to get desired information, police rely more on fists and tortures than on wits or culture.** Some senior policemen justify it as necessary evil to curb growing crimes in the society. It should be remembered that there is nothing more cowardly and unconscionable than a person in police custody being beaten up and there is nothing which inflicts a deeper wound on our constitutional culture than a state official running berserk regardless of human rights. Though our criminal code and other laws have provisions to prevent the atrocities being inflicted on the inmates and the women in custody, they go on all the time.

Custodial torture is inflicted upon individual regardless of sex, age, ill-health. This worst form of human right violation has become a serious and alarming in India. The brutal atrocities of severe pain or suffering, whether physical or mental perpetrated by the police, jail authorities, armed forces, and other law enforcing agencies on the suspect / accused persons and prisoners are menacing and they are on the increase day by day. Custodial torture (atrocities) has become so common these days that not only the police and bureaucracy but also people take it for granted as a routine police practice of interrogation. For obvious reasons torture is not called torture by those who practice it. **They call it —sustained interrogation, questioning or examining.** Whatever the name brutality always is the result. Until the end of eighteenth

³ Chauhan, Preeti. "Making the 'Invisible Visible: Custodial violence and the civil liberties-democratic rights movement in India." *International Journal of Law, Crime and Justice* 62 (2020): 100375

⁴ JANAK RAJ JAI, *Bail Law and Procedures*, Universal Law publishing Co.Pvt.Ltd, at p.1 2012

century, physical torture was legally and officially admitted as a method of interrogation in many countries. It was only after the second world war that torture just like other modes of human rights violation, figured prominently and became a matter of international concern. The prohibition of torture and other inhuman or degrading treatments has been advocated since the adoption of the Universal Declaration of Human Rights 1948. But it was only in 1984 that United Nations General Assembly for the first time adopted the convention against torture. But still under the convention certain brutal physical

punishments i.e. public whipping, execution by launching or amputation or limbs are practiced and this loophole is left to go on. **Custodial torture has become a systematic and a state-controlled phenomenon.**

In recent years, many people have been sexually abused and tortured by overzealous law enforcement officials, including in cases of custodial death. Their desperate drive for evidence has led them to adopt cruel, barbaric, and outdated methods to influence decisions in their favour. A number of people have been arrested on unrecorded occasions when warrants were improperly obtained. Detained people have since been tortured to obtain confessions, gather information, and retrieve lost property, and for obtain information for additional investigations. Tragically, few of these detainees have passed away due to the extreme torture they endured. The police typically try to dispose of bodies that die while in custody or fabricate stories to make it appear as if the death happened after the person was released⁴. Torture during incarceration is a startlingly common occurrence in India. The Indian police have committed numerous horrifying and heinous crimes that have shocked the nation. According to the National Crime Record Bureau (NCRB) 2021 statistics, India recorded 88 deaths in custody, a startling 53% increase from 2020.

1.1 STATEMENT OF RESEARCH PROBLEM

Custodial torture continues to be a deeply entrenched issue in the Indian penal justice system, despite constitutional guarantees and legislative safeguards meant to protect the rights of individuals in custody. Incidents of custodial violence including beatings, sexual abuse, and deaths have repeatedly come to light through media reports, National Human Rights Commission (NHRC) records, and civil society investigations.

This research study identifies some of significant gaps in judiciary's role and Indian penal system in tracking and curbing custodial torture in India which are as follows: -

1. **Persistent Incidence of Custodial Torture:** - Despite constitutional and legal safeguards, custodial violence including physical abuse, sexual assault, and deaths continues to occur frequently in India.
2. **Lack of Accountability:** - Very few law enforcement personnel are prosecuted or convicted for custodial violence, indicating a systemic failure in ensuring justice.
3. **Judicial Intervention vs. Ground Reality:** - Although the judiciary has issued guidelines and delivered landmark judgments (e.g., *D.K. Basu, Nilabati Behera*), there remains a significant gap between these directives and their actual implementation by the police and state authorities.
4. **Absence of Comprehensive Legislation:** - India has not enacted a stand-alone anti-torture law and has failed to ratify the UN Convention Against Torture (UNCAT), leaving the legal framework inadequate.
5. **Weak Enforcement Mechanisms:** - Existing oversight bodies like the NHRC often lack enforcement powers, and investigations into custodial torture are rarely independent or timely.
6. **Need for Structural Reforms:** - The problem underscores the need to evaluate and strengthen the judiciary's role not just in punishing offenders, but in pushing for systemic and institutional reforms.

1.2 OBJECTIVE OF RESEARCH STUDY

The primary objective of this research is to critically examine the role of the Indian judiciary in addressing and curbing custodial torture within the penal justice system. In this background, the present study examines the following research objectives specifically:

- To explore how constitutional provisions and legal safeguards particularly those enshrined under

Articles 20, 21, and 22 of the Indian Constitution, the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhinyam (BSA), 2023 are interpreted and enforced by the judiciary in cases involving custodial violence.

- To analyse key judicial interventions and landmark judgments, such as *D.K. Basu v. State of West Bengal and Nilabati Behera v. State of Orissa*, which have set significant legal precedents in matters of custodial torture and state responsibility.
- The research also intends to evaluate the implementation of judicial guidelines issued in these cases, and whether they have resulted in tangible changes in law enforcement practices.
- To identify the challenges and limitations faced by the judiciary in ensuring justice for victims of custodial violence. These include institutional constraints, lack of independent investigative mechanisms, procedural delays, and limited enforcement of judicial orders.
- To propose meaningful legal and institutional reforms to strengthen the judiciary's role in preventing custodial torture and penalising such incidents. This includes advocating for the enactment of a comprehensive anti-torture law, enhancing the independence of oversight bodies, and ensuring strict compliance with judicial mandates by the executive and police authorities.

1.3 HYPOTHESIS FORMULATED

The research is based on the hypothesis that while the Indian judiciary has played a significant role in addressing custodial torture through landmark judgments and constitutional interpretation, its effectiveness remains limited due to inadequate implementation, lack of structural reforms, and insufficient support from procedural and evidentiary laws even under the newly enacted Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhinyam (BSA).

It is further hypothesized that the recent criminal law reforms, despite claims of modernization and victim-centric justice, do not provide a substantially stronger legal framework to prevent, monitor, or penalize custodial torture, and that judicial efforts alone are insufficient without legislative backing and executive accountability.

Therefore, the study proposes that a comprehensive approach involving proactive judicial monitoring, robust legislative safeguards, independent investigative mechanisms, and effective implementation is essential to eliminate custodial torture in India.

1.4 SIGNIFICANCE OF THE RESEARCH STUDY

This research holds considerable significance in the contemporary legal and human rights discourse in India. Custodial torture is not merely a violation of individual rights but a reflection of deep-seated structural deficiencies in the criminal justice system. While the judiciary has historically served as the guardian of fundamental rights, its role in addressing custodial violence has largely been reactive and remedial. This study is significant because it seeks to examine whether judicial intervention alone is sufficient to combat custodial torture, or whether its effectiveness is compromised by inadequate enforcement, lack of political will, and weak institutional mechanisms.

The importance of this research is further elevated in the context of the recently introduced criminal law codes the **Bharatiya Nyaya Sanhita (BNS)**, **Bharatiya Nagarik Suraksha Sanhita (BNSS)**, and **Bharatiya Sakshya Adhinyam (BSA)** which have replaced colonial-era statutes and promise a more citizen-centric justice system. This study critically evaluates whether these reforms have made meaningful improvements in procedural protections against custodial abuse, such as enhanced safeguards during arrest, interrogation, and detention, and whether the judiciary has been equipped with

stronger legal tools to address violations under this new framework.

It also seeks to expose the continuing gap between judicial pronouncements and their on-ground implementation, particularly in the face of institutional resistance from the police and investigative authorities. By identifying gaps in the legal system and proposing reforms, the research aspires to strengthen the judiciary's capacity to prevent custodial torture and promote a more accountable and humane justice delivery system in India.

1.5 SCOPE AND LIMITATION OF THE STUDY

This research is limited to examining the role of the Indian judiciary in identifying, addressing, and preventing custodial torture within the Indian penal justice system. It covers the constitutional framework, statutory provisions, and landmark judicial pronouncements that deal with the rights of individuals in custody. The study critically analyses the effectiveness of judicial interventions in cases of custodial torture and evaluates how courts have interpreted and enforced safeguards against such violations.

In light of the recent legal reforms, the scope also extends to analysing the relevant provisions under the Bharatiya Nyaya Sanhita (BNS), 2023, Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, and Bharatiya Sakshya Adhinyam (BSA), 2023. The research assesses whether these new criminal laws have enhanced procedural safeguards, accountability mechanisms, and evidentiary standards in cases involving custodial violence.

