

## CUSTODIAL JURISPRUDENCE UNDER CRIMINAL JUSTICE ADMINISTRATION

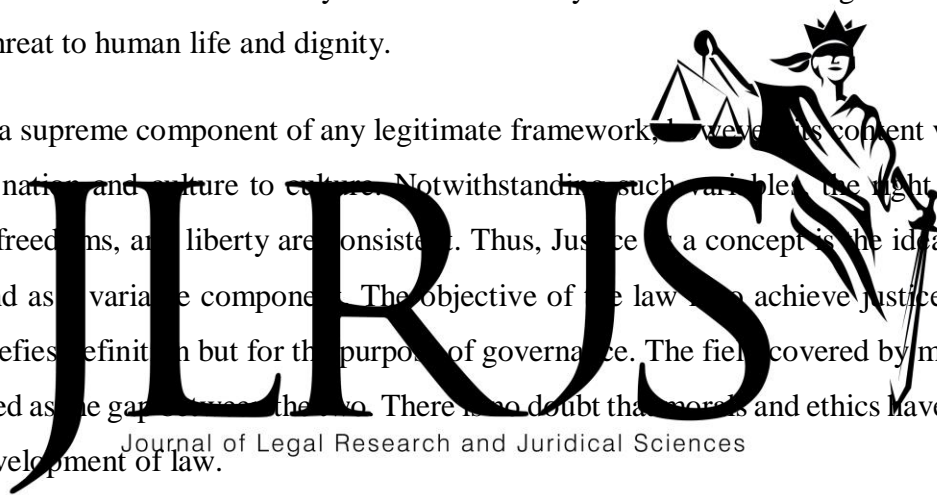
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### INTRODUCTION

The word 'custody' connotes ideas of guardianship and protective care. Even when used to indicate arrest or incarceration, it should not carry any horrible side effects of viciousness. Custodial violence is an inhuman trait that arises out of a perverse desire to cause misery when there is no possibility of any retaliation; it is a pointless exhibition of superiority and physical power over the individual who is detained or manifestation of collective rage. It is one of the most common types of crime in civilized society, governed by the rule of law and it is a severe threat to an ordered civilized society. Torture in custody violates the basic rights of the citizens and is a threat to human life and dignity.

Justice is a supreme component of any legitimate framework, however its content varies from nation to nation and culture to culture. Notwithstanding such variables, the right to dignity, equality, freedoms, and liberty are consistent. Thus, Justice as a concept is the ideal achieved by law and as a variable component. The objective of the law is to achieve justice. Law as a concept defies definition but for the purpose of governance. The field covered by morality can be regarded as the gap between the two. There is no doubt that morals and ethics have an impact on the development of law.



The principles of equity and natural justice, as powerful and effective agencies of growth, have influenced the infusion of morality for shaping the law. The ideal state is governed by the rule of law, which includes justice. The purpose of such governance is to bridge the gap between the ideals adopted by the Constitution and the ground reality. The gap between the ideal and the reality can be bridged only by judicial activism, which encourages the development of new Jurisprudence.

With Criminal Jurisprudence, we should consider the society to which we belong, but modern civilization leads to a common goal of protecting human rights so that peaceful co-existence can be achieved and each human being can feel secure that he will be able to live comfortably

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with dignity during his lifetime. All laws have the same tendency. This gives rise to the moral obligation of a man towards others i.e. what he must do and what he must not do.

When a man acts, his actions have an impact on others. As a result, this reflection creates imbalances. The law is the method of correcting imbalances. It is concerned with rights, obligations, and enforcement. It is stated to be wrong when a man is placed in an uncomfortable situation as a consequence of the action or inaction of another. Wrongs can be classified as interference with one's right and failure to execute one's obligation, and the eradication of the wrongs is done through adjudication. Justice is the end result of adjudication. Jurisprudence is the name given to this system of Justice.

By taking cognizance of a large number of the reporting of custodial crimes in India, the Supreme Court initiated "Custodial Jurisprudence" in *D.K. Basu vs. State of West Bengal*. The apex court stated that there should be more transparency and accountability in the system when it comes to arrests and detentions of the offenders. The establishment of custodial jurisprudence safeguards the rights of the detainee and protects him from custodial torture.

