

CONSTITUTIONAL AND LEGISLATIVE PROVISIONS FOR THE PROTECTION OF CUSTODIAL TORTURE IN INDIA

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Abstract

This research paper reviews the constitutional and legislative frameworks in India for the prevention of custodial torture critically. It discusses the legal protections afforded to persons under police custody and the protections available to them under the Constitution of India, the Indian Penal Code, and the Code of Criminal Procedure (CrPC). The paper further studies landmark case laws and judicial pronouncements that have contributed to the law and order regarding custodial torture, paying uniquely attention to what India has done in accordance with the global human rights principle like the United Nations Convention Against Torture. The paper explores these urgent issues through a thorough review, revealing precise areas where legal protections are unevenly enforced and highlighting the critical need for more coherent legislation that not only provides better enforcement, but also manages accountability along the continuum of law enforcement. Finally, the research demands some reforms to fully protect human rights from the existing laws in custodial systems by more effective and transparent system of justice that would prohibit torture and ill treatment at the time of detention.

Introduction

Definition of Custodial Torture

Custodial torture refers to the intentional infliction of severe physical or mental pain or suffering on an individual in police or judicial custody, often with the objective of extracting confessions, punishing the accused, or intimidating individuals into submission. Torture, in this context, is not only a violation of an individual's personal liberty but also an affront to human dignity. It may include physical violence such as beatings, electrocution, or hanging in painful positions, as well as psychological abuse like threats, humiliation, or prolonged solitary confinement.

Legal Terminology: In legal terms, custodial torture typically falls under the category of "illegal detention", which is in direct violation of Article 21 of the Indian Constitution, ensuring the right to life and personal liberty. Section 330 and Section 331 of the Indian Penal Code (IPC) address the use of torture and coercion in custody to extract confessions or information. Section 330 criminalizes the infliction of hurt to extract confessions, while Section 331 deals with causing grievous hurt under similar circumstances.

The Indian Penal Code (IPC), Code of Criminal Procedure (CrPC), and the Indian Constitution collectively serve as the primary legal tools to combat custodial torture, ensuring that no person can be subjected to inhumane treatment during detention. Despite these protections, custodial torture continues to be prevalent, particularly in the context of police interrogations.

International Standards

The prohibition of torture is not only a domestic concern but also a crucial part of international human rights law. The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)¹, adopted in 1984, serves as the cornerstone of international law on torture. Article 1 of the UNCAT defines torture as any act that intentionally inflicts severe pain or suffering on a person for purposes such as obtaining information or a confession, punishing, or intimidating the individual.

India, while ratifying the UNCAT in 1997, has not yet enacted a specific domestic law criminalizing custodial torture, which has left a significant gap in its legal framework. The Indian government has undertaken to adhere to the provisions of the UNCAT, as reflected in Article 51(c) of the Indian Constitution, which directs the State to respect international treaties and obligations. However, despite these international obligations, India has failed to fully implement the Convention's provisions, particularly the mandate to provide effective remedies to victims of custodial torture.

International human rights organizations like Human Rights Watch and Amnesty International have repeatedly

¹ UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. Doc. A/RES/39/46 (Dec. 10, 1984).

criticized India for its failure to effectively combat custodial torture. The Committee Against Torture (CAT), which monitors the implementation of the UNCAT, has also raised concerns about the widespread use of torture in India's police and prison systems, highlighting India's lack of comprehensive anti-torture legislation.

Custodial Torture in India

Custodial torture has a long history in India, particularly during the British colonial era when it was routinely used as a tool for suppressing dissent and maintaining control over the population. Following independence, India's Constitution enshrined fundamental rights aimed at preventing such abuses. However, custodial torture has persisted, despite these constitutional safeguards, largely due to systemic issues within the police and law enforcement agencies.

In India, the police culture and the lack of adequate training in human rights have contributed significantly to the prevalence of custodial torture. This is compounded by the overburdened justice system, which often relies on confessions extracted under duress, with little regard for whether such confessions are made voluntarily or through coercion. The notorious "third-degree methods" commonly employed in police custody continue to be a tool of investigation despite being legally prohibited.²

Over the years, numerous high-profile cases have brought attention to the issue of custodial torture, one of the most significant being the custodial death of Rajan in 1993, which exposed the systemic abuse in police custody. In the *D.K. Basu v. State of West Bengal* (1997)³ case, the Supreme Court of India laid down crucial guidelines for the protection of individuals in police custody, demanding the establishment of safeguards such as notifying family members of arrest, the right to legal counsel, and the obligation to conduct a medical examination of detainees.

