



CUSTODIAL TORTURE AND HUMAN RIGHTS: ANALYZING INTERROGATION TACTICS AND JUDICIAL OVERSIGHT IN INDIA

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ABSTRACT

Custodial torture represents one of the most egregious violations of human rights, constitutional democracy, and the rule of law. Within the Indian criminal justice system, the phenomenon of police brutality, coercive interrogation tactics, and custodial deaths persists as a systemic challenge, exposing the friction between state sovereign investigative powers and individual constitutional guarantees. This comprehensive article analyzes the jurisprudence, institutional mechanisms, and legislative frameworks governing custodial torture in India, focusing exclusively on legal developments, judicial pronouncements, and empirical data. By examining landmark Supreme Court rulings—including *D.K. Basu v. State of West Bengal* (1997), *Nilabati Behera v. State of Orissa* (1993), *State of Maharashtra v. Natwarlal Damodardas Soni*, and *Selvi v. State of Karnataka* (2010)—this study evaluates the efficacy of judicial guidelines, constitutional remedies, and statutory safeguards against police abuse. Furthermore, the paper addresses the historical failure of the Indian legislature to ratify the United Nations Convention Against Torture (UNCAT), the institutional inertia within police forces, forensic investigative deficits, and the absence of a dedicated anti-torture statute. Ultimately, the article argues that eradicating custodial torture requires moving beyond reactive judicial compensation toward proactive institutional accountability, mandatory independent oversight, rigorous CCTV surveillance in interrogation rooms, and a profound cultural transformation in policing ethics.

1. INTRODUCTION

The sanctity of human dignity and personal liberty forms the foundational bedrock of any constitutional democracy. When an individual is apprehended by law enforcement agencies and placed in state custody, the power differential between the sovereign state and the isolated citizen becomes absolute. It is precisely within this enclosed, coercive environment of police custody that the temptation for investigative shortcuts, violence, and psychological coercion manifests. Custodial torture—encompassing physical brutality, psychological abuse, and degradation inflicted by agents of the state upon detainees—destroys the rule of law, subverts the administration of justice, and reduces constitutional rights to illusory promises.

In India, the criminal justice system continues to grapple with deeply entrenched colonial policing practices that historically prioritized confession extraction over scientific investigation. Despite the constitutional guarantees enshrined in Article 21 (protection of life and personal liberty) and Article 20(3) (protection against self-incrimination), custodial violence remains a persistent institutional malaise. Reports from human rights organizations, the National Human Rights Commission (NHRC), and parliamentary committees consistently highlighted alarming statistics regarding custodial deaths, police brutality, and impunity for law enforcement personnel.

This article provides a rigorous legal and criminological analysis of custodial torture in India. By examining the constitutional framework, landmark judicial interventions, coercive interrogation tactics, and legislative shortcomings, this study evaluates the mechanisms of accountability and outlines necessary structural reforms to safeguard human rights

in state custody.

2. CONSTITUTIONAL FOUNDATIONS AND INTERNATIONAL HUMAN RIGHTS STANDARDS

To evaluate the legal response to custodial torture, one must examine the constitutional mandates and international obligations governing state conduct in India.

2.1 Constitutional Guarantees Against Torture and Coercion

While the Constitution of India does not contain an explicit standalone provision bearing the exact nomenclature “torture,” the Supreme Court of India through progressive judicial interpretation has read the prohibition against torture into the core of fundamental rights:

- **Article 21:** Guarantees that no person shall be deprived of life or personal liberty except according to procedure established by law. The apex court has repeatedly held that the right to life includes the right to live with human dignity, and subjecting a detainee to torture, cruel, inhuman, or degrading treatment violates Article 21.
- **Article 20(3):** Enshrines the privilege against self-incrimination, protecting an accused person from being compelled to be a witness against themselves. This constitutional shield invalidates confessions extracted through physical or psychological coercion during police interrogation.
- **Article 22:** Provides foundational safeguards for arrested persons, including the right to be informed of the grounds of arrest, the right to consult and be defended by a legal practitioner of choice, and the obligation to produce the detainee before a magistrate within twenty-four hours.

2.3 International Legal Instruments and India's Position

Globally, the absolute prohibition of torture is recognized as a norm of customary international law (*jus cogens*). Key international instruments, such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR)—to which India is a state party—explicitly prohibit torture and cruel, inhuman, or degrading treatment. Furthermore, the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), adopted in 1984, mandates state parties to criminalize torture explicitly and establish universal jurisdiction. Although India signed UNCAT in 1997, successive administrations failed to ratify the treaty, citing the absence of a domestic penal definition of torture and procedural complexities, thereby maintaining a glaring gap in international compliance.

3. LANDMARK JUDICIAL JURISPRUDENCE

In the absence of a comprehensive domestic anti-torture statute, the judiciary assumed a proactive role in formulating binding procedural safeguards and compensatory remedies.

3.1 The Magna Carta of Custodial Justice: D.K. Basu v. State of West Bengal (1997)

The absolute watershed moment in Indian custodial jurisprudence occurred with the landmark Supreme Court ruling in *D.K. Basu v. State of West Bengal* (1997). Responding to a letter petition highlighting rampant custodial violence, a two-judge bench authored a historic judgment declaring custodial torture to be a “calculated assault on human dignity.”