## CRIMINAL JUSTICE ADMINISTRATION

It is the primary responsibility of a state to safeguard the rights and liberties of its people. To protect the innocent while punishing those who are guilty. Every civilized society is governed by rule of law and is enforced through a criminal justice system. In India, the Criminal Justice System is also known as the "Adversarial System". It is a legacy of a bygone colonial era, with the underlying principle i.e. "it is better for all guilty people to go unpunished than from one innocent person to suffer".

The rule of law, democracy, development, and human rights are all determined by how successful governments are in criminal justice. The state has the primary responsibility to preserve the rights and liberties of its citizens as well as to save the innocent and punish the guilty. In India, the criminal justice system consists of four important components;

*A. The Investigating Agency (Police),*

*B. The Judiciary,*

*C. The Prosecution Wing, and*

*D. The Prison and Correctional Services.”*

In the legal system, the first three components play a significant role. Failure or ineptitude on behalf of one might lead to a failure to deliver justice. As a result, each agency of the criminal justice administration must operate with integrity, honesty, and loyalty as a sine qua non.

**1.) The Investigating Agency (Police):**

The police, being the [first and foremost entity responsible for the administration of criminal justice](#) in Indian society, initiates a criminal case. It is responsible for registering cases, conducting investigations in accordance with the Code of Criminal Procedure, and presenting them to the court for trial. The [Indian Police Act of 1861](#) gives the state jurisdiction and regulation over the police service. The Central Bureau of Investigation (CBI) was established by the Government of India at the national level, alongside the state police force, under the special law called the [Delhi Special Police Establishment Act, 1946](#). Despite being based at the Federal level, the CBI can conduct investigations in states with the authorisation of the respective state government.

Apart from the state police forces and the CBI, the central government has constituted certain other specialised investigating agencies in other departments, such as the Customs Department, the Income Tax Department, the Enforcement Directorate, and so on. They look into the cases that fall under their jurisdictions and prosecute them in court. The rights of citizens are trampled when the [investigating agencies use their power beyond the limited boundaries](#). As the Supreme Court has said, *“the police has come to treat itself as the law unto itself, sometimes even above the law. It is heart-rending to note that day in and day out we come across with the news of blood-curdling incidents of police brutality and atrocities, alleged to have been committed, in utter disregard and all branches of humanitarian law and universal human rights as well as total negation of the rights constitutionally guaranteed and human decency.”*

The plight of the people becomes horrible when the police become an irresponsible bunch. The courts, which are expected to act in extraordinary circumstances regularly, are forced to do almost every day. Instead of putting pressure on the police to act, this is being construed as [judicial activism](#) with all consequences that entail.

**2.) The Judiciary:**

India has a powerful and independent judiciary that is mandated to safeguard the fundamental rights of the people. The evolution of public interest legislation in the Indian legal system has resulted in a substantial body of law relating to human rights in favour of the weaker and exploited sections of society. By ignoring the traditional rules of locus-standi, this method has allowed the top court and high courts to open their doors. This has undoubtedly [advanced the cause of human rights](#), especially for those people who were unable to approach the courts on their own due to poverty disability, and other social or economic impediments.

The preamble and various other provisions relating to Fundamental Rights, Directive Principles of State Policy, and Fundamental Duties demonstrate our constitutional commitment to the protection and advancement of human rights. The judiciary has demonstrated its wisdom by developing new human rights-oriented interpretations of numerous statutes, thereby protecting the citizens from police atrocities. In [Nilabati Behera vs. the State of Orissa](#), the Court observed that Article 21 does not deprive prisoners and detainees of their fundamental rights and those only legal restrictions can be imposed on the enjoyment of such rights of the arrestees and detainees.

It was further observed... *"there is a great responsibility for the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the fact of his confinement and therefore, his interest in the limited liberty left to him is rather precious. The obligation of care on the portion of the state is strict and admits no exceptions. The wrongdoer is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to procedure established by law ..."*

In this case, after her son died in police custody, the mother was awarded a payment of Rs.1.5 lakhs. [Article 9\(5\) of the International Covenant on Civil and Political Rights, 1966](#) states that an enforceable right to compensation is not incompatible with the concept of guaranteed right. Anyone who has been subjected to unlawful torture has a legal compensation claim.

