



Custodial Torture of Accused in India: Legal Position, Rights, and Remedies

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Abstract: *Custodial torture continues to be one of the most severe and persistent human rights challenges in India. Although the Constitution and various laws offer protections against such abuse, incidents involving third-degree methods, physical torture, and even deaths in custody are reported far too often. This article takes a detailed look at the legal landscape surrounding custodial torture in India. It examines relevant constitutional provisions, statutory safeguards, judicial rulings, and the country's obligations under international human rights frameworks. It also highlights the rights and legal remedies available to individuals subjected to such abuse. Ultimately, the article argues for urgent legal reforms and systemic changes to prevent the misuse of power by law enforcement and ensure accountability within the justice system.*

Introduction:

Custodial torture involves causing physical harm or psychological suffering to individuals who are detained by the police or held in judicial custody. In many cases, it is used by law enforcement as a means to force confessions, extract information, or exert control. While both Indian and international legal systems explicitly prohibit such acts, custodial torture remains a disturbing reality in the country. The continued use of these inhumane practices is often fuelled by a sense of impunity, gaps in enforcement, and indifference within institutions meant to uphold justice. Beyond being a grave violation of human dignity and fundamental rights, custodial torture erodes public trust and weakens the foundations of the legal system. Its persistence signals a pressing need for comprehensive legal reforms and robust accountability frameworks to put an end to this form of abuse.

Constitutional and Statutory Provisions:

India's legal framework provides robust protections against custodial torture through a combination of constitutional guarantees and statutory laws. These provisions aim to uphold the dignity of individuals and curb the misuse of power by state authorities.

➤ Article 21– Right to Life and Personal Liberty

Article 21 of the Indian Constitution declares that "No person shall be deprived of his life or personal liberty except according to the procedure established by law." Over the years, the Supreme Court has broadened the interpretation of this Article to include not just the right to life, but also the right to live with dignity and be free from torture. In the landmark judgment *D.K. Basu v. State of West Bengal*, the Court unequivocally stated that custodial violence violates Article 21 and is completely unacceptable, even during the course of an investigation.

➤ Article 22 – Procedural Rights of the Arrested

Article 22 provides important procedural safeguards to those taken into custody. These include:

- The right to be informed of the reasons for arrest.
- The right to consult and be defended by a lawyer of their choice.
- The requirement to be produced before a magistrate within 24 hours of arrest.

These protections are crucial in ensuring that arrests are not arbitrary and that the legal rights of the accused are respected from the very outset.

➤ **Section 49, Code of Criminal Procedure (CrPC)**

This section explicitly prohibits the use of unnecessary restraint on a person during arrest or detention. It reinforces the principle that force used by police should be minimal and proportionate, and aims to deter physical mistreatment of individuals in custody.

➤ **Section 176(1A), CrPC**

To address the growing concern of custodial deaths, Section 176(1A) mandates a judicial inquiry in cases involving death, disappearance, or sexual assault while in custody. This provision is designed to ensure transparency and impartial investigation when such grave incidents occur under the watch of the state.

➤ **Sections 330 and 331, Indian Penal Code (IPC)**

The IPC contains specific provisions targeting torture by public servants:

- Section 330 punishes any public servant who voluntarily causes hurt to extract a confession or information.
- Section 331 extends this punishment to cases involving grievous hurt.

While these sections carry penalties including imprisonment and fines, the conviction rate remains low due to systemic issues such as lack of evidence, institutional cover-ups, and the reluctance of victims or witnesses to come forward.

➤ **Section 24, Indian Evidence Act, 1872**

This section plays a vital role in preventing the misuse of coerced confessions. It states that any confession obtained through threats, inducements, or promises is inadmissible in court. This reinforces the right against self-incrimination and serves as a key safeguard against custodial abuse.

Judicial Approach and Leading Cases:

The Indian judiciary has played a pivotal role in shaping the legal discourse around custodial

torture. Through landmark judgments, the courts have not only recognised the gravity of custodial abuse but have also laid down preventive measures, reinforced the rights of the accused, and imposed accountability on the State.