Geographically, the study focuses on the Indian legal system and does not conduct a comparative analysis with other jurisdictions. The study primarily adopts a doctrinal and analytical approach. It does not involve empirical data collection such as fieldwork, interviews with victims, police officials, or judges, which could have offered a more ground-level understanding of the issue.

1.6 METHODOLOGY ADOPTED

This research adopts a **doctrinal legal research design** as the research does not include **empirical data** or **fieldwork**, focusing on analysing the Indian legal framework concerning custodial torture. The study examines judicial interpretations, statutory provisions, and constitutional safeguards related to custodial torture, with particular emphasis on the **Bharatiya Nyaya Sanhita (BNS)**, **Bharatiya Nagarik Suraksha Sanhita (BNSS)**, and **Bharatiya Sakshya Adhinyam (BSA)**, 2023. A **qualitative approach** will be used, primarily involving critical analysis of legal texts, case law, and relevant legal reforms.

The study will rely on **primary sources** such as landmark judgments from the **Supreme Court** and **High Courts**, constitutional provisions, and statutory laws. Key cases like **D.K. Basu** and **Nilabati Behera** will be analysed to understand judicial interventions in custodial torture cases. **Secondary sources** will include scholarly books, journal articles, NHRC reports, and official government publications, which will help contextualize the findings and identify trends in the legal approach to custodial torture. However, it aims to provide a deep, theoretical understanding of the legal landscape and offer insights into potential reforms to strengthen protections against custodial torture in India.

CHAPTER – 2

CONCEPTUAL FRAMEWORK OF CUSTODIAL TORTURE

2.1 MEANING OF TORTURE

Torture is the act of deliberately inflicting severe physical or psychological pain and suffering on someone, often to punish, extract information or a confession, intimidate, or exert control. **Torture** is one of the oldest and most deeply condemned forms of human cruelty, yet it continues to exist in various

forms around the world. At its core, torture involves the **deliberate infliction of intense physical or psychological pain** on a person, usually against their will. It is often carried out by individuals in positions of power such as government officials, law enforcement, military personnel, or criminal organizations but can also occur in interpersonal or domestic settings.

• **DEFINITIONS OF TORTURE: -**

Torture has been defined by many academics, dictionaries, and reliable sources, but no consensus has emerged. Some definitions are as follows:

“Torture is the deliberate act of causing severe physical or mental suffering to someone to exact revenge, obtain information, or sate twisted desires”.⁵

The Cambridge Dictionary of English defines torture as “an act of causing great physical pain in order to persuade someone to do something or to give information or as an act of cruelty.”

In **Oxford Dictionary** the torture means “the act of causing severe pain as punishment or to make someone do something.”⁶

⁵ Black’s Law Dictionary

⁶ Catherine Soannes; The Compact Oxford Reference Dictionary, (Vllth Edition) Oxford University Press Inc., New York (2004) at 886.

Chet Scringna of New York University defines act of Torture as “Intentional trauma deliberately conceived by vilemen to systematically cause pain and suffering to selected individuals ultimately ending with the physical and psychological collapse of the victims”.⁷

“Torture is the deliberate, systematic, or wanton infliction of physical or mental suffering by one or more people, acting alone or on the orders of any authority, to force another person to yield information, to make a confession or for any other reason.”⁸

Supreme Court of India defined ‘torture’ as: - “It would clearly include any and every type of physical violence and further, it would also cover cases of psychological, mental and other forms of harassment or perversion imposed on the person in custody or under the authority of the person inflicting it.”⁹

The primary object of torture is to weaken the victim's will. The reasoning behind this claim stems from the belief that subduing the victim's will is often a primary objective, critical to achieving the other objectives. To obtain information from an enemy spy, the first step in questioning and torturing the spy is usually to violate the victim's will and violate their rights. Additionally, torture serves as an instrument of weakening the victim's resolve, unlike, for example, a form of physical punishment like flogging. It is pertinent to note that the torture is not like other forms of punishment, which usually involve specific, pre-established actions and have defined, restricted durations.

2.2 MEANING OF CUSTODY

In the Indian legal system, the term "**custody**" holds significant importance in the realms of criminal justice, human rights, and procedural law. It refers to the **legal control or physical detention** of an individual by law enforcement or judicial authorities. Custody can arise at

⁷ Shankar Sen, Human Rights in a developing Society, APH Publishing Corporation, New Delhi (1998) at 11

⁸ the definition of torture as adopted by the World Medical Association in its Tokyo Declaration of 1975.

⁹ Collection of Malabar v Erimal Ebrahim Hajee, AIR 1957 SC 688 at 691

various stages of a legal proceeding during investigation, trial, or even after conviction—and may involve different forms depending on the nature and purpose of the detention.

Though the term is not explicitly defined in the Indian Penal Code (IPC) or the Code of Criminal Procedure (CrPC), its meaning has been clarified through judicial interpretation and case law. Courts in India have consistently held that custody does not necessarily mean confinement in a jail—it can also include situations where a person is under **legal restraint or control**, even without formal arrest. There are various instances when judiciary has attempted to define the term ‘custody’. They are as follows: -

1. State of Uttar Pradesh v. Deoman Upadhyaya¹⁰ - "Custody means the keeping of an accused in the personal care and supervision of an authority, even if he is not locked up in a prison."

2. CBI v. Anupam J. Kulkarni¹¹ - "Police custody means that the police officer has physical custody of the accused, while judicial custody means that the accused is in the custody of the Magistrate and is lodged in jail."

3. Union of India v. Dharamendra Rathwa¹² - "Custody includes both actual detention and circumstances where a person is under the effective control of the investigating authorities."

• **Definition of ‘custody’ given by different authorities: -**

1. National Human Rights Commission (NHRC) – India - "Custody refers to a situation where a person is under the control, supervision, or detention of police, judicial, or other state authorities, whether in a lock-up, jail, or other detention facility."

2. Ministry of Home Affairs (MHA), Government of India - "Custody" implies detention or confinement of a person by lawful authority, whether for investigation, security, or judicial reasons.

¹⁰ AIR 1960 SC 1125

¹¹ 1992 AIR 1768

¹² 2021 SCC Online SC 232

3. Law Commission of India - "Custody refers to a situation where an individual's liberty is restrained by the state or its agents for legal or administrative purposes."¹³

No matter how an arrest is made, whether verbally or through actions, legally or illegally, formal or informal, it begins the moment that the person is placed in custody. Regardless of how or where an arrest occurs, it always has one very important consequence: it robs the arrestee of their personal freedom and places them under the authority of the arresting party. Despite their similarities, the terms "arrest" and "custody" are not the same. In some circumstances, custody may indicate arrest, but not always. While arrest is one way to take someone into custody, there are other methods available.

The Supreme Court ruled in **Gurbaksh Singh's case** that if 'custody' implies some form of control, monitoring, or absence of free will to leave, then when someone is subjected to police interrogation, they experience a greater degree of restraint than when they voluntarily approach the police to give a statement. In other words, police custody refers to placing a victim is under the police custody during any action that restricts the victim's freedom of movement.

2.3 MEANING AND TYPES OF CUSTODIAL TORTURE

• **Meaning: - Custodial torture** in the refers to the deliberate infliction of physical or mental pain and suffering by public servants, particularly law enforcement personnel, on individuals who are under arrest, detention, or judicial or police custody. While Indian law does not contain an explicit and

comprehensive statutory definition of custodial torture, related provisions in the Indian Penal Code—such as Sections 330 and 331 (causing hurt or grievous hurt to extort confession), Section 348 (wrongful confinement), and others—are used to prosecute acts associated with it. The Indian Constitution, under Article 21, guarantees the right to life and personal liberty, which has been judicially interpreted to include protection against torture and cruel, inhuman, or degrading treatment. The Supreme Court of India, through landmark judgments like *D.K. Basu v. State of West Bengal* (1997),

¹³ In Reports (e.g., 152nd Report on Custodial Crimes)

has recognized custodial torture as a gross violation of fundamental rights and laid down detailed procedural safeguards to prevent such abuse.

Types of Custodial Torture: - Custodial torture manifests in various forms, broadly categorized into **physical, mental, and psychological torture**. These methods are often used in combination to inflict pain, extract information, or break the will of individuals in custody. While each form targets different aspects of a person's well-being, they collectively result in the violation of human dignity and fundamental rights.