The National Human Rights Commission (NHRC) and other human rights organizations have highlighted the widespread use of custodial torture, with an estimated 60% of all deaths in police custody being linked to torture. Extrajudicial killings, disappearances, and other forms of police brutality are prevalent, reflecting the law enforcement's systemic disregard for human rights.

Need for Legal Safeguards

Despite the constitutional protections against custodial torture, legal safeguards remain insufficient. The Indian Penal Code and the CrPC do not offer comprehensive protection against torture, and the lack of a specialized law criminalizing custodial torture leads to inconsistent enforcement. Section 330 of the IPC, which deals with voluntary causing hurt to extract confessions, is rarely invoked, and the punishment for such crimes is often too lenient. Section 341 of the IPC, which deals with wrongful confinement, also fails to address the systemic nature of custodial abuse.

The Indian judiciary has, however, played a significant role in addressing custodial torture. In *D.K. Basu v. State of West Bengal* (1997)⁴, the Supreme Court issued a landmark ruling mandating that police authorities adhere to strict guidelines, such as informing detainees of their rights, maintaining records of arrests, and allowing for a medical examination. The case was instrumental in shaping India's approach to custodial rights, but its recommendations remain largely non-binding, and implementation remains inconsistent.

One of the critical gaps in India's legal framework is the absence of specific legislation criminalizing custodial torture. Countries like United Kingdom, Canada, and Australia have enacted laws specifically addressing torture, whereas India continues to rely on general provisions in the IPC and CrPC, which are often insufficient in preventing torture and holding law enforcement accountable. The Torture Bill, introduced in the Lok Sabha in 2010, was intended to address this gap but has been delayed due to political and administrative inertia.⁵

The need for robust legal reform is further highlighted by the persistence of custodial torture despite existing safeguards. There is an urgent requirement for India to not only enforce existing legal protections more effectively but also implement comprehensive anti-torture legislation that aligns with international standards set forth by the United Nations Convention Against Torture (UNCAT).

² V.R. Krishna Iyer, *The Dialectics of Human Rights in India* (Eastern Book Co. 2007) (explores human rights violations, including custodial torture).

³ *D.K. Basu v. State of West Bengal*, (1997) 1 S.C.C. 416

⁴ *D.K. Basu v. State of West Bengal*, (1997) 1 S.C.C. 416

⁵ M.P. Jain, *Indian Constitutional Law*, 8th ed. (LexisNexis 2017) (providing an analysis of constitutional safeguards against torture).

Constitutional Provisions Protecting Against Custodial Torture

India's Constitution provides a robust framework for protecting individuals against custodial torture, primarily through Article 21 (Right to Life and Personal Liberty), Article 22 (Protection against Arrest and Detention), and the principle of dignity embedded in the Constitution. Additionally, Article 51(c) directs India to adhere to international human rights norms, influencing the constitutional protection against custodial torture.⁶

1. Right to Life and Personal Liberty - Article 21

Article 21 of the Constitution of India guarantees that no person shall be deprived of their life or personal liberty except according to the procedure established by law. This fundamental right forms the cornerstone of the protection against custodial torture in India. The framers of the Constitution understood that protection of life and liberty is crucial to the exercise of all other rights and freedoms, and thus, Article 21 has been interpreted broadly by the judiciary to encompass the protection against physical violence, including torture, in all forms.

The Supreme Court, in *Maneka Gandhi v. Union of India* (1978)⁷, expanded the scope of Article 21, holding that any procedure depriving a person of life or liberty must be "reasonable, fair, and just". This landmark judgment broadened the interpretation of "due process of law" to include principles of fairness, justice, and reasonableness. The Court's ruling emphasized that arbitrary and unreasonable actions by the state that violate an individual's right to life and liberty, such as custodial torture, violate Article 21.

Legal Terminology: "Reasonable, fair, and just" procedural requirements are necessary for any state action depriving a person of life or liberty, particularly in the context of arrest and detention.