D.K. Basu v. State of West Bengal (1997)

This landmark case stands as a cornerstone in the fight against custodial violence. In response to the growing number of custodial deaths and complaints of third-degree treatment, the Supreme Court laid down a set of detailed guidelines aimed at safeguarding the rights of detainees. These included:

- Preparation of an arrest memo, witnessed and signed.
- Informing the arrested individual of their right to contact a friend or relative.
- Mandatory medical check-ups every 48 hours.
- Maintenance of arrest records to be submitted to the magistrate.

Though these guidelines have since been integrated into the Code of Criminal Procedure (CrPC), their enforcement remains patchy, and violations are still frequently reported.

Nilabati Behera v. State of Orissa (1993)

In this case, the Supreme Court addressed the death of a young man while in police custody. Recognising the State's responsibility, the Court awarded compensation to the victim's mother. This case is significant because it introduced the concept of **public law compensation** for violations of fundamental rights, marking a shift towards holding the State accountable for acts of custodial violence under the constitutional framework.

Arnesh Kumar v. State of Bihar (2014)

Concerned with the misuse of arrest powers, particularly in dowry-related cases, the Court issued guidelines to ensure that arrests are made judiciously and not as a matter of routine. The judgment stressed that:

- Arrests should be based on necessity and supported by reasoning.

- Magistrates must scrutinise the legality of arrests before approving detention.

This ruling reinforced the idea that arrest should be an exception, not the norm, and that liberty cannot be curtailed without due process.

PUCL and Public Interest Litigations (PILs)

The **People's Union for Civil Liberties (PUCL)** has consistently used public interest litigation to challenge systemic police brutality and custodial torture. Their interventions have prompted the courts to address broader structural issues, such as the need for independent police oversight, protection of prisoner rights, and greater transparency in custodial practices. These cases have been instrumental in catalysing reform and pushing for institutional accountability.

Role of NHRC and State Human Rights Commissions:

The **National Human Rights Commission (NHRC)**, established under the **Protection of Human Rights Act, 1993**, serves as a key institution in the fight against custodial torture in India. It is empowered to investigate complaints related to human rights violations, including torture and deaths occurring in police or judicial custody. Over the years, the NHRC has issued important guidelines concerning arrest procedures, medical examinations of detainees, prompt reporting of custodial deaths, and the payment of compensation to victims or their families.

Despite its proactive stance, the NHRC's influence is often limited by the fact that its recommendations are **advisory in nature** not legally binding. This means that while it can recommend action, compensation, or disciplinary measures, enforcement depends on the willingness of the concerned authorities to comply.

State Human Rights Commissions (SHRCs) function at the state level with similar mandates. However, many SHRCs face serious challenges such as inadequate funding, shortage of staff, and limited infrastructure. These constraints significantly hinder their ability to conduct thorough investigations or follow through on their directives. Additionally, like the NHRC, their lack of binding authority often weakens the impact of their findings.

Although these commissions play a vital role in raising awareness and pressuring the state to act on human rights violations, the absence of enforceable powers remains a major hurdle in delivering justice and ensuring accountability in cases of custodial abuse.

International Obligations India signed the United Nations Convention:

India's stance on custodial torture is also subject to scrutiny under international human rights law. In 1997, India signed the **United Nations Convention Against Torture (UNCAT)** a global treaty aimed at preventing torture and other cruel, inhuman, or degrading treatment. However, despite its signature, India has **not yet ratified** the convention. Ratification would require India to enact a specific law that criminalises torture and establishes clear legal standards in line with international norms.

To move in that direction, the **Prevention of Torture Bill, 2010** was introduced in Parliament. Unfortunately, the bill failed to gain legislative approval and eventually lapsed, leaving a critical gap in the country's legal framework for tackling torture.

Recognising this, the **Law Commission of India**, in its **273rd Report**, strongly recommended the passage of a comprehensive anti-torture law. The report highlighted not only India's **international legal obligations** but also the **moral duty** to safeguard human dignity and prevent the misuse of state power. It argued that failing to criminalise torture weakens India's position on the global stage and undermines its constitutional values.