Physical torture is the most direct and visible form of custodial abuse. It involves inflicting bodily harm through violence or coercive methods. Common techniques include beating with sticks or belts, electric shocks, suspension by limbs, and causing burns or fractures. Victims are often subjected to extreme forms of violence like falanga (beating the soles of the feet), forced postures for extended hours, or denial of basic needs such as food, water, or medical care. These acts can lead to severe injuries, internal damage, permanent disabilities, or even death. Despite being easier to identify due to visible marks, many cases go unreported due to fear, intimidation, or systemic indifference.

Mental torture, on the other hand, refers to non-physical abuse that causes emotional distress, confusion, and psychological instability. It includes threats of death or harm—either to the detainee or their loved ones—verbal abuse, caste-based slurs, humiliation, sleep deprivation, or misleading the detainee about their legal situation. The objective is to create a state of fear, helplessness, and psychological pressure that compels the victim to confess or comply. Mental torture may not leave physical scars but can result in significant emotional trauma, anxiety, depression, and long-term psychological damage.

Psychological torture is a more subtle yet deeply harmful form, aimed at undermining an individual's mental stability and sense of identity over time. This includes prolonged solitary confinement, complete sensory deprivation, gaslighting, and instilling a constant fear of indefinite detention or retribution. Unlike mental torture, which often involves immediate threats or abuse, psychological torture is prolonged and manipulative in nature, gradually breaking down a person's ability to think, reason, or trust their own perception. It can result in conditions like post-traumatic stress disorder (PTSD), emotional detachment, or suicidal tendencies, making it one of the most difficult forms of torture to detect and heal.

In practice, these types of torture are often interlinked. Victims may experience physical violence while simultaneously being threatened or isolated to compound their suffering. The combined impact of these methods severely undermines the rule of law and justice system, especially when used systematically or under the pretext of investigation. Addressing all forms of torture physical, mental, and psychological is essential not only for upholding constitutional rights but also for preserving human dignity and ethical

law enforcement practices.

2.4 CAUSATIVE FACTOR FOR CUSTODIAL TORTURE

The reasons of custodial torture include administrative, psychological, and structural ones. The torture by police has been linked to many factors, including: inadequate training; ignorance of human rights; inadequate judicial oversight; inadequate supervision mechanisms; understaffing and heavy workloads among law enforcement personnel; lack of scientific investigation and interrogation methods; insufficient infrastructure in police stations; heavy workloads among police personnel; and delays in the criminal justice system. Some of the causative factors are as follows: -

2.4.1 Police Sub- culture - The prevailing police subculture during the pre-independence era persisted even after India gained independence. The police served as an assertive instrument during the "British Raj" to create a master-servant relationship between the ruled and the governed. Through the police, the executive was able to subdue, suppress, and inflict suffering to the persons as an instrument of oppression.

Since 1861, the Police Act has remained largely unchanged, with little effort from governments to redefine the roles and duties of police forces. This resulted in the continuation of the police subculture from the British era. In this culture, both the authorities and the public allow and tolerate torture. Despite the fact that Article 2 of the Law Enforcement Officers Code of Conduct, for promotes preservation of human rights, it is still unfortunate that the Indian Police do not acknowledge themselves as an integrated civilian force. As far as structure, organisation, and functioning are concerned, the Indian Police still preserve a fundamentally colonial character.

2.2.2 Social causes - People's perceptions of police during times of crisis are shaped by their interactions with them; in India, they are compared to Dracula, frightening and intimidating. A correlation between the severity of force used by law enforcement and their social distancing from the public. The degree of cruelty, exploitation, and torture permeating society as a whole is one theory that keeps cropping up time and time again when explaining the cause for police officers' violent behaviour. Furthermore, the public acclaim that "we receive the police we deserve" when it comes to justifying police brutality.

After the '**Bhagalpur Blindings**' incident, in which police officers poured acid into prisoners' eyes, people in the area showed their support for the police officers. In order to show their support, they even planned a march. In a survey of 863 people and 280 opinion leaders in Bombay, Calcutta, Madras, Gwalior, Patna, and Bhagalpur, the "Illustrated Weekly of India" discovered that more than two-thirds of the general sample and 60% of the opinion leaders in Bhagalpur agreed that blinding were appropriate. Furthermore, 73% of respondents from outside Bihar stated that they would have accepted it if the police had beaten the people physically rather than blinding them¹⁴.

Even progressive members of society expect police to take "tough action" when anti-social elements avoid conviction and get away with it due to the broken criminal justice system.¹⁵

2.2.3 Performance pressure - Police officers are constantly under pressure to produce results. Their positions of vulnerability mean that issues could potentially come from either side. In absence of good evidence and enough information, they might be charged. If, however, they employ harsh questioning techniques, also known as "third-degree methods," police officers

¹⁴ R.K. Ray, "Custodial Crime Causes and Remedies" – a paper published in CBI Bulletin 17-20 (July,1996).

¹⁵ Sankar Sen, “Custodial Crimes”, An article in SVP NPA-Journal, 8-12 (January-June, 1994).

will be accused of brutality. He stressed that police officers play a challenging role and sometimes must exercise more authority than is permitted to do their jobs, according to Sutherland. While they are responsible for maintaining law and order and capturing alleged criminals, the power they are given may not be sufficient. When dealing with specific suspects or offenders, they risk serious public backlash if they overreach. If they are dealing with people who are comparatively defenceless and possess little political power, they may feel comfortable going beyond what is required by law.

2.4.4 Economic Causes - Since police work is so demanding, the average policeman feels that the pay he receives is not commensurate with that of other professions, such as business, corporations, banking, insurance, and railways. Therefore, he may turn to illegal means of satisfying his desires while ignoring the respect he accords everyone around him. Additionally, bribery encourages police officers to file more cases and bargain for financial benefits, like avoiding torturing victims or releasing them without a charge.

A large number of the excesses are also attributable to poor working conditions in the police force's lower ranks. Despite recommendations from the National Police Commission, the Central and State Governments routinely ignore police reform recommendations. Because of low pay, limited advancement opportunities, poor training, and pressure to achieve high conviction rates, the police force experiences a great deal of frustration, discontent, and helplessness.

A police officer claimed “We are the lowest paid among the Government employees, misused by politicians and officials alike, run around for twenty-four hours and finally earn not two square meals but a bad name from the public.”

2.4.5 Lack of Judicial Vigilance - In India, there is no quick fix when the right to life or freedom from torture is violated. There has not been a prompt, thorough investigation into the majority of police deaths that occur in custody. Despite the legal requirement for magistrates to investigate death claims while a person is in custody, the lack of it in many cases is significant and a matter of deep concern.

If police are fails to conclude the investigation in a day, they may request that the magistrate remand the accused person under Section 57 of Code of Criminal Procedure 1973. Magistrates, including the Chief Judicial Magistrates, have been observed to be acting extremely carelessly in handling the situation, despite having the authority to issue such orders if they believe there are reasonable grounds for arresting him.¹⁶

In the **State of Gujarat v. Swami Amar Jyoti Shyam case**, the Gujarat High Court emphasised the general rule that an arrested person must appear before a magistrate within 24 hours of their arrest. This protocol gives the magistrate the ability to oversee police investigations in order to protect the rights and dignity of the person in custody. Despite this, there are several instances where this practice is not adhered to consistently.

2.4.6 Political Interference - It is difficult for the police to maintain objectivity and ensure that everyone is treated equally under the law due to the overabundance of political participation in law enforcement. Because of this meddling, improper methods like extrajudicial executions and torture have been employed. Police officers frequently come to the realisation that they have no control over the prevailing culture in their environment. Since the police are an independent body subject to the law, previous ruling parties have viewed them as an extension of their own power. Political interference by lawmakers and party members has undermined the credibility of law enforcement by establishing a link

between political influence and police authority.

2.4 OBJECTIVE BEHIND INFLICTION OF CUSTODIAL TORTURE

1. **To Extract Confessions** - One of the most common objectives behind custodial torture is to **force a confession** from the accused. When law enforcement lacks sufficient evidence to prove a case in court, they may resort to physical or psychological coercion to obtain a statement that implicates the suspect. This is a direct violation of **Article 20(3) of the Indian Constitution**, which protects individuals from self-incrimination. Despite its illegality, confessions obtained under torture are sometimes used to build cases, although courts often reject such confessions if proven to be coerced.