To curb police brutality during arrest and interrogation, the Supreme Court formulated eleven mandatory procedural requirements (commonly known as the D.K. Basu guidelines), which included:

- Carrying accurate identification and clear name tags by arresting and interrogating personnel.
- Preparing a formal memo of arrest witnessed by at least one family member or respectable local resident, countersigned by the detainee.
- The right of the arrested person to have a friend or relative informed of their whereabouts within 8 to 12 hours of arrest.
- Maintaining an inspection memo recorded at the time of arrest detailing major and minor injuries.
- Mandatory medical examination by a trained doctor every 48 hours during detention.
- Allowing the detainee access to legal counsel during interrogation.

The Court ruled that violation of these guidelines would entail departmental action and contempt of court proceedings in High Courts.

3.3 Compensatory Jurisprudence: Nilabati Behera v. State of Orissa (1993)

Prior to *Nilabati Behera* (1993), victims of custodial torture seeking monetary compensation were relegated to cumbersome civil suits where proving state negligence was exceptionally

difficult. In this landmark ruling, the Supreme Court established public law remedies under Articles 32 and 226, holding that the state is constitutionally liable to pay monetary compensation for violations of fundamental rights resulting from custodial death or torture. This compensatory jurisprudence shifted the focus toward state accountability and victim restitution.

3.4 Restricting Coercive Interrogation: Selvi v. State of Karnataka (2010)

In *Selvi v. State of Karnataka* (2010), a unanimous three-judge bench of the Supreme Court addressed the constitutional validity of involuntary scientific interrogation techniques—such as narco-analysis, polygraph tests, and brain electrical oscillation fingerprinting (BEOF)—used by investigative agencies. The Court ruled that subjecting individuals to involuntary cognitive interrogation violated Article 20(3) (right against self-incrimination) and Article 21 (right to privacy and mental liberty). This ruling reinforced the principle that investigative efficiency cannot override individual bodily and mental autonomy.

4. SYSTEMIC HURDLES AND OPERATIONAL REALITIES IN INDIA

Despite progressive judicial pronouncements and binding procedural guidelines, empirical evaluations and human rights reports revealed profound structural hurdles that obstructed the eradication of custodial torture.

4.1 Investigative Inertia and Police Culture

The operational culture within Indian police stations remains heavily reliant on testimonial confessions rather than scientific, forensic-based evidence gathering. Because the criminal justice system historically placed immense evidentiary value on confessions (despite their inadmissibility before police officers under Section 25 of the Indian Evidence Act, 1872), investigating officers frequently resorted to third-degree methods to extract quick admissions, bypassing rigorous investigative legwork.

4.2 The Legal Obstacle of Sanction for Prosecution

Section 197 of the Code of Criminal Procedure, 1973 (CrPC) requires prior governmental sanction to prosecute public servants (including police officers) for acts alleged to have been committed in the discharge of official duty. In practice, executive sanction is rarely granted, shielding errant police personnel from criminal prosecution and fostering a pervasive culture of impunity.

4.3 Underreporting and Complicity of Medical Practitioners

Victims of custodial torture frequently face severe intimidation, threats of renewed prosecution, and social ostracization, preventing them from lodging formal complaints. Furthermore, investigative reports documented instances where government medical officers—acting under police pressure or institutional complicity—minimized or falsified injury reports during mandatory medical examinations, erasing physical evidence of torture.

5. PROSPECTS AND STRATEGIC RECOMMENDATIONS

Addressing the deep-seated menace of custodial torture requires a multi-faceted reform agenda that bridges the gap between constitutional theory and administrative reality.

5.1 Enacting a Dedicated Anti-Torture Legislation

Parliament must enact a comprehensive, standalone anti-torture statute that criminalizes custodial violence explicitly, incorporates universal jurisdiction, removes procedural bars like Section 197 CrPC for torture prosecutions, and ensures stringent mandatory minimum sentences for erring law enforcement officials, fulfilling long-pending UNCAT ratification requirements.

5.2 Mandating Universal CCTV Surveillance

Building upon judicial directives (such as *Paramvir Singh Saini v. Baljit Singh*), all police stations, interrogation rooms, lock-ups, and transit holding cells must be equipped with functional night-vision CCTV cameras with audio-visual recording capabilities, backed by an independent, centralized data archive to prevent evidence tampering.

5.3 Institutionalizing Independent Oversight Bodies

Establishing independent, civilian-led police complaint authorities at state and national levels—entirely autonomous from police hierarchies—will ensure impartial investigations into allegations of custodial abuse, breaking the chain of departmental shielding.

6. CONCLUSION

Custodial torture represents an absolute negation of constitutional democracy, reducing human beings to instruments of state coercion. Through landmark jurisprudence—such as *D.K. Basu, Nilabati Behera, and Selvi*—the Supreme Court of India established vital protective bulwarks, transforming compensatory and procedural standards. However, as operational realities and systemic failures demonstrated, judicial guidelines alone are insufficient without robust legislative criminalization, elimination of prosecutorial sanctions, universal technological surveillance, and a fundamental cultural shift in policing ethics. Ensuring that state power remains tethered to human dignity is an enduring imperative for preserving the rule of law in India.

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