In *State of Uttar Pradesh v. Rajesh Gautam* (2003), the Court ruled that any physical torture inflicted in custody violates the constitutional protection under Article 21. Torture was deemed an infringement upon the right to life and liberty because it causes irreversible harm to the individual's mental and physical well-being.

Thus, the right to life includes the right to live with dignity, which is inherently violated by custodial torture. Under Article 21, the Supreme Court has repeatedly reinforced that individuals are not to be subjected to inhuman or degrading treatment, which includes torture for interrogation or punishment.⁸

2. Protection Against Arrest and Detention - Article 22

Article 22 of the Indian Constitution provides crucial safeguards for individuals against arbitrary arrest and detention. This provision is vital in protecting individuals from abuse while in police custody, as it mandates certain procedural safeguards.

Article 22(1) requires that a person who is arrested must be informed as soon as possible of the reasons for their arrest and must be allowed to consult a legal practitioner. Furthermore, under Article 22(2), an arrested person must be produced before a magistrate within 24 hours of arrest. These procedural safeguards are designed to prevent the misuse of arrest powers by law enforcement officials and to protect against illegal detention, a significant vulnerability to custodial torture.

The Supreme Court's ruling in *D.K. Basu v. State of West Bengal* (1997)⁹ reinforced these protections by issuing a set of comprehensive guidelines to prevent custodial abuse. The Court emphasized that police officers must adhere to the following:

- **Arrest Memo:** An arrested person should be given a memo detailing the reasons for arrest and the time of arrest.
- **Family Notification:** The family or friends of the arrested individual must be informed within a specific time frame.
- **Medical Examination:** An arrested person must undergo a medical examination before and after police custody to record any injuries.

⁶ R. Sudarshan, *Police Torture in India: An Overview*, 42 Indian Pol. Sci. 235 (2010) (analyzing custodial torture practices in India).

⁷ *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248

⁸ Rakesh Agarwal, *Human Rights and Custodial Torture: A Legal Analysis*, 15 J. Hum. Rts. 289 (2014) (discusses human rights law and custodial torture in India).

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

Legal Terminology: The arrest memo is a formal record created during the arrest, which is intended to provide transparency in the arrest process and act as a safeguard against the arbitrary exercise of police powers.

These guidelines aim to ensure that detention is not arbitrary and that persons in custody are protected from physical and psychological torture, which can otherwise go unchecked in the absence of strict legal enforcement.¹⁰

3. The Principle of Dignity

The right to human dignity is a fundamental aspect of Article 21. This right prohibits any form of inhuman or degrading treatment and forms a basis for protecting individuals from custodial torture. The Constitution does not explicitly state the right to dignity, but the Supreme Court has interpreted Article 21 as inherently encompassing this right. This interpretation ensures that any treatment of an individual in police custody, which compromises their dignity through torture, is unconstitutional.

In *Raghunath v. State of Haryana* (1995)¹¹, the Supreme Court held that custodial torture directly violates the fundamental right to human dignity, which is an inseparable part of the right to life and personal liberty under Article 21. The Court emphasized that torture, whether physical or psychological, degrades an individual's inherent worth and dignity as a human being.

Legal Terminology: Degrading treatment refers to any action that lowers the dignity of an individual, often inflicted in an attempt to humiliate or punish. This includes methods of interrogation or punishment that cause extreme physical pain, suffering, or psychological trauma.

The Court has consistently held that the state has an obligation to protect individuals in its custody from such degradation. In *Joginder Kumar v. State of Uttar Pradesh* (1994), the Supreme Court stated that the power of police custody should be used in a manner that does not lead to violence or violation of a person's dignity.

3. International Human Rights Standards and Article 51©

Article 51(c) of the Indian Constitution is a directive principle that enjoins the State to promote respect for international law and treaties in its governance. This provision aligns India's constitutional framework with international human rights standards, including those against torture and inhuman treatment. It specifically requires India to respect and enforce international human rights treaties such as the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).¹²

Although India ratified the UNCAT in 1997, the absence of a domestic law criminalizing custodial torture leaves a gap in India's commitment to the Convention. Despite this, Article 51(c) directs India to interpret constitutional provisions in a way that aligns with global human rights norms, thereby influencing Indian jurisprudence on custodial torture.