¹⁶ In Re Nagendra Nath Chakaravarti v Unknown, ILR 51 Cal.402 at 412

2. **To Obtain Information** - Custodial torture is often used by police or security agencies to **extract information**, such as the whereabouts of co-accused, stolen property, weapons, or future plans of criminal activity. This is particularly common in terrorism, drug trafficking, or organized crime cases. However, this method violates the principle of due process and can lead to false information being provided just to avoid further pain, thereby weakening the investigation.
3. **To Punish the Accused** - In some cases, officials may use torture as a form of **extrajudicial punishment**, believing the accused "deserves" to be punished even before a trial. This is often driven by anger, frustration, or moral judgment by the police officers. Such actions completely bypass the legal process and are a serious violation of the accused's **right to a fair trial**. It reflects a misuse of authority where law enforcement assumes the role of judge and executioner.
4. **To Intimidate or Threaten** - Torture is sometimes used as a tool of **intimidation**, either directed at the individual in custody or as a warning to the larger community. Police may torture an accused to deter them from resisting, challenging authority, or filing complaints. It can also serve as a threat to others who may be watching, especially in cases involving political protests, communal unrest, or marginalized groups.
5. **To Coerce Compliance** - When a detainee resists cooperation or refuses to obey certain instructions, torture may be used to **break their will**. This coercive method is employed to compel individuals to behave in a particular manner, whether it is signing documents, giving statements, or implicating others. This violates multiple legal protections and often results in the abuse of innocent individuals who may not fully understand their rights.
6. **To Settle Personal or Political Scores** - There are instances where custodial torture is used to **settle personal grudges** or act on political motivations. A police officer may torture someone based on caste, religion, community bias, or under political pressure to target dissenters. This is especially dangerous as it reflects a **corruption of state power** and undermines justice by turning law enforcement into a tool of oppression rather than protection.
7. **To Show Quick Results or Close Cases** - In high-profile or time-sensitive cases, there is often **pressure on police** from superiors, media, or political leadership to deliver quick results. In response, law enforcement may resort to custodial torture to extract confessions or create a narrative that allows them to close the case rapidly. This leads to **wrongful convictions**, delays in justice, and further victimizes the accused, often without proper investigation.
8. **To Assert Power and Control** - Custodial torture can also stem from the **need to dominate and**

control. Some police personnel use violence in custody to reinforce their authority, especially over marginalized, poor, or socially disadvantaged groups. It becomes a tool to maintain hierarchical power structures and instill fear, thereby ensuring that detainees remain submissive. This mindset fosters a culture of brutality and normalizes human rights violations within the system.

CHAPTER: - 3

CONSTITUTIONAL FRAMEWORK REVOLVING AROUND CUSTODIAL TORTURE

3.1 CONSTITUTIONAL PROVISIONS AGAINST CUSTODIAL TORTURE

The Constitution of India does not explicitly use the term "custodial torture," but it provides several strong safeguards that protect individuals from arbitrary arrest, inhuman treatment, and abuse of power by state authorities. Among the most important constitutional protections in this context are **Articles 20, 21, and 22**, which collectively ensure that the rights of arrested or detained individuals are not violated through coercion, torture, or illegal confinement.

3.1.2 Article 20 - Protection in respect of conviction for offences: -

Article 20 of the Indian Constitution guarantees protection against **conviction and double jeopardy**, but it also provides protection against **self-incrimination** and **arbitrary arrest and detention**. **Article 20** is the first direct constitutional shield against abuse of power in the criminal justice system. It includes three key clauses: Article 20(1) protects individuals from retrospective criminal legislation, ensuring that no person can be punished for an act that was not a crime at the time it was committed. Article 20(2) offers protection from double jeopardy, meaning a person cannot be prosecuted and punished for the same offence more than once. Most significantly in the context of custodial torture, **Article 20(3) guarantees that no accused person shall be compelled to be a witness against themselves**. This clause directly safeguards against forced confessions extracted through torture, coercion, or threats during police interrogation. The judiciary has interpreted this protection to include any form of pressure that infringes on the voluntary nature of an accused's testimony.

Custodial torture, which often takes place in the custody of police or judicial authorities, violates this provision. While the Indian Constitution does not specifically mention custodial torture, several landmark judgments have interpreted its various provisions to prohibit such torture, relying on the broader interpretation of Article 20. Some of them are as follows: -

1. **Selvi v. State of Karnataka¹⁷**: - in this case The Supreme Court dealt with the issue of forced confessions and police torture to extract information. The Court ruled that **"no confession obtained through torture or duress can be admitted as evidence."** The Court also emphasized that scientific methods like narco-analysis, polygraph tests, and brain mapping are impermissible if they involve coercion or violate the rights of the individual.
2. **Nandini Satpathy v. P.L. Dani¹⁸**: - The case held that **coercive interrogations** are against constitutional values and the **right against self-incrimination** under **Article 20(3)** must be respected. The police and authorities must adhere to strict procedures to avoid torture and mistreatment, including timely production of detainees before a magistrate and informing their families.

3.1.2 Article 21 – Protection of life and personal liberty: -

Article 21 of the Constitution provides the most comprehensive protection against custodial torture. It states that "no person shall be deprived of his life or personal liberty except according to procedure established by law." Over time, the Supreme Court has expansively interpreted this Article to mean that

the procedure must be fair, just, and reasonable not arbitrary or oppressive. In landmark judgments such as *Maneka Gandhi v. Union of India* (1978), the Court established that the right to life includes the right to live with dignity, and in *D.K. Basu*

v. State of West Bengal (1997), it explicitly stated that custodial torture is a gross violation of Article 21. The Court further issued comprehensive guidelines to prevent custodial violence, including mandatory procedures for arrest, medical examinations of detainees, and maintaining arrest records. Additionally, in *Nilabati Behera v. State of Orissa* (1993), the Court held that victims of custodial violence are entitled to compensation from the state, reinforcing the constitutional obligation to protect individuals from state-inflicted harm. Other cases dealing with custodial torture under Article 21 are as follows: -

1. D.K. Basu v. State of West Bengal¹⁹: - This landmark case is one of the most significant judgments related to custodial torture and death in police custody. The

¹⁷ (2010) 7 SCC 263

¹⁸ (1978) 2 SCC 424

¹⁹ (1997) 1 SCC 416

Supreme Court ruled that custodial torture is unconstitutional under the right to life and personal liberty under **Article 21** of the Constitution. The Court issued guidelines to prevent custodial torture. The ruling emphasized that "**custodial torture**" is a violation of **Article 21** and that the authorities must follow strict protocols during arrests and detentions to ensure the safety and dignity of detainees.

2. K.K. Verma v. Union of India²⁰: - This case dealt with the treatment of a detainee during police custody. The Supreme Court held that torture in police custody, including physical abuse, mental harassment, or denial of rights, amounts to a violation of **Article**

21. The Court emphasized that police authorities must not inflict physical or psychological harm on detainees under any circumstance. The case reaffirmed the constitutional protections against **custodial torture**, asserting that all police personnel are duty-bound to uphold the **fundamental rights** of individuals in their custody.

3. Prithipal Singh v. State of Haryana²¹: - The Supreme Court held that **custodial torture and illegal detention** are serious violations of the right to life and liberty under **Article 21**. The Court noted that any police officer involved in the use of torture should be held accountable and may be penalized. Furthermore, the victim's dignity should be respected, and any action that degrades a person's human dignity would amount to a violation of the Constitution. This case reinforced the protection against **inhuman and degrading treatment**, stating that **Article 21** protects every individual from such acts by the police.

4. State of Andhra Pradesh v. Challa Ramkrishna Reddy²²: - In this case, the Court emphasized that a person should not be subjected to physical violence or torture during interrogation. It was made clear that any action of torture is unconstitutional and violative of **Article 21**, which guarantees **right to life and personal liberty**. The police should strictly adhere to legal guidelines and human rights. The case reiterated that **custodial violence** undermines the **rule of law** and the **human dignity** of individuals, and any such actions would be subject to legal action.

5. Raghbir Singh v. State of Haryana²³: - This case examined the rights of detainees during custodial interrogation. The Supreme Court held that the **right against torture and ill-treatment** is part of the **fundamental right to personal liberty** under Article

²⁰ (1991) 1 SCC 452

²¹ (2010) 12 SCC 366

²² (2000) 5 SCC 712

²³ (1980) 3 SCC 70

21, and any police officer found guilty of using torture or violence against a detainee should be held liable for violating this fundamental right.

3.1.3 Article 22 - Protection against arrest and detention in certain cases: -

Article 22 provides procedural safeguards for individuals who are arrested or detained. It ensures that a person taken into custody must be informed of the reasons for their arrest and given the right to consult a lawyer of their choice. Moreover, the arrested person must be presented before a magistrate within 24 hours, failing which the detention becomes illegal. These provisions are crucial because most custodial torture occurs during illegal detention or prolonged police custody without judicial oversight. However, Article 22(3) makes an exception in cases of preventive detention, allowing for a person to be held without the standard safeguards, which has drawn criticism for enabling potential misuse and human rights violations.

