

The State as Protector and Violator: Human Rights and Democratic Accountability in India

Dimpal Das¹, Rimjhim Saikia², Priyanka Konwar³

^{1,3}Research Scholar, Department of Political Science, Gauhati University, Assam

²Assistant Professor, Department of Political Science, Digboi College, Assam

Abstract

Human rights in a democracy are usually discussed in terms of the protections that citizens possess against arbitrary power. Yet the state occupies a more complicated position. It is responsible for securing life, liberty and equality, but it also controls the institutions most capable of restricting them. This article examines this contradiction in contemporary India. It argues that human rights violations should not be understood merely as isolated acts of official misconduct. They often emerge from institutional structures that permit excessive coercion, weak accountability, prolonged detention and exceptional legal powers. At the same time, courts, the National Human Rights Commission and constitutional remedies have produced an extensive framework for protecting rights. The difficulty lies increasingly in the distance between legal guarantees and their everyday implementation. The article argues that the democratic legitimacy of the state depends not on abandoning its responsibility to maintain security and public order, but on ensuring that coercive power remains bounded by legality, necessity, transparency and effective accountability.

Keywords: human rights, state, custodial violence, civil liberties, India

Introduction

The state occupies a contradictory position in the field of human rights. It is the institution expected to protect individuals from violence, discrimination and arbitrary treatment. At the same time, it possesses the legitimate authority to arrest, detain, investigate, punish and in exceptional situations, use force. Human rights therefore cannot be understood separately from the question of state power.

This contradiction is particularly important in India. The Constitution provides an extensive architecture of fundamental rights. Equality before law, protection against discrimination, freedom of speech, protection in criminal proceedings and the right to life and personal liberty are constitutionally guaranteed.¹ Through judicial interpretation, Article 21 has grown beyond protection against physical deprivation of life to encompass a broader conception of dignity, liberty and fair procedure.² The Supreme Court's recognition of privacy as a fundamental right in *K. S. Puttaswamy (Retd.) v. Union of India* further established that individual autonomy must be protected against unjustified state intrusion.

¹ Government of India. (1950). The Constitution of India. Legislative Department, Ministry of Law and Justice.

² *K. S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

India is also a party to the International Covenant on Civil and Political Rights, having acceded to it in 1979.³ Yet an important gap remains. India signed the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1997 but has not ratified it.⁴ Contemporary assessments also continue to raise concerns relating to civil liberties, accountability and the exercise of state power in India.⁵

The central problem, therefore, is not the absence of a language of rights. India possesses constitutional protections, statutory institutions, an independent judicial structure and a long tradition of civil liberties mobilisation. The deeper problem is the gap between the normative state—the state described in constitutional law and the coercive state encountered by individuals in police stations, prisons, conflict regions and administrative processes.

This article argues that human rights violations in India must be examined through various gaps. The issue is not simply whether individual officials occasionally break the law. It is whether institutional arrangements make violations easier to commit, harder to investigate and difficult to punish. The role of the state must consequently be evaluated at three levels: as protector, as potential violator and as the institution responsible for investigating and correcting its own violations. It is the tension among these three roles that defines the contemporary human rights question.

The Constitutional Promise and the Power of the State

The Constitution does not imagine liberty as freedom from all governmental action. A state must maintain public order, investigate crime, protect vulnerable communities and defend national security. Fundamental rights themselves permit reasonable restrictions under specified conditions.⁶ What constitutionalism demands is not a powerless state, but a state whose power is exercised through law. This distinction is important. Police actions, preventive measures or restrictions imposed during security situations are not automatically violations of human rights. The problem arises when exceptional measures become routine, when restrictions are disproportionate to the threat or when institutions that use coercion are insulated from meaningful scrutiny.

Articles 14, 19, 20, 21 and 22 together provide an important constitutional framework for controlling state power. Article 14 guarantees equality before law and equal protection of the laws. Article 19 protects several civil freedoms. Article 20 provides safeguards in relation to criminal conviction, while Article 21 protects life and personal liberty. Article 22 provides safeguards concerning arrest and detention.⁷

Judicial interpretation has significantly strengthened these guarantees. In *Maneka Gandhi v. Union of India* (1978)⁸, the Supreme Court developed Article 21 by requiring procedures affecting liberty to meet standards of fairness and reasonableness. Later decisions strengthened safeguards against custodial abuse and arbitrary arrest and expanded constitutional protection of privacy and individual autonomy.⁹ These

³ United Nations. (1966). International Covenant on Civil and Political Rights (General Assembly Resolution 2200A [XXI], 999 U.N.T.S. 171).