India's delay in ratifying UNCAT remains a matter of concern, especially as custodial torture continues to be reported frequently. Ratification, accompanied by strong domestic legislation, would be a significant step toward aligning national laws with international human rights standards.

Rights of the Accused in Custody:

- Individuals taken into police or judicial custody are not stripped of their fundamental rights. In fact, the law guarantees several crucial protections to ensure their dignity, safety, and access to justice. These rights, if properly upheld,

act as critical safeguards against custodial torture and abuse of power.

- **Right to Legal Representation:** Under **Article 22(1)** of the Constitution, every accused person has the right to consult and be defended by a legal practitioner of their choice. Legal counsel acts as a vital support system and helps prevent abuse during custody or interrogation.
- **Right to Be Presented Before a Magistrate:** According to **Section 57 of the Code of Criminal Procedure (CrPC)**, any individual taken into custody must be brought before a magistrate within **24 hours** of arrest. This provision ensures judicial oversight and helps deter unlawful detention.
- **Right to Medical Examination:** **Section 54 of the CrPC** empowers an accused to request a medical examination by a qualified practitioner. This is particularly important in cases of alleged torture or mistreatment, as it creates medical documentation that can support future legal action.
- **Right Against Self-Incrimination:** Enshrined in **Article 20(3)** of the Constitution, this right protects individuals from being forced to testify or confess against themselves. It is a core principle of fair trial standards and a fundamental check on coercive interrogation methods.
- **Right to Silence:** Although not explicitly stated in the Constitution, the **right to remain silent** has been recognised by Indian courts as a part of the right to a fair trial. It reinforces the idea that no individual should be pressured into speaking or confessing under duress.
- Together, these rights serve as essential tools to uphold justice, promote transparency, and protect the integrity of the legal system. However, their real-world impact depends heavily on consistent implementation and strict

monitoring by law enforcement and judicial authorities.

Remedies Available:

Victims of custodial torture in India have access to multiple legal and institutional remedies. While the framework exists, its effectiveness depends on enforcement, transparency, and the willingness of institutions to uphold accountability.

1. Criminal Prosecution

Police officers involved in acts of torture or custodial death can be prosecuted under various sections of the **Indian Penal Code (IPC)**:

Section 330 and 331 – for causing hurt or grievous hurt to extract a confession.

Section 302 – for murder, particularly in cases of custodial death.

Section 166 – for public servants who knowingly disobey the law in the exercise of their duties.

Despite the availability of these provisions, criminal prosecutions are **extremely rare**. This is often due to institutional resistance, lack of political will, and the challenges in obtaining reliable evidence against fellow officers.

2. Departmental Action

Police personnel found guilty of misconduct may face **internal disciplinary measures**, including suspension, dismissal, or demotion. While these proceedings are essential for administrative accountability, they are frequently marred by **delays, leniency, or procedural lapses**, which dilute their impact.

3. Writ Jurisdiction of High Courts and Supreme Court

Under **Article 226** (High Courts) and **Article 32** (Supreme Court) of the Constitution, victims or their families can seek judicial intervention for violations of fundamental rights. Courts have used these powers to:

- Award compensation,
- Order **independent investigations**,
- Issue writs like **habeas corpus** in cases of unlawful detention or disappearance.

The judiciary has thus played a vital role in ensuring some measure of justice in cases where the regular criminal justice system has failed.

4. Compensation

Monetary compensation has emerged as a crucial remedy under public law. While financial relief cannot erase the trauma or physical harm suffered, it **acknowledges the wrong** and provides a tangible form of redress. The amount awarded generally depends on the **severity of abuse, the nature of rights violated, and the specific circumstances of the case.**

Challenges in Addressing Custodial Torture:

Despite the existence of legal safeguards and judicial guidelines, custodial torture continues to persist due to several deeply rooted systemic issues. These challenges make it extremely difficult for victims to obtain justice and for institutions to hold perpetrators accountable.