### 3.) The Prosecution Wing:

The State is responsible for prosecuting in the court of law. The State has formed cadres of public prosecutors to prosecute the matter at various levels in the subordinate courts and High court of the concerned state. The state legislature designates public prosecutors. The criminal

justice system has an [inherent flaw in the form of trial Delays](#). Generally, for a variety of reasons, including frequent adjournment petitions, lengthy cross-examinations with no beneficial purpose, lengthy arguments that sound like an empty vessel without much substance, the inadequacy of staff, the non - cooperation of the police, and the absence of judges. The concept of the speedy trial was evolved to overcome all such inadequacies. The expeditious trial is the facet of criminal Jurisprudence. The concept of speedy trial helps the prosecution and as well as the accused.

In [Kadra Pehadiya v. The State of Bihar](#), the Hon'ble Supreme Court observed quite pertinently. *"It is a shame upon an adjudicatory system which keeps a man in jail for years without a trial"*. In [Madheswardhari Singh v. The State of Bihar](#), the full bench of Patna High Court laid down: *"That the right to speedy trial extends to all criminal prosecution for all offenses generally. It applies to both trial and investigation as per the code of Cr. P. C 1973. Delay of 7 years or more in trial and investigation other than capital punishment is a violation of Art 21 of the constitution."*

The right to a speedy trial was implemented for the better of the working condition of the administration and judiciary. It enforces the increment of efficient workers and give stress on the enlargement of the prosecution and the court. Though this exercise may involve huge expenditure the state cannot be permitted to deny this constitutional right on the ground of inadequate financial resources which is already decided in [Hussainara Khatoon's case](#).

Justice Bhagwati aptly remarked that *"the state cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability."*

#### 4.) Prisons and Correctional Services:

Prisons and correctional homes are the fourth legs of India's criminal justice administration system. In India, the state governments are in charge of both the jails and correctional services. The duty of the prison authorities is not only to keep the accused safe and out of society but also to rehabilitate and reform them. "Prison is a place where the criminal justice system put its entire hopes. The correctional mechanism of the system, if fails will make the whole criminal procedure in vain. The doctrine behind punishment for a crime has been changed by the evolution of new human rights jurisprudence. The concept of reformation in the prison has become the watchword for prison administration. Human rights jurisprudence advocates that [no crime should be punished in a cruel, degrading, or in an inhuman manner](#). On the contrary,

it is held that any punishment that amounts to cruel, degrading, or inhuman should be [treated as an offence by itself](#). The transition caused to the criminal justice system and its correctional mechanism has been adopted worldwide. Here the inquiry is made to know the extent of [inclusion of these human rights of prisoners into Indian legislations.](#)”

**Krishna Iyer, J** opined prison as: *“A reformatory philosophy, rehabilitative strategy, therapeutic prison treatment and enlivening of prisoner’s personality through a technology of fostering the fullness of being such a creative art of social defence and correctional process activating fundamental guarantees of prisoner’s rights is the hopeful note of national prison policy struck by the constitution and the court.”*

As a result, all the dignity that human holds can also be found within the four walls of the prison. The traditional definition and concept of prison are no longer appropriate. [Many freedoms are taken away from an inmate in prison](#). Human rights jurisprudence had a significant role in the penal reforms and this had an impact in India. The penal reforms implemented around the world have an impact on India as well. [reformatory idea of punishment gave birth to the concept of penal reform](#). The meaning of the prison of the time should incorporate reformatory values. The reformatory aspect considers how to [incorporate humane ideals into the prison system](#) and the prison officials must work for the achievement of the same.

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Torture was still widely used in enforcement agencies. [The number of people who have died while in police custody is updated at regular intervals](#). Suicides, sudden medical complications, self-inflicted injuries, and natural deaths were all used as justifications for these fatalities. According to data provided by Asian Centre for Human Rights (ACHR), between April 2017 and February 2018, there were 1,674 custodial deaths —1,530 in judicial custody and 144 in police custody during that period. Torture is used to extract confessions, demand bribes, and settle personal grudges, among other things. Terror suspects are more likely to be tortured as a result of the tremendous pressure on the police authorities to solve the crimes.

