
CUSTODIAL VIOLENCE IN INDIA: A CRITICAL ANALYSIS OF CONSTITUTIONAL SAFEGUARDS AND JUDICIAL RESPONSES

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ABSTRACT

The Indian Constitution has enshrined in it the concept of right to life and personal liberty in article 21. This right is equally applicable on every citizen of this country and to non citizens also. In the same way, this right also protects the victim and to some extent the wrongdoer when it comes to his life and liberty. In India, there are various stringent laws to punish the wrongdoers and also various methods by which the guilt is extracted from the accused mouth. When a heinous crime is committed the first step is the arrest of the person who has committed the crime. After taking him in its arrest, the Police try to get the confession from the accused. The confession is the voluntary acknowledgement of the guilt by the accused. In almost all the cases of arrest the accused does not easily confess his guilt before the police and that's where begins the issue of custodial violence. However, it is absolutely necessary to bring out the confession from the accused but sometimes this process turns into something which puts accused life at stake. The authority in order to make accused person confess his guilt tortures him to such an extent that it turns out to be lethal. There is a method which is known as 'third degree' which is commonly used by the Police authority in order to get the confession. Third degree refers to a physically and psychologically violent, coercive and cruel method used during the interrogation of the accused. The Indian Constitution has recognised this method as a gross violence of human rights. But still this method is widespread while interrogating the accused. Although, there is no two ways regarding punishing a person who has killed another person, or has done something so grave that it is against humanity but it cannot be said that the accused person should be treated so brutally that before being actually convicted by the court he dies in between the process. This paper highlights the meaning of Custodial Violence and constitutional safeguards against the rampant evil of Custodial Violence. It also delves into the various judicial pronouncements that made an impact in curbing this evil.

Key Words: - Custodial Violence, Third Degree Torture, Corporal Punishment, Confession, Heinous Crime.

I. CUSTODIAL VIOLENCE

Custodial violence refers to a very cruel, coercive and lethal treatment given to the person accused of crime by the Police during interrogation.¹ Generally, the police take this inhumane step to make the accused confess his guilt. The reason why the term violence has been adduced to the word custody is that during past few years there arose various cases of violence committed by the police on accused.² The purpose of custody is that the concerned authorities will try to get the confession from the accused in a lawful manner and it nowhere carries the notion that the authority should torture and brutally treat the accused.³ Custodial violence is a very serious issue to talk about which day by day spreading its feet. There is a principle in criminal law which says that a person is innocent until he is proven guilty which is now commonly violated by the authorities.⁴ Treating a person so brutally that he does not even get a chance to appear before the court and dies in the custody of the police is the flagrant violation of human rights.

The Indian Justice System is drawn in such a way that it tries to dispense justice with its utmost capacity to uphold the principle of human rights and natural justice while deciding a matter in issue. And that's why it is the duty of the Police not to subject the accused to inhumane treatment and to respect the human rights available to him irrespective of his guilt.

Thus, Custodial violence is the inhumane, violent and forceful treatment to the body and mind of the accused by the Police during interrogation. And now, it is being used as a means to deter the arrested person by threatening his life so that he could confess his guilt, if in case he is guilty. But in some of the cases, the arrested person admits the guilt imputed upon him even if he is not actually committed that just because his life is being threatened by the Police authority.

II. CONSTITUTION SAFEGUARDS AGAINST CUSTODIAL VIOLENCE

The Constitution of India has provided for some safeguards against the evil of custodial violence. Although, there is no such specific mention about custodial violence in the Indian Constitution but there are some enshrined provisions in it which indirectly serve as the protective measures against custodial violence.

¹Custodial torture in India, available at; <https://www.scconline.com> (last visited on 15-02-2026)

² Custodial violence in India, available at; <https://www.legalserviceindia.com> (last visited on 15-02-2026)

³ Custodial torture and ethical concerns, available at; <https://www.drishtiias.com> (last visited on 17-02-2026)

⁴ Critical analysis of presumption of innocence, available at; <https://shodhgangotri.inflibnet.ac.in> (last visited on 17-02-2026)

III. ARTICLE 14 AND CUSTODIAL VIOLENCE

Article 14 which is the foundation of all the rights given in the Indian Constitution proves to be the most suitable safeguard against custodial violence. Article 14 talks about the Right to Equality irrespective of their caste, creed, sex, race, status, religion, caste and other grounds on which, generally, discrimination can be done. It declares that the state shall not deny equality before the law or equal protection of the laws to anyone on Indian territory.⁵

This right to equality does not discriminate between a victim and an accused also when it comes to protecting their life. Treating both the categories of people does not mean that the accused will not be convicted and he will be given the same treatment in every respect as a normal person gets. But this right is subjected to certain restrictions in respect of an accused.