⁴ United Nations. (1984). Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly Resolution 39/46, 1465 U.N.T.S. 85).

⁵ Human Rights Watch. (2026). India. In World report 2026: Events of 2025.

⁶ Government of India. (1950). The Constitution of India. Legislative Department, Ministry of Law and Justice.

⁷ Government of India. (1950). The Constitution of India. Legislative Department, Ministry of Law and Justice.

⁸ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

⁹ *D. K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

protections now operate alongside the Bharatiya Nagarik Suraksha Sanhita, 2023, which provides the current statutory framework governing important aspects of arrest, detention and criminal investigation.¹⁰ Yet constitutional rights are meaningful only when individuals can actually exercise them. A person who possesses a formal right against arbitrary detention but spends a prolonged period awaiting trial experiences constitutional liberty differently from someone capable of securing immediate legal representation. Poverty, caste, social position and access to legal assistance can influence an individual's capacity to challenge coercive state action. Historical research on policing in India likewise demonstrates how state coercion has interacted with wider hierarchies of class, caste and gender.¹¹ Formal legal guarantees therefore remain only one dimension of human rights protection. Their practical value depends on the institutions through which those rights are enforced.

Custody and the Everyday Exercise of Coercive Power

Perhaps the clearest test of a democratic state's commitment to human rights is the treatment of persons in its custody. Once an individual is arrested, the balance of power changes dramatically. The person loses physical freedom while the state gains control over movement, communication and to a considerable extent, bodily security. The duty of the state consequently becomes greater rather than smaller.

The persistence of custodial deaths illustrates the seriousness of the problem. The National Human Rights Commission's 2023-24 annual report recorded 2,346 new intimations concerning deaths in judicial custody and 160 concerning deaths in police custody. It also disposed of 3,403 custodial-death cases, including cases carried forward from previous years.¹²

A subsequent Ministry of Home Affairs response in the Lok Sabha provides a revealing series for deaths in police custody registered with the NHRC. The numbers were 176 in 2021-22, 163 in 2022-23, 157 in 2023-24, 140 in 2024-25 and 170 during 2025-26 up to 15 March 2026.¹³ The same parliamentary response states that deaths in police or judicial custody are required under NHRC guidelines to be reported to the Commission within 24 hours (Ministry of Home Affairs, 2026).¹⁴

These figures should be interpreted carefully. A custodial death does not by itself prove torture or intentional killing. Deaths in custody may result from illness, suicide, violence, negligence or other causes. But precisely because the individual is under state control, every such death creates a heightened obligation of independent investigation. The burden is not merely to record a death but to establish the circumstances in which it occurred.

The Supreme Court recognised this problem decades ago. In *D. K. Basu v. State of West Bengal* (1997)¹⁵, it established safeguards regarding arrest and detention, including preparation of an arrest memo, identification of arresting officers, notification of relatives and medical examination. The judgment treated custodial violence as an assault on constitutional governance rather than merely as an instance of individual police misconduct.

¹⁰ Government of India. (2023). The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act No. 46 of 2023). India Code.

¹¹ Kumar, R. (2022). Witnessing violence, witnessing as violence: Police torture and power in twentieth-century India. *Law & Social Inquiry*, 47(3), 946–970.

¹² National Human Rights Commission. (2024). Annual report 2023–24.

¹³ Ministry of Home Affairs. (2026, March 24). Custodial deaths (Lok Sabha Unstarred Question No. 5115). Government of India.

¹⁴ Ministry of Home Affairs. (2026, March 24). Custodial deaths (Lok Sabha Unstarred Question No. 5115). Government of India.

¹⁵ *D. K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

Yet detailed rules have not eliminated abuse. Research on Indian policing suggests that torture cannot be explained solely through the idea of a few deviant officers. Kumar (2022)¹⁶, examining the longer history of policing, argues that custodial violence is tied to institutional power and to social hierarchies of class, caste and gender. Human Rights Watch (2016)¹⁷ has also documented structural problems relating to police abuse, investigation and accountability.