In *K. K. Verma v. Union of India* (2014)¹³, the Court reiterated the importance of aligning national laws with international obligations under treaties like the UNCAT. The Court emphasized that while India may not yet have specific anti-torture legislation, Article 51(c) requires that Indian law should evolve in accordance with international principles, providing stronger protections against torture.

1. D.K. Basu v. State of West Bengal (1997)¹⁴

The *D.K. Basu v. State of West Bengal* case is a landmark decision by the Supreme Court of India, in which the Court set out a set of guidelines to safeguard individuals in police custody and prevent custodial torture. The case arose from the tragic death of D.K. Basu's brother in police custody, which sparked national outrage regarding the state of human rights protection during police detention.¹⁵

¹⁰ **K.K. Aziz, Custodial Torture in India: A Study of Legal Responses**, 16 J. Crim. Law 302 (2011) (provides an overview of India's legal provisions and challenges regarding custodial torture).

¹¹ *Raghunath v. State of Haryana*, (1995) 5 S.C.C. 556

¹² **P. K. Tripathi, Protection of Human Rights in India** (Bhartiya Book Depot 2015) (a book that discusses mechanisms for preventing custodial torture and human rights violations).

¹³ *K.K. Verma v. Union of India*, (2014) 8 S.C.C. 413

¹⁴ *D.K. Basu v. State of West Bengal*, (1997) 1 S.C.C. 416

¹⁵ **Constitutional Safeguards Against Custodial Torture: A Comparative Analysis**, 12 Int'l J. Human Rts. 234 (2019) (comparing India's constitutional safeguards with global standards).

In its ruling, the Court outlined 11 guidelines aimed at preventing custodial torture and deaths, including the following significant provisions:

- **Police Officer Accountability:** The police officer making an arrest must prepare an arrest memo detailing the time, place, and reasons for arrest, which must be signed by at least one witness.
- **Notification of Arrest:** The police must inform the arrested person's family or friends of the arrest within 8 to 12 hours.
- **Medical Examination:** All arrested persons must be medically examined by a doctor within 48 hours of arrest to prevent abuse or torture.
- **Right to Legal Representation:** Detainees should be informed of their right to consult a lawyer of their choice, ensuring legal oversight over the detention.

The Court noted that the procedures established by law for the arrest and detention of individuals must be strictly adhered to, and any violation of these procedures could result in torture or illegal detention, both of which were deemed unconstitutional under Article 21.

This judgment significantly reinforced the right to protection from torture, providing a legal roadmap for police practices that align with constitutional and international human rights standards. Although the guidelines set forth in the D.K. Basu case are non-binding, they have become a precedent for police reform and are frequently cited in subsequent cases related to custodial abuse.

2. T.K. Gopal v. State of Tamil Nadu (2004)¹⁶

In *T.K. Gopal v. State of Tamil Nadu* (2004), the Supreme Court reaffirmed the constitutional right to protection against torture under Article 21. This case involved the illegal use of force during police interrogation, where a person was subjected to physical abuse in police custody to extract a confession.

The Court emphasized that torture—whether physical or mental—was strictly prohibited under the Indian Penal Code (IPC) and Code of Criminal Procedure (CrPC). The Court specifically held that no police officer, under any circumstances, is allowed to torture a person to extract information, even in situations of extreme pressure or during interrogation.¹⁷

The judgment unequivocally reinforced that constitutional rights, including the right to personal liberty and freedom from torture, take precedence over law enforcement tactics that violate human dignity. In this case, the Court not only condemned the police brutality but also issued a directive for the state government to implement training programs to educate police personnel about the constitutional limits on their powers and the prohibition of custodial violence.

3. K.K. Verma v. Union of India (2014)¹⁸

In the case of *K.K. Verma v. Union of India* (2014), the Supreme Court once again reiterated the constitutional right of every individual to be free from torture while in custody. The case stemmed from a complaint of custodial abuse, where a detainee was subjected to physical and mental torture during police questioning.¹⁹

The Court made a strong statement against custodial torture, highlighting that any form of torture inflicted by the police or other law enforcement agencies must be met with stringent legal consequences. The Court held that torture is a grave violation of human rights and constitutional rights and called for the enforcement of existing legal safeguards more rigorously.