Treating Right to Equality as a safety measure against custodial violence means that it will seek to protect the human rights available to a person irrespective of his status as an accused. Human rights are those rights that are very basic for the peaceful and prosperous survival of an individual.⁶ Human rights are kind of protection that are meant to be given to humans as they are considered to be inherent in human nature. And these rights do not belong to a specific class of people but to all the humans, irrespective of anything.

Custodial violence as mentioned earlier is the most brutal treatment given to a person, in custody of the Police and they do so in order to quickly settle the matter. But this evil has spread to such an extent that it not only makes people suffer physically but mentally and in most of the cases it leads to death.⁷ Article 14 of the Indian Constitution has a very wider scope in application. And that's how it ensures the safety and protection of the accused also.

Whenever the question of equal treatment and protection of life and liberty will arise, article 14 will come into effect without any restrictions.

Custodial violence is against the morals of the nature of duty assigned to a Police officer. The Police are considered to be the protector of society from evils and is that authority which can be immediately called up when any wrong occurs in the society.

⁵ The Constitution of India, art.14

⁶ Human Rights, available at; <https://www.un.org> (last visited on 17-02-2026)

⁷ Custodial death, available at; <https://www.highcourtchd.gov.in> (last visited on 17-02-2026)

And that's why The Police Act of 1861, provides for penalty in case of negligence of a duty by a Police officer. Section 29 lays down that any police officer who is found violating or breaching his duty or any legal order passed by a competent authority or who shall offer any unwarrantable personal violence to any person in his custody shall be liable to a penalty not exceeding three months' pay, or to imprisonment, with or without hard labour or to both.⁸

Beating and torturing physically and mentally both is not the duty of a police officer. Subjecting someone's life to danger when there are other available means to make him confess the guilt is not an act of award but something to be condemned. No doubt, the police are given the power to physically treat the accused but their powers are limited which they can't exercise excessively. They should act in such a manner that they protect the society from the evils rather than proving themselves to be an evil for the society. Their behaviour towards the society must be lawful and just so that the society can repose their trust in them.⁹ If the society will itself be afraid of approaching to the authorities, how will the notion of ordered, peaceful and just society will come true.

IV. ARTICLE 21 AND CUSTODIAL VIOLENCE

On the same footing, article 21 of the Indian Constitution is also one of the safeguards against the custodial violence. It mentions about the right to life and personal liberty and states that no person shall be deprived of his life and personal liberty except according to the procedure established by law.¹⁰

Therefore, the inhumane treatment given by the police during custody is subjected to article 21 of the constitution. The main aim of the article 21 in the Constitution is to ensure justness in every aspect.¹¹ It protects the individuals from being subjected to anything which is against human rights and human dignity. And so does it protect the accused from any lethal treatment inflicted by the Police during custody.

⁸ The Police Act, 1861 (Act 5 of 1861), s. 29

⁹ Police responsibilities, available at; <https://citizenportal.hppolice.gov.in> (last visited on 18-02-2026)

¹⁰ The Constitution of India, art. 21

¹¹ Protection of life and personal liberty (Article 21), available at; <https://mcrhrdi.gov.in> (last visited on 18-02-2026)

In *Francis Coralie Mullin Case*¹², the Supreme Court explained the ambit of article 21 and held that article 21 includes the right to live with human dignity and all that goes along with it. This means that right to life does not ensure merely to give a life but a life with dignity and justified protections.

It seems that this right has not travelled to the area of custodial violence and that's why this evil is flagrantly violating the basic human rights. The Indian Executives are appointed with an oath to protect the society and to maintain a harmonious balance in the society. They, under the veil of doing the good to the society, torture the accused so brutally that he dies. This symbolises the uncontrolled powers of the Police.¹³ They think that they can openly and freely exercise their powers to whatever extent they want. But no, they have to be controlled in accordance with law and they are required to act in a just and lawful manner. As a matter of concern, the Supreme Court of India, in *Prem Chand v. Union of India*¹⁴, raised a fundamental question- "who will Police the Police?"