This distinction matters for policy. If custodial violence is treated as misconduct by a few individuals, the response will consist primarily of departmental inquiries and prosecution after particularly visible cases. If it is understood as an institutional problem, reform must address investigation methods, police incentives, forensic capacity, supervision, recruitment, training and the independence of complaints mechanisms.¹⁸

National Security and the Expansion of Exceptional Power

The conflict between liberty and security becomes sharper in areas affected by insurgency, terrorism or prolonged political violence. The state has a legitimate obligation to protect citizens against armed groups and organised violence. Human rights analysis cannot ignore this obligation. At the same time, security crises create conditions in which exceptional powers can become normalised.

The Armed Forces (Special Powers) Act (AFSPA) provides one of the most debated examples. For decades, extraordinary security legislation has shaped state-society relations in parts of Northeast India and has generated sustained debate over militarisation, citizenship and accountability.¹⁹ Ngaihte (2015)²⁰ questions the continuing necessity of extraordinary military powers under changing security conditions, while Sitlhou (2022)²¹ shows how experiences of militarisation have contributed to collective forms of victimhood and mobilisation in Manipur.

The Supreme Court's intervention in *Extra Judicial Execution Victim Families Association v. Union of India* (2016)²² was particularly significant. Responding to allegations of extrajudicial killings in Manipur, the Court rejected the proposition that lethal force becomes legally immune from scrutiny merely because an area is affected by insurgency. The decision reinforced the principle that allegations involving unlawful loss of life must remain subject to investigation and accountability. This principle goes to the heart of constitutional government that national security cannot create a geographical zone outside the rule of law. Similar questions arise in relation to anti-terror legislation, particularly the Unlawful Activities (Prevention) Act (UAPA). Section 43D(5) creates a restrictive bail framework in specified cases under the Act.²³ The Supreme Court's decision in *National Investigation Agency v. Zahoor Ahmad Shah Watali* (2019)²⁴ adopted a restrictive approach to judicial assessment at the bail stage. At the same time, *Union of India v. K. A. Najeeb* (2021)²⁵ affirmed the power of constitutional courts to protect personal liberty where prolonged incarceration and delay in trial create serious constitutional concerns.

¹⁶ Kumar, R. (2022). Witnessing violence, witnessing as violence: Police torture and power in twentieth-century India. *Law & Social Inquiry*, 47(3), 946–970.

¹⁷ Human Rights Watch. (2016). “Bound by brotherhood”: India's failure to end killings in police custody.

¹⁸ Uma, S., & Hiremath, V. (2020). Police atrocities and the quest for justice. *Economic & Political Weekly*, 55(50), 32–37.

¹⁹ Sitlhou, H. (2022). State violence and collective victimhood in a militarised state. *Sociological Bulletin*, 71(2), 255–271.

²⁰ Ngaihte, T. (2015). Armed forces in India's Northeast: A necessity review. *South Asia Research*, 35(3), 368–385.

²¹ Sitlhou, H. (2022). State violence and collective victimhood in a militarised state. *Sociological Bulletin*, 71(2), 255–271.

²² *Extra Judicial Execution Victim Families Association v. Union of India*, (2016) 14 SCC 536.

²³ Government of India. (1967). The Unlawful Activities (Prevention) Act, 1967 (Act No. 37 of 1967). India Code.

²⁴ *National Investigation Agency v. Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1.

²⁵ *Union of India v. K. A. Najeeb*, (2021) 3 SCC 713.

A democratic state faces real threats from terrorism and organised violence. The proper human rights question is therefore not whether the state may respond, but how. Security legislation must remain subject to periodic review, judicial scrutiny and proportionality. Otherwise, exceptional law risks becoming an enduring alternative to ordinary constitutional procedure.

Violations through Action and through Failure to Act

Human rights analysis often concentrates on direct state violence such as torture, unlawful detention, extrajudicial killing or censorship. But states can also fail in their human rights responsibilities through omission. When authorities fail to protect communities from predictable violence, fail to ensure adequate treatment of persons in custody or fail to investigate serious offences impartially, the state's responsibility may arise even where its officers did not directly commit the original harm. This distinction is crucial in a society structured by inequalities of caste, gender, ethnicity and economic position. The state is not merely prohibited from violating rights itself, it also carries responsibilities to establish institutions capable of protecting individuals against violence and arbitrary treatment.