Though Article 22 provides for the procedural safeguard the Supreme Court on several instances have interpreted it to extend its scope to custodial torture. Some of the landmark cases are as follows: -

1. Kehar Singh v. Union of India²⁴: - In this case, the **Court emphasized the importance of procedural safeguards under Article 22**, including the right to consult a legal practitioner and the need for a **reasonable explanation** for arrest or detention. If the procedural safeguards are not followed, **custodial torture** and illegal detention could occur.

2. Hussainara Khatoon v. Home Secretary, State of Bihar²⁵: - In this case, the Supreme Court addressed the **issue of illegal detention** and the right to be informed of reasons for detention under **Article 22**. The Court ruled that **detention without trial for extended periods** and failure to provide information about the reasons for detention violate the **right to life** under **Article 21** and the **right to protection from arbitrary arrest and detention** under **Article 22**. The Court recognized that such actions could lead to situations of **custodial torture**.

²⁴ (1989) 1 SCC 204

²⁵ (1979) 3 SCC 789

3. Prem Shankar Shukla v. Delhi Administration²⁶: - In this case, the Supreme Court held that the **use of handcuffs** or any other form of **physical restraint** on a person who is arrested and detained should not be arbitrary. The Court emphasized that the use of such restraints could amount to **inhuman treatment**, violating **Article 21** and **Article**

22. Any **custodial torture** or **unnecessary use of force** during detention is unconstitutional.

3.1.4. Other Provisions of Constitution: -

Another important aspect of the constitutional framework against custodial torture lies in the **right to legal remedies**. **Article 32** of the Constitution is referred to as the “heart and soul” of the Constitution by Dr. B.R. Ambedkar because it empowers individuals to directly approach the **Supreme Court** for the enforcement of fundamental rights. Similarly, **Article 226** provides the **High Courts** with the power to

issue writs for the protection of rights, including *habeas corpus*, *mandamus*, *prohibition*, *certiorari*, and *quo warranto*. The **writ of habeas corpus** is particularly vital in cases of custodial violence or illegal detention, as it compels the authorities to produce the detainee before the court and justify the legality of the detention. Over the years, Indian courts have used these constitutional powers to intervene in cases of torture, wrongful confinement, and police brutality, thereby reinforcing judicial oversight over law enforcement agencies.

In addition to the enforceable fundamental rights, the **Directive Principles of State Policy (DPSPs)** though not justiciable in courts guide the State in promoting justice and welfare. **Article 39A**, which mandates equal justice and free legal aid, plays a crucial role in protecting the rights of underprivileged or vulnerable individuals who are often the primary victims of custodial torture. The availability of legal aid can help prevent abuse during detention by ensuring that detainees are aware of their rights and have access to representation. Similarly, **Article 41** promotes the right to public assistance in cases of disablement and undeserved want, which can be invoked in the aftermath of custodial violence for rehabilitation and support.

²⁶ (1980) 3 SCC 526

It is also important to highlight that despite the constitutional protections, the **lack of specific legislation criminalizing torture** continues to weaken the enforceability of these rights. India has signed but not ratified the **United Nations Convention Against Torture (UNCAT)**. The absence of a standalone anti-torture law, such as the lapsed **Prevention of Torture Bill, 2010**, means that constitutional protections must rely heavily on judicial activism for enforcement. This creates gaps in accountability, as many instances of torture go unpunished due to weak institutional mechanisms, lack of forensic support, and fear of reprisal among victims.

The Indian Constitution provides a **strong moral and legal foundation** to combat custodial torture through a combination of fundamental rights, procedural safeguards, and judicial oversight. However, the effectiveness of these provisions largely depends on their **interpretation by courts** and the **willingness of state institutions to enforce them**. While Articles 20, 21, and 22 form the core legal protections, the supplementary provisions like Articles 32, 226, and 39A, have significantly advanced the cause of human rights in custodial settings. Nonetheless, the constitutional vision of dignity, liberty, and justice remains incomplete without a comprehensive legal framework explicitly criminalizing custodial torture and ensuring preventive, punitive, and remedial measures.

CHAPTER: - 4

STATUTORY PROTECTIONS AGAINST CUSTODIAL TORTURE

4.1 BHARATIYA NYAYA SANHITA 2023: -

The Bharatiya Nyaya Sanhita, 2023 (BNS) is India's newly enacted criminal law code that aims to modernize and replace the Indian Penal Code (IPC), 1860, along with other related laws. The BNS seeks to address the evolving needs of India's legal system by incorporating contemporary reforms while retaining the foundational principles of justice, fairness, and human rights. It is a comprehensive legal framework that defines criminal offenses, penalties, and procedures, and it also aligns with the constitutional vision of promoting justice, equity, and the rule of law. The BNS focuses on victim rights, accountability of law enforcement, and protection of personal freedoms, marking a significant step

towards achieving a more responsive and efficient criminal justice system in India. This new legislation aims to strengthen the legal process, improve criminal investigation, enhance punishments for various offenses, and ensure fairness and transparency in trials. As India continues to evolve socially and politically, the BNS represents a bold attempt to reform and update the criminal justice system to better serve the needs of modern India.

- **Provisions of BNS in reference to Custodial Torture: -**

1. Section 120 of the Bharatiya Nyaya Sanhita (BNS), 2023, is a critical legal provision aimed at addressing acts of violence, particularly in custodial settings, where individuals are subjected to harm to extort confessions or achieve other coercive objectives. It consolidates and modernizes the principles previously outlined in Sections 330 and 331 of the Indian Penal Code (IPC), focusing on two distinct offenses: **voluntarily causing hurt and voluntarily causing grievous hurt**.

In the context of custodial torture, this section is highly relevant as it directly targets the misuse of authority by officials, such as police or public servants, who inflict physical harm on detainees to extract information, confessions, or compel actions like returning property. By **prescribing severe penalties up to 7 years for causing hurt and up to 10 years for grievous hurt**. Section 120 underscores India's intent to curb human rights violations in custody, aligning with constitutional protections under Article 21 (right to life and liberty).

The section is divided into two parts: -

(i) **Subsection (1)** addresses **voluntarily causing hurt to extort a confession, obtain information related to an offense, or compel the restoration of property or satisfaction of a claim**, with punishment extending to 7 years of imprisonment and a fine.

(ii) **Subsection (2)** escalates the **offense to causing grievous hurt serious injuries like fractures or permanent disfigurement for the same purposes**, carrying a **harsher penalty of up to 10 years**.

In custodial torture, these provisions apply to scenarios where law enforcement officers physically assault detainees to force confessions or reveal details about crimes. **The BNS provides explicit illustrations, such as a police officer torturing a person to admit to a crime or disclose stolen goods' locations, making it clear that such acts by authorities are punishable.** This focus on intent and outcome ensures that **Section 120 serves as a deterrent against custodial brutality**, a pervasive issue in India often linked to systemic abuse of power.

Section 120 plays a pivotal role in holding public officials accountable, reinforcing India's obligations under frameworks like the UN Convention Against Torture (though not yet ratified). It provides a legal avenue to prosecute officers who exploit their authority, addressing cases where detainees face violence to produce false confessions or comply with demands. However, its implementation faces challenges. Victims often hesitate to report custodial torture due to fear of retaliation, and gathering evidence—like medical reports or witness testimonies—can be obstructed by complicit systems. Judicial delays further complicate timely justice.

Despite its strengths, Section 120 has limitations. **It primarily addresses physical harm, leaving psychological torture such as threats or humiliation** outside its explicit scope, which is a significant gap given the varied forms of custodial abuse. Proving the specific intent to extort a confession or property can also be difficult, potentially allowing perpetrators to evade liability. Moreover, the section operates within standard criminal procedures, lacking specialized mechanisms for urgent human rights violations. India's lack of a dedicated anti-torture law further underscores reliance on provisions like Section 120, which, while robust, cannot fully address the systemic nature of custodial torture. Ongoing judicial and NHRC interventions, alongside calls for legislative reforms, highlight the need for broader measures to complement this section.

2. **Section 121** of the Bharatiya Nyaya Sanhita (BNS), 2023, addresses voluntarily causing hurt or grievous hurt to deter a public servant from discharging their duty. It prescribes **imprisonment up to seven years and a fine for causing hurt, and for grievous hurt, punishment can range from one year to ten years or life imprisonment, along with a fine**, if the act is intended to prevent a public servant from performing their lawful duties.