#### A. Custodial Deaths:

During 2018-2019, the highest number of custodial deaths is reported in “Uttar Pradesh (374) followed by Maharashtra (137); West Bengal(132), Punjab (128); Madhya Pradesh (13); Bihar (109); Rajasthan (89); Tamil Nadu (76); Gujarat (61); Odisha (56); Jharkhand (55); Chhattisgarh (54); Haryana (48); Delhi (47); Assam (37); Andhra Pradesh (35); Uttarakhand and Telangana (17 each); Karnataka (15); Himachal Pradesh (8); Arunachal Pradesh and Tripura (6 each) Jammu & Kashmir and Meghalaya (4 each); Mizoram (3); Manipur, Chandigarh, Sikkim, and Nagaland (2each).”

In the majority of the incidents of death in detention, torture was involved. Torture is still used widely, entrenched and crucial to the administration of justice and counterterrorism measures. The ACHR stated that India must ratify the United Nations Convention Against Torture (UNCAT) – which is signed in 1997 and that the government should introduce the Prevention of Torture Bill of 2017, which was drafted by the Law Commission, before Parliament during the monsoon session,



“India has already lost the case of extradition of **Kim Davy**, an accused of Purulia arms dropping a case of 1995 in Denmark and extradition of **Sanjiv Chawla**, an alleged cricket bookie in the United Kingdom on the ground that prison conditions in India amount to torture or inhuman or degrading treatment or punishment and that India has not ratified the UNCAT”. It was said that it might lose other extradition requests as well unless India removed the legal hurdle by ratifying the UNCAT.

Mr. Rajendra Yadav, the son of Mr. Dashrath Prasad Yadav, died on 1 January 2010, in the Chhatarpur Police Station in Palamau district of Jharkhand, [due to alleged torture](#). Mr. Yadav was arrested on 30 December 2009 in connection with a murder case. The post-mortem report of the deceased revealed injury marks. A 20-year-old Dalit R. Jay Kumar died at the Chitilapakkam Police Station in the Kanchipuram district of Tamil Nadu due to alleged torture. On 14 November 2010, the deceased, a school van cleaner, was picked up for questioning in connection with a case of assault. On 15 November 2010, the deceased was released after his mother allegedly paid a bribe of Rs.1000. However, he had to be hospitalized at the hospital where he died. The deceased’s mother alleged that her son was put to [death as a consequence of sustained injuries due to torture by two constables](#).

In India, where the rule of law pervades every action and “right to life and liberty” is regarded as the most important fundamental right, instances of [torture and the use of third degree](#)

[methods on suspects](#) during illegal detention and police remand casts a stain on the entire administrative system. In this depressing scenario, human rights take a back seat. Torture in custody is at present considered an inevitable part of the investigation. Investigators continue to believe that [if they apply enough pressure, the accused will confess](#). The former Supreme Court judge, [V.R. Krishna Iyer, has said](#) that “*custodial torture is worse than terrorism because the authority of the State is behind it*”.

It is a paradox that torture continues to exist in India. This is because India is a liberal democracy with well-defined constitutional and statutory provisions against torture that are constantly being [developed and overseen by a powerful and independent judiciary](#). This raises the question of why torture is still practised in India. The lack of scientific equipment and professionally-trained personnel is often blamed for the crudity of criminal investigation. This is one of the issues; nevertheless, the utter impunity with which the law enforcement officers operate is far more serious. This impunity is allowed due to the lack of laws criminalizing and punishing custodial torture, as well as corruption and the wanton degradation of courts and other institutions for the maintenance of law in India.

When a torture victim has to wait years for a court to take up his/her case while the perpetrator is being promoted, the concept of justice is compromised. Torture and detention is often regarded as one of the most heinous forms of human rights violation. The Constitution of India, the Supreme Court, the National Human Rights Commission (NHRC), and the United Nations all ban it. However, police officers across the country defy these institutions. As a result, in preventing crimes, a realistic approach is needed to achieve a [balance between individual human rights and societal interests](#).