The expansive interpretation of Article 21 reflects a constitutional movement away from a narrow understanding of liberty towards a conception grounded in fairness, dignity and substantive protection of the individual.²⁶ The citizen who is formally free but lacks meaningful access to protective institutions may possess rights in law without possessing the practical means of enjoying them. The objective must therefore be to build capable but accountable state institutions. Human rights protection does not require a weak state. It requires a state strong enough to protect citizens but sufficiently constrained to prevent its own institutions from exercising arbitrary power.

Why Accountability Remains Difficult

Human rights violations persist partly because the institution accused of misconduct may also be involved in producing the initial account of what happened. A custodial death may first be documented within the same police structure in which the death occurred. An alleged encounter may initially be described through reports prepared by officers participating in the operation. Victims and their families may possess fewer resources, less documentary evidence and weaker institutional access. This is why independent investigation matters.

Human Rights Watch's research on custodial deaths has identified recurring problems such as difficulties in registering cases against police personnel, deficiencies in investigation, alleged manipulation of evidence and intimidation of witnesses.²⁷ Such findings are not judicial determinations in every individual case, but they identify institutional risks that require preventive safeguards.

The Supreme Court has also recognised the importance of independent procedures in cases involving police encounters. In *People's Union for Civil Liberties v. State of Maharashtra* (2014)²⁸, the Court laid down guidelines relating to investigation and accountability in cases of deaths arising from police encounters.

Police reform is therefore inseparable from human rights protection. Improvements are needed in investigative capacity, forensic infrastructure, separation between investigation and law and order

²⁶ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

²⁷ Human Rights Watch. (2016). "Bound by brotherhood": India's failure to end killings in police custody.

²⁸ *People's Union for Civil Liberties v. State of Maharashtra*, (2014) 10 SCC 635.

functions where feasible, independent complaints mechanisms and professional working conditions. The continuing relevance of such institutional reform is also reflected in *Prakash Singh v. Union of India* (2006)²⁹, in which the Supreme Court issued important directions intended to improve police independence, professionalism and accountability. Human Rights Watch (2009)³⁰ similarly identified structural weaknesses within policing that contribute to abuse and impunity.

India already possesses a statutory human rights oversight framework through the Protection of Human Rights Act, 1993, under which the National Human Rights Commission operates.³¹ The continuing volume of complaints and custodial-death cases before the Commission, however, demonstrates that institutional oversight must be accompanied by effective implementation and accountability.³²

Equally important is accountability after violations occur. Compensation can acknowledge state responsibility but should not substitute for disciplinary or criminal proceedings where evidence warrants them. The Supreme Court's decision in *Nilabati Behera v. State of Orissa* (1993)³³ was significant in recognising public-law compensation for violation of the fundamental right to life in the context of custodial death. A system in which compensation is paid from public funds while individual responsibility remains unexamined can socialise the cost of misconduct without necessarily changing the institutional incentives that produced it.

From a Security State to a Constitutional State

Criticism of state power sometimes generates a false choice between human rights and security. Governments are told either to act decisively against disorder or to respect civil liberties, as if the two objectives were inherently incompatible. The constitutional approach rejects this binary. Security without rights can produce arbitrary power. Rights without an effective state can leave citizens vulnerable to violence by non-state actors. Democratic legitimacy requires both.

The useful principles are legality, necessity, proportionality and accountability. Every significant restriction on liberty should have a clear legal basis. The state should demonstrate why the restriction is necessary. Where several methods can achieve the same objective, the less intrusive one should ordinarily be preferred. Restrictions should remain in force no longer than required and affected individuals should possess access to review. The Supreme Court has applied similar constitutional reasoning in cases concerning privacy and restrictions on communication.³⁴

Transparency is equally important. Arrests should be properly documented, as emphasised in *D. K. Basu v. State of West Bengal* (1997).³⁵ Custodial facilities should maintain effective mechanisms for recording and reviewing incidents. Post-mortem examinations and investigations following custodial deaths should be capable of independent scrutiny. Internet suspension orders should also remain subject to legal review and requirements of proportionality.³⁶ The continued use of internet shutdowns in India shows why such safeguards remain relevant. Data concerning detention, custodial deaths and official action should be

²⁹ *Prakash Singh v. Union of India*, (2006) 8 SCC 1.

³⁰ Human Rights Watch. (2009). *Broken system: Dysfunction, abuse, and impunity in the Indian police*.

³¹ Government of India. (1994). *The Protection of Human Rights Act, 1993* (Act No. 10 of 1994). India Code.

³² National Human Rights Commission. (2024). *Annual report 2023–24*.