In the context of custodial torture Section 121 could apply if a public servant (e.g., a police officer) inflicts hurt or grievous hurt on a detainee with the specific intent to deter another public servant such as an investigating officer, magistrate, or human rights official from carrying out their duties, like inspecting custodial conditions, ensuring detainee rights, or probing allegations of torture. For example, if an officer tortures a detainee to intimidate a colleague or superior from reporting misconduct, Section 121 could be invoked due to the intent to obstruct duty.

4.2 BHARATIYA NAGRIK SURAKSHA SANHITA: -

the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which replaced the Code of Criminal Procedure, 1973, includes provisions relevant to preventing custodial torture, though it does not explicitly address "custodial torture" as a standalone offense. Below is an overview of protections against custodial torture

under the BNSS, based on its framework and related safeguards:

1. **Limits on Police Custody (Section 187):** - The BNSS retains the constitutional safeguard under Article 22 of the Indian Constitution, which prohibits detention in police custody beyond 24 hours without magisterial approval. Section 187(2) allows police custody for up to 15 days, but only with magisterial authorization and not necessarily continuous. This custody can be spread over the initial 40 or 60 days of detention, depending on the offense's severity (90 days for offenses punishable by death, life imprisonment, or 10+ years; 60 days for others). Magistrates must scrutinize requests for custody extensions to ensure investigations justify detention, acting as a check against prolonged arbitrary detention that could lead to torture.
2. **Judicial Oversight and Inquiry into Custodial Deaths:** - Section 196 of the BNSS (equivalent to Section 176 of CrPC) mandates a magisterial inquiry in cases of custodial death or disappearance during custody. This inquiry is conducted by a Judicial Magistrate, ensuring independence from police influence, as reinforced by judicial precedent (e.g., *People's Union for Civil Liberties v. State of Maharashtra*). This provision aims to hold authorities accountable and deter custodial violence by ensuring investigations into suspicious deaths.
3. **Safeguards During Arrest and Interrogation:** - The BNSS incorporates Supreme Court guidelines from *D.K. Basu v. State of West Bengal* (1996), which mandate:
 - Informing the arrested person of their rights and grounds for arrest.
 - Preparing a memo of arrest with witnesses.
 - Allowing access to legal counsel.
 - Conducting medical examinations to document injuries, which can serve as evidence of torture if present.

These procedural safeguards aim to reduce the risk of torture by ensuring transparency and accountability during arrests and custody.

4. **Forensic Investigation Requirements:** - For offenses punishable by seven years or more, the BNSS mandates forensic investigation, including expert visits to crime scenes to collect evidence (Section 176). While primarily for evidence collection, this can indirectly deter custodial torture by emphasizing scientific methods over coercive confessions.
5. **Electronic Recording of Proceedings:** - The BNSS allows trials, inquiries, and proceedings to be conducted electronically, including the production of digital evidence. This transparency in documentation can discourage custodial misconduct by making it harder to conceal torture.

4.3 BHARATIYA SASKHYA ADHINIYAM: -

The BSA governs the admissibility and evaluation of evidence in criminal proceedings, and while it does not directly address custodial torture as a specific offense, several provisions are pertinent in the context of investigating, proving, or addressing custodial torture. Below is an explanation of the relevant provisions in the BSA and their application to custodial torture:

1. **Section 22: Confessions Caused by Inducement, Threat, or Promise:** - A confession made by an accused person is irrelevant (inadmissible) in a criminal proceeding if it is caused by inducement, threat, or promise from a person in authority (e.g., police) and relates to the charge, giving the accused grounds to believe that compliance would benefit them or avoid harm. Exceptions apply if the confession is made after the inducement ceases or in judicial custody before a magistrate. Custodial torture often aims to extract confessions through physical or psychological coercion. Section 22 renders such confessions inadmissible, protecting detainees from torture-driven evidence.

For example, if a suspect is beaten or threatened in police custody to confess, the confession cannot be used in court, discouraging police from using torture as a tool.

2. **Section 23: Confessions to Police Officer:** - Confessions made to a police officer are generally inadmissible, except for specific parts leading to the discovery of a fact (e.g., recovery of evidence under Section 25). Confessions recorded by a magistrate after proper procedure are admissible. This provision limits the incentive for police to use torture to extract confessions, as such statements are not admissible unless independently corroborated by facts discovered. It encourages proper procedure, such as recording confessions before a magistrate, reducing the risk of custodial abuse during interrogations. In cases of alleged torture, courts can scrutinize whether a confession was genuinely voluntary or obtained through coercion in custody.
3. **Section 165: Medical Evidence and Expert Testimony:** - The BSA recognizes opinions of experts, including medical professionals, as relevant evidence. Medical reports documenting injuries, cause of death, or physical condition are admissible, often supported by testimony. Medical examinations of detainees, mandated under BNSS (e.g., Section 54) and judicial guidelines (D.K. Basu), can document signs of torture (e.g., bruises, fractures, or psychological trauma). In custodial death or torture cases, forensic reports under Section 165 can prove abuse, as seen in magisterial inquiries under BNSS Section 196. For example, a medical report showing injuries inconsistent with police claims (e.g., “death by suicide”) can lead to prosecution under BNS provisions like Section 117 (grievous hurt) or 119 (hurt to extort confessions).
4. **Section 53: Electronic Evidence:** - Electronic records, including CCTV footage, audio recordings, or digital logs, are admissible if authenticated and meet integrity requirements. Many police stations are now required to have CCTV cameras (per Supreme Court directives). Footage capturing custodial interactions can serve as evidence of torture or exonerate officers. For example, video evidence showing physical abuse or coercion during interrogation can be used to prosecute under BNS provisions and support claims of custodial torture.

CHAPTER: - 5 JUDICIAL INTERVENTION ON MATTER OF CUSTODIAL TORTURE

5.1 D.K. BASU V. STATE OF WEST BENGAL: -

The **D.K. Basu v. State of West Bengal** (1997) case is a landmark judgment by the Supreme Court of India that addressed the widespread issue of custodial violence and human rights violations in police custody. In this case, the Court recognized the need to safeguard individuals against unlawful arrest, torture, and inhuman treatment by the police. The petitioner, D.K. Basu, filed a writ petition to highlight the rampant abuse of power by law enforcement agencies and the violation of fundamental rights guaranteed under the Indian Constitution. In response, the Supreme Court issued a series of comprehensive guidelines aimed at protecting the rights of arrested individuals, emphasizing the importance of legal procedures, transparency, medical examinations, and accountability in police actions. This judgment remains a cornerstone in Indian criminal law, reinforcing the principles of justice, human dignity, and the rule of law in custodial settings.

The Supreme Court, under the leadership of Justice Kuldip Singh, laid down specific guidelines to safeguard citizens' rights and ensure that the police adhere to the legal procedure. **Guidelines provided in the DK Basu case:**

1. Notice of Arrest

- **Information to family:** The person who is arrested must be informed, at the time of the arrest, of the

reasons for the arrest and must be told about the right to consult a legal practitioner of his/her choice.

- **Notification to relatives:** The arresting officer is required to inform the person's family or a close relative of the arrest, including the place where the person is being held.
2. **Arrest Memo**
 - **Document of arrest:** The arrest and all related details must be recorded in an arrest memo. This memo should be signed by the arrested person and one witness.
 - The arrested person should be provided with a copy of the memo.
 3. **Medical Examination**
 - **Examination after arrest:** The arrested person must be medically examined by a doctor within 48 hours of being taken into custody.
 - The medical examination should be recorded and the results documented, especially to check for signs of injury or torture.
 4. **Right to be Produced Before a Magistrate**
 - **Timely production before magistrate:** The arrested person must be produced before a magistrate within 24 hours of the arrest, as per Section 57 of the Criminal Procedure Code (CrPC).
 - **Right to a lawyer:** The arrested individual has the right to consult with a lawyer of their choice at this point.
 5. **Police Custody**
 - **Duration of police custody:** The person should not be kept in police custody for more than 24 hours without being produced before a magistrate.
 - **No torture or ill-treatment:** Torture or any form of ill-treatment during police custody is strictly prohibited. The guidelines stress that custodial violence is a serious violation of human rights and should be dealt with accordingly.
 6. **Access to Legal Remedies**
 - **Right to challenge unlawful detention:** If a person is detained unlawfully, they can approach the higher courts for their release under the writ of habeas corpus.
 - **No incommunicado detention:** An arrested person cannot be held without communication with the outside world or without access to a lawyer.
 7. **Register of Arrests**
 - **Police must maintain a register:** A register of all arrests must be maintained in every police station, and the details of each arrest must be recorded, including the names of officers, date and time of arrest, and reasons for detention.
 8. **Torture and Ill-treatment Prohibited**
 - **Zero tolerance to torture:** The guidelines emphasized that torture or any form of ill-treatment during police custody or arrest is prohibited under Indian law, including Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty.
 - **Accountability:** Police officers found guilty of custodial torture or ill-treatment should be held accountable.
 9. **Compensation for Violations**
 - **Victims of custodial violence:** If any violation of these guidelines occurs, the state must provide compensation to the victim, and there must be accountability for those responsible for such violations.
 10. **Preventive Measures for Police Officers**

- **Training and awareness:** The police force should be trained to understand and respect human rights. Proper training on handling arrests and custodial procedures should be given to all officers.
- **Responsibility of senior officers:** Senior police officers are expected to ensure that their subordinates adhere to these guidelines.