### **B. Custodial death through torture - alleged Suicide:**

In a number of cases, the police alleged that the accused committed suicide while being held in police detention. However, the mystery of what led them to commit such a heinous act and how they committed suicide with unusual things such as shoelaces, blankets, jeans, remains unsolved. It was unclear how the victims got access to suicide inducing substances such as poisons, drugs, electric cables, while in detention. Gautam Pal, 30, died in Pradhan Nagar police station in Darjeeling district in West Bengal. On November 26, 2010, the deceased, a resident of Prakash Nagar, was detained with his friends in connection with a theft case. On November 27, 2010, he appeared in court and was remanded in police custody. Gautam Pal



was found hanging in the prison bathroom at 4 a.m. on November 29, 2010, according to the police. Gautam Pal allegedly committed suicide by hanging his trousers (jeans) from the ventilator of the lockup bathroom, according to the police. However, Gautam Pal's brother refuting the police suicide explanation claimed that his brother was [tortured since he saw multiple injury marks on the body](#). He further stated that his body was strung up after he died in order to hide their crime.

The Prison Service uses the term "self-inflicted death" rather than "suicide" when referring to those prisoners who take their own lives while imprisoned. This is because it does not differentiate between the occasions where there is an official Coroner's verdict of suicide and other occasions where people die at their own hands, for example through misadventure. As a result, the Prison Service records around a third more self-inflicted deaths than it would if it measured only suicide verdicts given by Coroners.

### C. Custodial death through torture - alleged medical complications:

Many victims who were fit and healthy before being arrested develop medical problems after being taken into custody and die while in police custody. The victims are tortured and assassinated in actuality. Because the medical community agrees that the death was caused by medical complications, the police are able to get away with it. There have been a number of death cases in police custody as a result of alleged medical complications. After allegedly being tortured Babu (58), a labourer, died in Kattakada Police Station in Thiruvananthapuram in Kerala. Babu was apprehended in 2002 after a warrant was issued for his arrest in connection with a land dispute. Mr. Babu passed out at the police station and was taken to the hospital, where he later died. The deceased's family, on the other hand, [alleged that he was tortured to death](#).

### INFRINGEMENT OF HUMAN RIGHTS

Torture and other cruel or corrupting treatment is prohibited in the Universal Declaration of Human Rights (1948) and the Geneva Conventions (1949), but it was only in 1948 that the United Nations Assembly surprisingly embraced the anti-torture tradition. Apart from other things, the custom transmits the notion of torture. It characterizes torture as follows: "[Torture is defined as](#) any act by which severe pain or suffering whether physical or mental is intentionally inflicted on a person for such purposes as obtaining from him or third person

*information or a confession, punishing him for an act he or a third person has committed or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official acting in the official capacity. It does not include pain or suffering arising only from inherent or incidental to lawful sanctions".*

“*Sarve Bhavantu Sukhinah*” is the [National Human Rights Commission’s motto](#). Happiness and health for all are pursued through a rights-based system that prioritizes respect for human beings and their dignity. “*President’s assent to the Protection of Human Rights Act was a major breakthrough in this direction. Section 3 of the Act provides for the setting up of the National Human Rights Commission (NHRC) and Section 21 provides for the setting up of various States Commissions (SHRC).*”

## FACTORS RESPONSIBLE FOR CUSTODIAL VIOLENCE

Our culture adheres to a ‘tooth for tooth’ policy. As a result, our society implicitly expects and consents to the use of physical force i.e. violence against suspects in order to solve crimes. The police are instigated to use force against the suspects or accused by the complainants themselves. There are also various other reasons why law enforcement agency becomes a lawbreaker.

### A. Psychological Reasons:

Using scientific methods of study can be a time-consuming process. In order to get a confession and uncover the mystery of motivation behind the commission of the offence, investigating officers who are lacking proper orientation in scientific methods [resort to third degree measures](#). The police regularly resort to custodial savagery due to different psychological reasons. They are specified as under:

1. *“Poor relation between police and society.*
2. *The absence of legitimate training and familiarity with human rights laws.*
3. *They follow old methods which are used for training given to budding police officers. The accentuation is still more on muscle than on the brain. They trust that aggressive implementation of law arranges a fast settle answer for the issue of rising crime, without discussing the main reasons for increasing crime.*

4. *Stress due to the pitiable working states of the cops.*
5. *Corruption because of a poor state of administration in regard of pay, payments, and various promotions.”*

### **B. The pressure of Jobs:**

According to the National Police Commission, an examining officer devotes just 37 percent of his time to investigational work while the remaining 63 percent is consumed by different obligations such as upkeep of VIP, band bust, petitions, inquiries, court participation, and so on.