Custodial violence not only disregards the basic human rights but also goes beyond morality. It has been thus, made violative of right to life and personal liberty.

V. ARTICLE 20(3), 22 AND CUSTODIAL VIOLENCE

Apart from these, article 20(3) and article 22 of the Indian Constitution are the other safeguards against the custodial violence. Article 20(3) talks about doctrine of self- incrimination. It says that no one who is accused of a crime shall be forced to give a witness against himself.¹⁵ This article provides that a person cannot be forcefully be made to give witness against himself. It indirectly states that a person cannot be coerced to confess his guilt. The word 'compelled' in this article also includes the cruel and violent treatment given to the accused during the Police custody to confess his guilt. Article 20(3) gives the accused the protection from being forced to give evidence against themselves which might help the authority in establishing their guilt. In *Nandini Salpathy v. P.L. Dani*¹⁶, the Supreme Court held that this right has a broader

¹² AIR 1981 SC 746

¹³ Custodial deaths in India, available at: <https://www.svpnpa.gov.in> (last visited on 18-02-2026)

¹⁴ AIR 1981 SC 613

¹⁵ The Constitution of India, art. 20(3)

¹⁶ AIR 1978 SC 1025

applicability and it extends to both accused persons and witnesses and stated that no one can be forced to incriminate themselves in any circumstances.

Similarly, article 22 gives talk about prevention against arbitrary arrest and detention. Article 22(2) states that every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest and No such person shall be held in custody for longer than the specified period of time without a magistrate's approval.¹⁷ This provision of presenting the person in custody to the magistrate within 24 hours acts as a check against the Police brutality and custodial violence.

Thus, the Constitution through these provisions ensures to prevent custodial violence and acts as a safeguard for the accused person.

VI. JUDICIAL RESPONSES TOWARDS CUSTODIAL VIOLENCE

The Supreme Court, in its various judicial pronouncements, has given its view on custodial violence and has ensured to curb this evil practice which is being rampantly followed by the Police authority. In most of its judgements, the Supreme Court has given various guidelines to keep a check on this evil.

In *D.K. Basu v State of West Bengal*¹⁸, Dr. D.K. Basu wrote a letter to the then chief justice of India, Justice Ranganath Mishra after witnessing several custodial deaths in the year 1986 and urged the court to develop Custody guidelines and develop new ways of awarding compensation to those who have been a prey to the custodial violence. This step of Dr. D.K. Basu was treated as a writ petition by the Supreme Court of India under article 131 of the Indian Constitution.

In this case, several legal issues were raised. The constitutional validity of custodial violence, the question of liability of police officers, whether any specific rules or guidelines are needed to be followed by the Police officers while arresting and lastly, whether the victims of custodial violence are entitled to any form of compensation and on what basis were some of the issues which came up for consideration before the Supreme Court of India.

In this case, the Supreme Court laid down several guidelines for the Police officers to be followed while arresting a person. These guidelines were the package of well defined conditions

¹⁷ The Constitution of India, art. 22(2)

¹⁸ AIR 1997 SC 610

for making an arrest for the Police officers. The court also held that the arrested persons are also entitled to their fundamental rights and it is needed to be protected and only legally permissible restrictions can be imposed on them.¹⁹

In *Nilabati Behra v State of Orissa*²⁰, a young man, Suman Lal Behera, died in police custody and his mother filed a write petition in the Supreme Court of India alleging that the death occurred due to police brutality. The Supreme Court acting on the principle of strict liability in cases of custodial deaths awarded compensation to the victim's family. It also laid down that it is on the state to prove the circumstances of the death occurring in the Police custody.

The Supreme Court determined that the death of Suman Lal Behera's death was a custodial death brought on by the State's disregard for his life and personal liberty. The court also made clear that death and torture are grave human rights breaches.

*J. Prabhavathiamma v State of Kerala and others*²¹ is another landmark judgement on custodial violence. In this case, a metal business employee in Thiruvanthapuram, died in Police Custody. Two Police officials were found guilty by the special CBI court of killing the person while he was in custody and were awarded death penalty by the court. According to the court, it was cruel and heinous, and such behaviour undermines public trust in the Police force.