Impact of the Guidelines

The **DK Basu case** significantly impacted the Indian criminal justice system. It laid down stringent requirements for police behaviour during arrest and custodial procedures and provided a mechanism for accountability. The decision acted as a strong deterrent against custodial torture and abuse, reinforcing constitutional and human rights protections.

These guidelines are still widely referenced in cases involving custodial rights and police abuses in India.

5.2 NILABATI BEHERA V. STATE OF ORRISA: -

The **Nilabati Behera v. State of Orissa** (1993) case is a pivotal judgment by the Supreme Court of India, addressing the grave issue of custodial deaths and the violation of fundamental rights guaranteed under the Constitution. In this case, Nilabati Behera sought justice for the death of her son, who had died in police custody under suspicious circumstances. The Court held the state accountable for the custodial death, emphasizing the state's responsibility to protect citizens' rights and prevent police misconduct. This landmark decision not only reinforced the constitutional guarantee of the right to life and personal liberty under **Article 21** but also laid down significant guidelines for ensuring accountability, offering compensation to victims' families, and mandating independent investigations in cases of custodial deaths. The judgment marked a critical step in strengthening the protection of human rights and ensuring justice for victims of custodial violence.

The Supreme Court laid down important guidelines for dealing with custodial deaths, wrongful arrest, and the duty of the state to protect citizens' rights. Below are the key **guidelines** from the **Nilabati Behera case**:

1. State's Liability in Custodial Death

- **Accountability of the State:** The Court held that the state is vicariously liable for the acts of its officials, especially when those acts result in violations of an individual's fundamental rights. The state must ensure that law enforcement personnel follow the law and that no person is subjected to torture, death, or inhuman treatment while in custody.
- **Compensation for Violation of Rights:** The Court emphasized that when custodial deaths occur due to negligence, torture, or unlawful acts by police officials, the state must provide compensation to the victim's family. The compensation is seen as a form of restorative justice in addition to any criminal liability.

2. Right to Life and Personal Liberty (Article 21)

- **Protection of Fundamental Rights:** The Court reaffirmed the interpretation of **Article 21** of the Indian Constitution, which guarantees the right to life and personal liberty. It highlighted that custodial violence, including torture or death, violates this fundamental right, and the state has the duty to ensure the protection of these rights.
- **Presumption of Custodial Death:** If an individual dies while in police custody, the Court shifted the burden of proof on the state to demonstrate that the death was not caused by police negligence or misconduct.

3. Remedy of Compensation in Case of Custodial Violence

- **Award of Compensation:** The Court ruled that compensation can be granted to the victim's family as a remedy for the violation of their fundamental rights, especially in cases of custodial death or custodial torture. This is a civil remedy available to victims, irrespective of criminal prosecution.
 - **Assessment of Compensation:** The amount of compensation should be determined on a case-by-case basis, taking into account the circumstances of the violation, the loss suffered by the victim's family, and the gravity of the police misconduct.
- 4. Investigation and Accountability of Police Officers**
- **Independent Investigation:** The Court directed that an independent and impartial investigation should be conducted in cases of custodial death. The investigation should be free from police influence, and the responsible officers should be held accountable.
 - **Criminal Liability of Police Officials:** Police officers found guilty of causing custodial deaths or torturing a person in custody could be subjected to criminal prosecution under the Indian Penal Code (IPC). Such actions could lead to charges of murder or grievous harm.
- 5. Prevention of Torture and Death in Custody**
- **Preventive Measures:** The Court emphasized that the police and the state must take all necessary steps to prevent custodial deaths and torture. This includes better training for police officers on the proper conduct of arrests and detentions and ensuring safeguards for detainees' rights.
 - **Role of the Courts:** The Supreme Court also highlighted that the judiciary has an important role in ensuring that the state takes adequate preventive measures and in awarding compensation to victims of custodial violence.
- 6. Judicial Oversight**
- **Court's Role in Ensuring Justice:** The Court reiterated that it has a crucial role in ensuring that human rights are protected, and violations are rectified. Courts should take cognizance of custodial deaths, whether brought to their attention through a petition or suo-motu action, and ensure that justice is served to victims' families.

Impact of the Nilabati Behera Case:

The **Nilabati Behera** case marked a significant step forward in the Indian legal system concerning **custodial violence**. By granting compensation and holding the state accountable for custodial deaths, the case reinforced the **human rights framework** within the Indian judicial system. This judgment not only highlights the **state's responsibility** in preventing custodial torture and deaths but also established the important principle of **compensation as a form of remedy** in cases where fundamental rights have been violated by state actors.

The guidelines laid down in this case continue to influence discussions on custodial rights, police accountability, and the protection of human rights within the Indian legal framework.

CHAPTER: - 6

DATA & INSTANCES RELATED TO CUSTODIAL TORTURE

6.1 DATA RELATING TO CUSTODIAL DEATH IN INDIA: -

MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI NITYANAND RAI)

As per the information provided by the National Human Rights Commission (NHRC), statement showing the year-wise and State-wise number of cases registered about custodial deaths in Police custody are given at Annexure.

Statement Showing State-wise No. of Cases Registered in respect of Custodial Deaths in Police Custody from 01.04.2018 to 31.03.2023.

S No.	State/UT Name	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023
1	ANDHRA PRADESH	5	3	3	1	5
2	ARUNACHAL PRADESH	2	0	1	0	3
3	ASSAM	5	2	1	9	11
4	BIHAR	5	5	3	18	16
5	CHHATTISGARH	3	3	3	2	1
6	GOA	0	0	0	1	2
7	GUJARAT	13	12	17	24	15
8	HARYANA	7	3	3	4	3
9	HIMACHAL PRADESH	1	4	0	0	1
10	JHARKHAND	3	2	5	5	5
11	KARNATAKA	7	4	5	8	5
12	KERALA	3	2	1	6	2
13	MADHYA PRADESH	12	14	8	8	8
14	MAHARASHTRA	11	3	13	30	23

15	MANIPUR	3	2	0	1	2
16	MEGHALAYA	0	1	2	4	0
17	MIZORAM	1	1	0	1	0
18	NAGALAND	0	0	0	2	0
19	ODISHA	4	6	4	2	3
20	PUNJAB	5	6	2	8	10
21	RAJASTHAN	8	5	3	13	4
22	SIKKIM	0	0	0	1	0
23	TAMIL NADU	11	12	2	4	7
24	TELANGANA	0	0	1	4	1
25	TRIPURA	0	1	0	1	1
26	UTTAR PRADESH	12	3	8	8	10
27	UTTARAKHAND	2	1	1	2	4
28	WEST BENGAL	5	7	8	5	15
29	ANDAMAN & NICOBAR	0	1	0	0	0
30	CHANDIGARH	0	0	0	0	0
31	DADRA & NAGAR HAVELI	0	0	0	0	0
32	DAMAN & DIU	0	0	0	0	0
33	DELHI	8	9	4	1	5
34	JAMMU & KASHMIR	0	0	2	2	2
35	LADAKH	0	0	0	0	0
36	LAKSHADWEEP	0	0	0	0	0
37	PUDUCHERRY	0	0	0	0	0
	TOTAL	136	112	100	175	164

6.2 INSTANCES OF CUSTODIAL TORTURE: -

This is a especially ironic because India does not have a case of police brutality from the US. The nation has its own inheritance of shameful acts. As per data presented by home ministry five custodial death daily.

Let's see some of the cases mentioned below: -

1. **Bhagalpur blinding incidents** from 1979 to 1980 when police blinded 31 under-trials by pouring acid into their eyes.
2. In 1982 The Bombay Police without giving a proper chance to defend or **surrender killed Manya Surve a gangster in an encounter**. The John Abraham's movie Shootout at Wadala is plotted in this case.
3. In 2009 an **unarmed youth namely Ch Sanjit Meitei was allegedly killed by the Manipur Police in Imphal's Khwairamband Market** and later the police reported to recover a pistol from Sanjit. The police also killed a pregnant lady named Thokchom Rabina Devi and held that she was killed in the crossfire.