### **C. Inadequacy of Infrastructural Facilities:**

Due to the lack of infrastructure in many police stations, there are no independent female or juvenile lockups. This has made it dangerous for women and juveniles who have been arrested and are being held at the police stations. The [security of women deteriorates due to the lack of woman police officers and constables](#) at the police station resulting in custodial rapes. Sexual harassment in the form of molestation or rape in the custody is most commonly committed on women accused who are left alone in the custody of security and duty officers at odd hours of the night.

### **D. Torment Due to Low Job Satisfaction:**

The public doesn't have much confidence and respect for the police officers. They are also denied the basic minimum of working conditions. They are underpaid; labour in inhuman conditions, are unable to obtain housing and have no job security. All of this causes police officers to become frustrated and enraged, leading to the harsh treatment of the accused, including assault in jail and corruption. Cops are frequently seen as pawns in the hands of powerful government figures. Political impedance is blamed for a disproportionate percentage of deaths in police custody.

## **INTERNATIONAL & NATIONAL CONCERN FOR CUSTODIAL VIOLENCE**

Torture in detention has been an international concern since the 19th Century when the fight to end slavery began. In its preamble, the Universal Declaration of Human Rights recognises the constitutional dignity and equality as inalienable rights of all the members of the society as the foundation for Justice, Peace, and Freedom. The General Assembly declared the declaration of

human rights to be a common standard of achievement that all nations must seek to attain by teaching and education in order to foster respect for the fact that [all human beings are born free and equal in dignity and rights](#). Therefore, in order to safeguard the victims of custodial violence, various measures have been taken by countries.

[Article 5 of Universal Declarations of Human Rights](#) states that “no one shall be subject to torture or cruel, inhuman or degrading treatment or punishment”. [Article 9](#) of the same guarantees that human has the right to security of persons. “No one shall be subjected to arbitrary arrest or detentions”. [Article 6](#) of the “International Covenant on Civil and Political Rights” defines that “every state shall keep a proper check on techniques used by the police officers for interrogation and arrangements shall be made for custody and treatment of persons who are in custody”.

Manoj Yadav, (28), when his father Dayanand Yadav met him in the lock-up of Sadar police station in Bihar's Nawada district, was crying. He was in excruciating pain as a result of police torture. His father had brought home-cooked food, but he could not eat it. Manoj's body was discovered the next day in a barren field, lying in the dust with saliva oozing from his gaping mouth. Manoj, who had no criminal record, had been detained for the second time. He was arrested for the first time for finding a dead businessman's mobile phone, which he had found abandoned on the streets. When he was found innocent following interrogation, the police released him. With the pressure growing to solve the murder case, the police picked up Manoj again and this time they thrashed him in an attempt to make him talk, eventually killing him. The incident caused such a stir that the [police were forced to file an FIR against five police officers](#).

## LEGAL REMEDIES AGAINST CUSTODIAL TORTURE

“[Detention does not deprive one of his Fundamental Rights](#)”. In a number of cases, it has been adjudicated that an [arrestee is not deprived of his fundamental rights](#) solely because he is detained by the police; the violation entitles the arrestee to file a complaint with the Supreme Court under Article 32. They [don't escape the individuals when he enters the prison](#), even though detention may cause them to shrink. In any case, in the authority of such a nature, the degree of shrinking can never reach the point of torture, where the people are reduced to a mere animal presence.

## CONSTITUTIONAL PROVISIONS

### I. ARTICLE 20:

Article 20 predominantly protects a person from being convicted of an offence. This notion of [non-retroactivity of penal laws](#) is incorporated here (*Nullum crimen sine lege.*). As a result, ex-post facto laws constitute an infringement of the person's fundamental rights if efforts are made to punish and torment him in accordance with some statute. Article 20 also protects against Double Jeopardy (*Nemo debet pro eadem causa bis vexari*), which occurs when a person is subjected to brutality and continuous torture by the police in order to force him to confess a crime that he did not commit.

### II. ARTICLE 21:

In a series of cases, the Indian judiciary has interpreted its purpose to protect the right to be free from torture. This viewpoint is held because the [right to life encompasses more than a simple right to live an animalistic existence](#). The expression "*life or personal liberty*" in Article 21 includes a guarantee against torture and assault to a person who is taken into custody by the State and its functionaries, and [no sovereign immunity can be invoked to shield the State from the liability](#) arising from such criminal use of force against the captive person.