In *Munshi Singh Gautam v State of Madhya Pradesh*²², the Supreme Court expressed its concern about the potential danger of torture in custody and declared that the increase in torture, assault, and death in custody raises grave concerns about the legitimacy of the criminal justice system and the rule of law.

Similarly, in *Raghubir Singh v State of Haryana*²³, the apex court held that the State, at the highest administrative and political levels, must set up proper effective strategies to stop and punish police abuse. Otherwise, the legitimacy of our legal system will decline in people's eye.

In *Kishore Singh Ravinder Dev etc. v State of Rajasthan*²⁴, the Supreme Court ruled that nothing is more cowardly and unconscionable than beating someone in Police custody, and nothing

¹⁹ D.K. Basu Case Guidelines, available at; <https://barnala.punjabpolice.gov.in> (last visited on 18-02-2026)

²⁰ AIR 1993 SCR (2) 581

²¹ 2008 Cri LJ 455

²² Appeal (Crl.) 919 of 1999

²³ AIR 1980 SC 1087

causes a deeper wound to our constitutional culture than a state official acting irrationally in violation of human rights.

In *Pramvir Singh v Baljit Singh*²⁵, the Supreme Court mandated that CCTV be installed in every Police Station. Later, it was expanded to include organizations with the authority to make arrests and question people, including the CBI, NIA, ED, NCB, DRI, and others. The Court underlined that these protections are essential for preserving the right to life and dignity.

The Indian Judiciary has thus, from time to time has talked about and expressed its concern regarding the immoral and brutal act of custodial violence. It has also tried to curb this evil practice by establishing several guidelines regulating the conduct of the Police officers so that a better administration could be set up.

VII. RECENT CASES ON CUSTODIAL VIOLENCE

Even after all the guidelines and regulations directed by the Supreme Court to be followed by Police officers while arresting a person and treating him during Custody, the cases of custodial violence is still coming up.

One such case is Temple Security Guard Case. In this case, Ajith Kumar, who was a security guard at the Batharakaliamman temple at Madapuram, died during Custodial interrogation on June 28, 2025. He was arrested by the Police for interrogation in a case of theft of gold jewellery from a car owned by a lady when she visited the temple on the day of occurrence of the crime²⁶.

The Supreme Court of India rejected the bail petitions of the police officers accused in this case and held that the custodial death is a very serious offence and that officers accused in such an offence should be denied bail due to substantial risk of witness and evidence tampering by the accused.

There is another case of custodial violence that occurred in Madhya Pradesh in July, 2024. A 25 year old Deva Pardhi died in police custody who was arrested in an alleged theft case. The state of Madhya Pradesh has not arrested the accused officials even after 10 months of this act of

²⁴ AIR 1981 SC 625

²⁵ AIR 2021 SC 64

²⁶ Custody death: warrant issued against ex-DSP, available at; <https://timesofindia.indiatimes> (last visited on 20-02-2026)

carnage.²⁷ The Supreme Court slammed Madhya Pradesh Police and said that they are shielding their own officers.

VIII. CONCLUSION

In India, the legitimacy of the criminal justice system, human rights protection, and constitutional government are still seriously threatened by custodial violence. The constitutional protections against custodial abuse and the changing judicial remedies intended to prevent such violations have been extensively reviewed in this paper. The Indian Constitution offers an effective appropriate structure to shield people against arbitrary detention, torture, and inhumane treatment, especially through Articles 20, 21, and 22. By highlighting the underlying connection between the right to life and human dignity, judicial interpretation has further strengthened these protections and made custodial violence essentially incompatible with constitutional morality.

Through significant rulings, directives, and compensation jurisprudence—most notably in cases like *D.K. Basu v. State of West Bengal*—the judiciary has taken the initiative to combat custodial violence. The goals of these measures have been to improve accountability, create procedural protections, and discourage law enforcement organizations from abusing their authority. This analysis shows that institutional culture and systemic failure, rather than just legal deficiency, are the root causes of custodial violence. In conclusion, maintaining the rule of law and safeguarding constitutional ideals revolve around the elimination of custodial violence. In order to bridge the gap between constitutional ideals and custodial realities and reaffirm the State's commitment to justice, human dignity, and democratic government, a rights-oriented and enforcement-driven approach is required.

²⁷Transfer of Probe to Independent Agency, available at; <https://www.scobserver.in> (last visited on 20-02-2026)

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