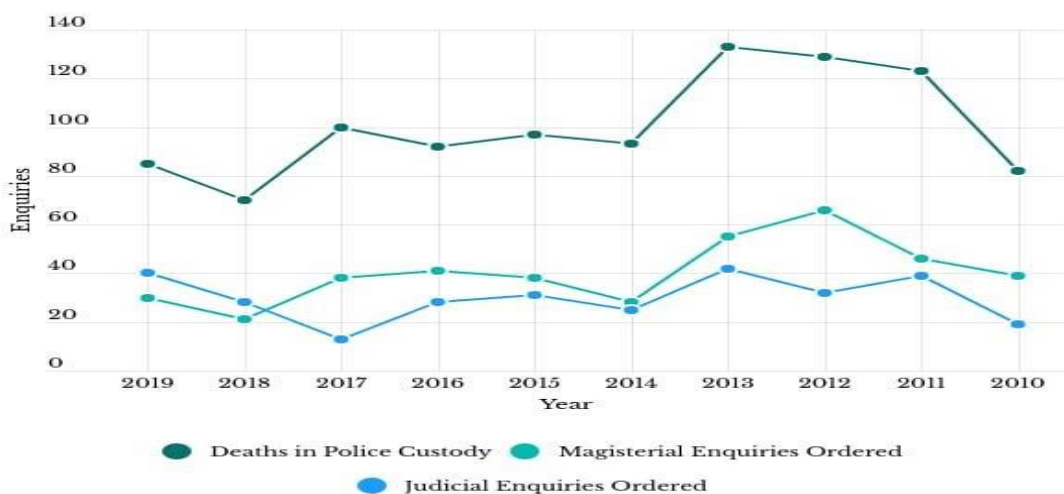
4. The **Jamia Milia Islamia University attack case** of 2019, where police attacked student protesters as well as non-protesting students at the college campus and mercilessly charged lathis on them.
5. In **June 2020 A father and son namely Jeyaraj and Benniks were brutally beaten, tortured, and sexually harassed by the police** and even the magistrate whose duty was to investigate the injuries of the duo remanded them where they died¹⁰.
6. And recently on the 15th of July 2020, the Guna incident took place where a Dalit family was brutally beaten by police.
7. In 2020 only, during the lockdown, three men were lynched in the Palghar district of Maharashtra. And if one looks into these cases deeply, no proper investigation was done in these cases by the government or by the higher police. The main reason behind this is the hoax which only immunises the police officials from any charges and hardly imposes criminal charges like imprisonment on the police for such murderous acts.

S. No.	Incidence of	Number of Cases Registered	Number of Cases Found to be False	Number of Police Personnel Chargesheeted	Number of Police Personnel Convicted
1	Fake Encounter Killings	13	6	4	0
2	Illegal Detentions or Arrests	16	2	1	0
3	Torture	1	0	0	0
4	Hurt/Injury	52	22	22	0
5	Extortion	50	18	7	0
6	Failure in Taking Action	2	0	0	0
7	Others Human Rights Violations	75	25	16	0
Total Human Rights Violation by Police	Total Human Rights Violation by Police	209	73	50	0

State/UT-wise Cases Registered against Police Personnel for Human Rights Violation during 2016⁷

6.3 NUMBER OF CUSTODIAL DEATH AND ENQUIRIES ORDERED

Enquiries Ordered for Deaths in Police Custody, Year-wise 2010-19



Source: Crime In India reports, 2010-19, National Crime Records Bureau

CHAPTER: - 7 CONCLUSION AND SUGGESTIONS

7.1 CONCLUSION

In conclusion, custodial torture remains a significant and persistent issue within many legal systems, undermining fundamental human rights and the principles of justice. Despite various legal frameworks and judicial interventions aimed at curbing such practices, instances of custodial abuse continue to occur, highlighting the inadequacy of existing safeguards and enforcement mechanisms. Landmark judgments such as the **D.K. Basu case** and **Nilabati Behera case** have been instrumental in establishing key guidelines and providing remedies for victims of custodial violence, yet the gap between law and practice remains a concern. To truly eradicate custodial torture, it is crucial for authorities to strengthen accountability, ensure transparency, and implement effective reforms within law enforcement agencies. Furthermore, there must be a continued emphasis on education and training for police officers regarding human rights, the protection of detainees, and the legal consequences of abuse. Ultimately, the fight against custodial torture requires collective effort from the judiciary, legislature, civil society, and law enforcement to uphold the sanctity of human dignity and ensure that justice is served for all.

To further eliminate custodial torture, a comprehensive approach is needed that includes not only stricter enforcement of laws but also a shift in the overall mindset of law enforcement agencies. Building a culture of respect for human rights within the police force is essential. This can be achieved through regular human rights training, monitoring, and the establishment of transparent mechanisms for reporting abuse. In addition, the use of technology, such as body cameras and digital documentation of arrests, can serve as a deterrent to potential violations and provide concrete evidence in case of abuse.

The role of the judiciary is also critical in ensuring that perpetrators of custodial torture are held accountable. Courts must continue to uphold the constitutional rights of individuals, ensuring that no one is subjected to inhuman or degrading treatment under any circumstances. Stronger laws related to custodial torture, along with a dedicated effort to protect whistleblowers and witnesses who expose misconduct, will also go a long way in fostering accountability and preventing abuse.

Finally, it is important to emphasize the role of civil society and media in monitoring custodial practices and advocating for the rights of detainees. By raising awareness, reporting violations, and pressuring authorities for reforms, civil society organizations can help maintain public scrutiny of law enforcement agencies.

In sum, while the legal and judicial frameworks have made strides toward combating custodial torture, much more needs to be done to ensure effective implementation and protection of human rights. Only with a concerted effort by all stakeholders law enforcement, the judiciary, lawmakers, and the public can we hope to eradicate custodial torture and uphold the dignity of every individual in custody.

7.2 TEST OF HYPOTHESIS

The research study has been carried with the following hypotheses and they are tested and found fully or partially affirmative.

The research is based on the hypothesis that while the Indian judiciary has played a significant role in addressing custodial torture through landmark judgments and constitutional interpretation, its effectiveness remains limited due to inadequate implementation, lack of structural reforms, and insufficient support from procedural and evidentiary laws even under the newly enacted Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhinyam (BSA).

It is further hypothesized that the recent criminal law reforms, despite claims of modernization and

victim-centric justice, do not provide a substantially stronger legal framework to prevent, monitor, or penalize custodial torture, and that judicial efforts alone are insufficient without legislative backing and executive accountability.

7.3 SUGGESTIONS

To effectively combat custodial torture and ensure that the legal and human rights of detainees are protected, the following recommendations and suggestions are offered:

- 1. Strengthening Legal Frameworks:** - Implementation of Comprehensive Anti-Torture Legislation: While India has ratified the United Nations Convention Against Torture, a specific anti-torture law is still lacking. A dedicated law criminalizing custodial torture, along with stringent punishments for offenders, should be enacted and rigorously enforced.
- 2. Sensitization to Human Dignity:** Police personnel must be sensitized to the importance of treating all individuals with respect and dignity, regardless of the nature of the offense for which they are detained. Programs should aim to reduce the inclination towards violence and emphasize non-violent interrogation techniques.
- 3. Effective Monitoring and Oversight Mechanisms:** - Establish independent, transparent bodies to monitor police custody conditions and investigate complaints of torture or mistreatment. These bodies should have the authority to conduct surprise visits to police stations, review custodial records, and interview detainees.
- 4. Accountability and Transparency:** - All police interrogations and arrests should be documented through modern technologies, such as **body cameras** or **audio-video recordings**, to ensure transparency and provide evidence in case of allegations of torture or abuse. Officers found guilty of custodial torture or deaths should face criminal prosecution, and senior officers should be held accountable for failing to prevent such abuses. This should include measures like suspension or dismissal of officers involved in custodial torture.
- 5. Judicial Interventions and Monitoring:** - Courts must continue to actively monitor custodial conditions, conduct regular inspections of detention centres, and ensure that detainees' rights are not violated. Judges should take a proactive role in ensuring that the police follow legal procedures and that victims of custodial abuse receive timely justice. In cases of custodial deaths, immediate and transparent investigations should be ordered by the judiciary to determine the cause of death and hold responsible individuals accountable.
- 6. Use of Technology for Accountability:** - The introduction of **digital surveillance systems** in police stations such as cameras in lockups and interrogation rooms can deter abuse and provide important evidence for investigations. A digital platform for reporting custodial torture, available to both the public and detainees, can facilitate easier and faster reporting of abuse, ensuring that the state takes prompt action.

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