### III) ARTICLE 22

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Article 22 renders four key fundamental rights in respect to conviction:

- 1.) *“Being informed of the grounds of arrest.*
- 2.) *Legal practitioner of the accused's choice.*
- 3.) *Preventive detention laws.*
- 4.) *Accused to be produced before the magistrate within 24 hours of arrest. In this manner, these arrangements are intended to guarantee that a man is not subjected to any evil treatment that is without statutory support or outperforms recommended abundances”.*

## OTHER STATUTORY PROVISIONS

### A) INDIAN POLICE ACT, 1861

This statute allows the police officers who are found to be negligent or unfit in discharging their duties to be fired, fined, and suspended (*Section 7 & 29*). In light of the police officer's violation of various constitutional and statutory safeguards, as well as the guidelines given in [D.K Basu v. State of West Bengal](#), this is understandable.

## B) INDIAN PENAL CODE (IPC), 1860

Following the controversial [Mathura Rape Case](#), *Sec. 376 of the Indian Penal Code* was amended. "*Sec. 376(1)(b) of criminal code*", makes it illegal for the police officer to rape someone in custody. This was a much needed improvement to the section in question, as it finally condemns police officers who abuse their power. "*Sections 330, 331, 342, and 348 of the Indian Penal Code*" appear to be intended to prevent a police officer with the authority to arrest and interrogate a person during the investigation of a crime from using [third degree methods that cause 'torture'](#).

## JUDICIAL PRECEDENTS

In the face of cruelty and torture, the Supreme Court is known for upholding human rights. since the 1990s, the Supreme Court has devised two ingenious methods for dealing with Custodial Torture and Custodial Death.

1) The *Right to Compensation for Custodial Torture and*

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2) Supreme Court has also *formulated Custodial Jurisprudence for the same.*

## Award of Rs 15 lakh to the widow of custodial death victim by Supreme Court

The Supreme Court, in [Indu Singh & Ors vs State of Uttar Pradesh](#), ordered the government to compensate a widow with Rs.15 lakh for her husband's death in custody 27 years earlier. Vinay Singh, Indu Singh's husband and a doctor by profession, died in custody in March 1987, allegedly during an incident that erupted between him and two constables. Advocates SS Nehra, ND Gaur, and Arun Kumar Tripathi represented the petitioners. Senior advocate Ratnakar Das as well as attorneys Ashutosh Kr. Sharma and Gaurav Dhingra represented the respondents.

The Supreme Court ordered the government to show the reason why it should not be directed to give the widow a lump sum compensation, and the government agreed to pay her Rs. 5 lakh

in compensation. When the widow stated on the following date of hearing that she is entitled to more compensation because her husband was a doctor and his death took place a long time ago, the bench of justices S.J. Mukhopadhaya and PC Pant dismissed the petition and awarded her with an additional Rs.10 lakh in compensation. The lump sum amount must be recovered from the guilty police constables.

[Sheela Barse v. State of Maharashtra](#) has contributed to the protection of the interests of the arrested persons, especially for women, by establishing a rule for the same. In the same case, the Court has put a duty on the Magistrates to tell the arrested person of their rights. In [D.K. Basu v. State of West Bengal](#) the Supreme Court established rules in respect to the Rights of detainees. The arrestee, who is the most important, should be examined by a specialist from a recognized board of doctors at regular intervals (48 hours) during his confinement, and duplicates of every endorsed record should be submitted to the concerned Magistrates. During interrogation, the arrestee shall be permitted to meet his lawyer.

### C) INDIAN EVIDENCE ACT, 1872

A confession given to a police officer by the accused is inadmissible in the court under *Section 25*. Furthermore, in court, a coerced confession made in response to police intimidation in order to avoid any temporary evil would be immaterial. As a result, even while custodial torture is not explicitly prohibited by law in India, the evidence obtained by illegal means, including torment is not recognised in courts.