³³ *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746.

³⁴ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

³⁵ *D. K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

³⁶ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

published regularly. Reliable public information makes it easier for legislatures, courts, human rights institutions, researchers and citizens to evaluate whether exceptional powers remain justified.

India also needs to reconsider the continuing absence of a comprehensive domestic anti-torture framework consistent with international standards. India signed the Convention against Torture in 1997 but has not ratified it.³⁷ Research and human rights documentation concerning custodial abuse indicate why stronger preventive and accountability mechanisms remain important.³⁸ The broader objective must be institutional rather than rhetorical. Human rights cannot depend upon the goodwill of individual officials. The purpose of constitutional design is precisely to make rights survive changes in officials, governments and political circumstances.

Conclusion

The human rights question in India cannot be reduced to a simple conflict between citizens and the state. The state remains indispensable to the protection of rights. It prosecutes violent offenders, operates courts and prisons, provides legal remedies, protects disadvantaged communities and maintains the institutional order within which rights can be claimed. Yet the concentration of coercive authority makes the state uniquely capable of violating the same rights it is expected to protect.

The most important human rights challenge is often not the absence of constitutional principles but the distance between constitutional law and everyday administrative practice. India already possesses a substantial constitutional framework protecting equality, liberty and personal dignity. The challenge is to ensure that these principles govern everyday encounters between citizens and institutions exercising coercive power.

The democratic role of the state must consequently be understood in two inseparable ways. It must possess enough capacity to protect citizens from violence and enough restraint to protect them from itself. Human rights become durable only when both obligations are treated as essential features of state legitimacy.

References

1. Anuradha Bhasin v. Union of India, (2020) 3 SCC 637.
2. D. K. Basu v. State of West Bengal, (1997) 1 SCC 416.
3. Extra Judicial Execution Victim Families Association v. Union of India, (2016) 14 SCC 536.
4. Government of India. (1950). The Constitution of India. Legislative Department, Ministry of Law and Justice.
5. Government of India. (1967). The Unlawful Activities (Prevention) Act, 1967 (Act No. 37 of 1967). India Code.
6. Government of India. (1994). The Protection of Human Rights Act, 1993 (Act No. 10 of 1994). India Code.
7. Government of India. (2023). The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act No. 46 of 2023). India Code.
8. Human Rights Watch. (2009). Broken system: Dysfunction, abuse, and impunity in the Indian police.

³⁷ United Nations. (1984). Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly Resolution 39/46, 1465 U.N.T.S. 85).

³⁸ Kumar, R. (2022). Witnessing violence, witnessing as violence: Police torture and power in twentieth-century India. *Law & Social Inquiry*, 47(3), 946–970.

9. Human Rights Watch. (2016). "Bound by brotherhood": India's failure to end killings in police custody.
10. Human Rights Watch. (2026). India. In World report 2026: Events of 2025.
11. K. S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.
12. Kumar, R. (2022). Witnessing violence, witnessing as violence: Police torture and power in twentieth-century India. *Law & Social Inquiry*, 47(3), 946–970.
13. Maneka Gandhi v. Union of India, (1978) 1 SCC 248.
14. Ministry of Home Affairs. (2026, March 24). Custodial deaths (Lok Sabha Unstarred Question No. 5115). Government of India.
15. National Human Rights Commission. (2024). Annual report 2023–24.
16. National Investigation Agency v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1.
17. Ngaihte, T. (2015). Armed forces in India's Northeast: A necessity review. *South Asia Research*, 35(3), 368–385.
18. Nilabati Behera v. State of Orissa, (1993) 2 SCC 746.
19. People's Union for Civil Liberties v. State of Maharashtra, (2014) 10 SCC 635.
20. Prakash Singh v. Union of India, (2006) 8 SCC 1.
21. Sitlhou, H. (2022). State violence and collective victimhood in a militarised state. *Sociological Bulletin*, 71(2), 255–271.
22. Uma, S., & Hiremath, V. (2020). Police atrocities and the quest for justice. *Economic & Political Weekly*, 55(50), 32–37.
23. Union of India v. K. A. Najeeb, (2021) 3 SCC 713.
24. United Nations. (1966). International Covenant on Civil and Political Rights (General Assembly Resolution 2200A [XXI], 999 U.N.T.S. 171).
25. United Nations. (1984). Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly Resolution 39/46, 1465 U.N.T.S. 85).