1. Culture of Impunity

One of the biggest hurdles in addressing custodial torture is the widespread **lack of accountability**. Police officers involved in abuse are rarely prosecuted or punished. Often, they are protected by their superiors or shielded by the institutional structure, which fosters a **culture of silence and denial** rather than transparency and discipline.

2. Fear of Retaliation

Victims, and even witnesses, frequently face **threats, harassment, or retaliation** for speaking out. The fear of being targeted or falsely implicated deters many from filing complaints or pursuing legal action, especially in cases involving vulnerable or marginalised individuals.

3. Forensic and Documentation Gaps

Effective investigation of custodial torture often hinges on **timely and impartial medical examinations** and forensic evidence. However, in many instances, **independent medical boards are not involved**, and documentation is either incomplete or manipulated, making it difficult to establish the facts and hold perpetrators accountable.

4. Political Interference

Investigations into custodial abuse are sometimes **derailed by political influence**. Powerful actors may intervene to suppress findings, protect officers involved, or delay legal proceedings. Such interference undermines the credibility of the justice system and perpetuates abuse.

5. Reluctance to Register FIRs

There is often **hesitation within police departments to register First Information Reports (FIRs)** against their own colleagues. This not only obstructs justice at the initial stage but also reflects a systemic bias that favours impunity over accountability.

Recommendations:

Addressing custodial torture in India requires more than just legal acknowledgment; it demands a multi-layered strategy rooted in reform, accountability, and respect for human dignity. The following recommendations outline concrete steps the government and institutions can take to effectively combat this systemic abuse:

1. Enact a Comprehensive Anti-Torture Law

India urgently needs a **dedicated legislation** that criminalises all forms of custodial torture. Such a law should prescribe **strict and mandatory penalties** for perpetrators, ensure victim protection, and create a clear legal mechanism for investigation and redress.

2. Ratify the United Nations Convention Against Torture (UNCAT)

Although India signed UNCAT in 1997, it is yet to ratify the treaty. Ratification, along with the **domestic implementation of its provisions**, would reinforce India's commitment to international human rights standards and create a legal obligation to end torture in custody.

3. Install and Monitor CCTV Cameras in Custodial Facilities

In line with the Supreme Court's directive in *Paramvir Singh Saini v. Baljit Singh* (2020), **CCTV cameras must be installed in all police stations, lock-ups, and custodial institutions**. Regular monitoring and secure data storage should

be ensured to maintain transparency and deter abuse.

4. Establish Independent Police Complaints Authorities

Setting up **independent oversight bodies** at both the state and district levels is essential for investigating allegations of custodial violence. These authorities must be free from political or departmental influence to ensure impartiality.

5. Regular Judicial and Independent Inspections

Custodial institutions should undergo **routine inspections** by judicial officers and independent human rights bodies. These inspections should be unannounced, transparent, and followed by public reporting to maintain accountability.

6. Mandate Forensic Medical Examinations by Independent Doctors

Medical assessments of detainees must be carried out by **independent and qualified medical professionals** to ensure credible documentation of injuries and prevent cover-ups.

7. Police Training and Human Rights Sensitisation

Police officers must receive **regular training on human rights, ethical investigation methods, and non-coercive interrogation techniques**. Sensitising law enforcement personnel can gradually shift the institutional mindset from control and coercion to service and justice.

Conclusion:

Custodial torture remains a deep and painful contradiction within India's democratic and constitutional framework. While the law promises justice, dignity, and protection, the reality on the ground often reflects the opposite marked by silence, fear, and impunity. Despite strong constitutional safeguards and proactive judicial interventions, the practice of torture in custody persists, exposing critical gaps in enforcement and accountability.

Ending custodial torture is not just a legal obligation it is a **moral imperative**. Real and lasting reform requires more than symbolic gestures. It demands **clear legislation**,

independent oversight, political will, and a cultural shift within law enforcement agencies.

Only when these elements come together can the constitutional vision of justice, equality, and human dignity be truly upheld for every citizen especially those most vulnerable and voiceless behind custodial walls.ⁱ

References:

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