### D) CODE OF CRIMINAL PROCEDURE, 1973

*Sections 46 & 49* were enacted with the legislative intent of protecting persons in custody who are not accused of a crime punishable by death or life imprisonment, as well as those attempting to escape. Article 22 of the Constitution is followed by Provisions 50 – 56. *Section 54* of the Code is a scheme that, to a large extent, resembles any form of punishment of custodial torment and brutality. When a person in detention [makes an allegation of ill-treatment](#), the Magistrate is then and there required to inspect his body and record the result of his examination and reasons for it, according to *Article 22*. It grants an individual the [right to report any act of torture or assault](#) to the court as well as to have oneself examined by a medical practitioner at their request. Courts have also employed a [compensatory mechanism](#). When a [Magistrate fails to](#)

[follow the procedure](#) with respect to the entertaining complaint of custodial torture, the High Court is summoned to intervene under Sec. 482 of the Code.

*Sec. 176 of the Code*, which requires a mandatory magisterial inquiry for the death of an accused caused in police custody, is another significant provision with respect to custodial torture leading to deaths. The purpose of *Sections 167 and 309 of the Code* is to [bring accused persons before a court and so protect their rights and interests](#), as the detention is done under their authorization.

## OTHER AUTHORITIES

In its 177th Law Commission Report, the 16th Law Commission recommended significant modifications to the Code of Criminal Procedure, including making it the obligation of the cops under whose authority captured people are held to secure their safety, and holding them liable if they fail to do so. The 185th Law Commission Report also makes a recommendation regarding the rights of the people arrested under sec.27 of the Indian Evidence Act, 1872. *The Malimath Committee Report* also emphasized the importance of codifying the rights of those who have been arrested.

*“The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [adopted by United Nations General Assembly on 10th December 1984 (Resolution No. 39/46)] was signed by India. On October 14, 1997, United Nations General Assembly adopted the UN Convention against Torture, (often known as "CAT"). However, the Central Government asked the Law Commission to examine the issue of ratification of the same and submit a report on the matter in a letter dated 8th July 2017”, according to [273<sup>rd</sup> Law Commission Report](#).*

*“Article 3 of the European Convention on Human Rights states that: 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment'. There are no exceptions or limitations to this right. This provision usually applies not only to torture but also cases of severe violence in police custody and poor conditions in detention. It is an absolute right and in no circumstances, to torture, someone will ever be justifiable.”*



## CONCLUSION

*“INJUSTICE ANYWHERE IS A THREAT TO JUSTICE EVERYWHERE.”*

*- MARTIN LUTHER KING JR.*

The ultra-vires use of powers by the law enforcement agency tends to infringe the rights of the citizens who have been detained or arrested. The Custodial jurisprudence protects the rights of the detainee from the administrative authority. It is a [recurring statecraft issue](#). As a result, establishing a state administration system that allows the police to successfully maintain lawfulness while also preventing and recognizing wrongdoing without jeopardizing lawful rights, benefits, and cases of laymen becomes increasingly crucial. Such a framework clearly demands effective police control in order to prevent the officers from expending their time on frivolous activities. It is also necessary to have an effective institutional [grievance-redressal mechanism](#) to address police excesses’.

Firstly, we must choose a [humane tool to reform criminals](#), abandoning the irrational belief that the State's brutality will change the savage into a society member and giving a new breakthrough in crime management that is consistent with human rights and curial compassion. Custodial torture must be made illegal. A special statute should be enacted to do this. Secondly, the root of all the evils lies in entrusting extensive judicial powers to the police officials. Their job starts with the arrest and ends with the conviction of the arrestee. Many cases of incarnation torture could be avoided if law-authorizing agencies followed the current laws governing arrest and detainment. To avoid any hassle, the guidelines in the *D.K Basu case* formulated by the Supreme Court should be strictly followed.

Thirdly, the general public - and particularly concerned professional groups, such as human rights organisations and the media- - should closely monitor police activities to ensure that administration guarantees are upheld. The political restriction should also ensure that the Director General of Police responds to the administrative and submit an investigative report on each case of custodial death and torture. Fourthly, the “*United Nation Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*” should be ratified by the central government. Criminal jurisprudence safeguards society from wrongdoers, while custodial jurisprudence safeguards the rights of the prisoners. The “tit for tat” notion will not help to reduce crime. Society should hate crimes, not criminals. To cure

criminals, preventive and reformatory theories can be used, and the United Nations Convention against Torture should be enforced. Furthermore, the majority of custodial torture is due to the police frustration, which can only be curbed by providing well-equipped facilities and raising their pay, as well as releasing them from political pressures and educating them on the rights of the detainees.