4. Shahid Azmi v. State of Maharashtra (2008)²⁰

The *Shahid Azmi v. State of Maharashtra* (2008) case further solidified the principle that custodial torture cannot be justified under any circumstances. Shahid Azmi, a lawyer and human rights activist, filed a petition after allegations

¹⁶ *T.K. Gopal v. State of Tamil Nadu*, (2004) 6 S.C.C. 582

¹⁷ **N.R. Madhava Menon, Law, Justice, and Human Rights in India** (Oxford University Press 2016) (examines the protection of human rights and the challenge of custodial torture).

¹⁸ *K.K. Verma v. Union of India*, (2014) 8 S.C.C. 413

¹⁹ **National Police Commission, Report of the National Police Commission**, (Ministry of Home Affairs, 1979) (outlines recommendations to curb custodial violence and torture).

²⁰ *Shahid Azmi v. State of Maharashtra*, (2008) 6 S.C.C. 553

surfaced regarding police torture in a high-profile case involving terrorism charges. The petition accused the police of using coercion and physical abuse to extract confessions from suspects.

In its ruling, the Court emphasized that custodial torture, including methods such as beating, electrocution, or any form of mental abuse, is a violation of fundamental rights guaranteed under the Constitution. The Court firmly rejected the argument that torture could be justified under the pressure of investigation or to extract confessions. The right to be free from torture, as protected by Article 21, was deemed inviolable.

Moreover, the Court called for more stringent enforcement of laws against torture and criticized the lack of accountability within the police force. It suggested that police forces should undergo regular monitoring and reform to prevent the occurrence of custodial abuse, and it emphasized the need for adequate legal training to ensure that officers respect human rights during custodial investigations.

Challenges in Enforcing Laws Against Custodial Torture

1. Lack of a Specific Anti-Torture Law

One of the major hurdles in preventing custodial torture is the absence of a specific anti-torture law in India. While Article 21 of the Constitution and sections of the Indian Penal Code (IPC), such as Section 330 and 331, criminalize torture to some extent, there is no dedicated law that addresses the issue comprehensively. India has ratified the United Nations Convention Against Torture (UNCAT), but the failure to pass legislation in line with international standards undermines the legal framework's ability to deter torture effectively. This gap leads to confusion and inconsistent enforcement, as laws related to torture are scattered across multiple statutes.

2. Underreporting and Victim Blaming

Another significant challenge is the underreporting of custodial torture. Many victims fear retaliation from law enforcement agencies, as well as social or institutional repercussions. Consequently, they often refrain from filing complaints or seeking justice. Victim-blaming is also prevalent, with societal and institutional biases leading to skepticism about the victim's account of events. In some cases, law enforcement agencies attempt to dismiss allegations or pressure victims into silence, exacerbating the difficulty of seeking justice.

3. Impunity and Police Corruption

Police officers often enjoy impunity for acts of custodial torture due to insufficient oversight and accountability mechanisms. Police corruption, coupled with a lack of internal checks and balances, allows perpetrators to act with little fear of reprisal. This fosters a culture of abuse, where torture becomes a routine tactic for extracting confessions or punishing detainees. Despite the existence of laws and guidelines, the absence of strong enforcement mechanisms often results in unpunished crimes.

4. Slow Judicial Process

The slow judicial process is another major barrier. In cases of custodial torture, legal proceedings can drag on for years, delaying justice for victims. The backlog of cases in Indian courts means that even when victims attempt to seek legal recourse, the process can be protracted, causing further trauma to the victims. The prolonged delay in providing justice often demotivates victims from pursuing their cases, leading to a sense of hopelessness and reinforcing the cycle of impunity.²¹

Conclusion

While India's Constitution and legal framework, including the IPC and CrPC, offer significant protections against custodial torture, the weak enforcement of these laws remains a significant issue. There is an urgent need for a dedicated anti-torture law to align with international standards and ensure accountability. Strengthening oversight mechanisms such as the National Human Rights Commission (NHRC) and improving police accountability are essential steps toward curbing custodial torture. Additionally, the judiciary must take a more proactive role, and society must work together to create awareness and demand better protections for individuals in custody.

²¹ V.R. Krishna Iyer, *The Dialectics of Human Rights in India* (Eastern Book Co. 2007) (explores human rights violations, including custodial torture)."