



## CUSTODIAL VIOLENCE AND ARTICLE 20/21: DO CONSTITUTIONAL SAFEGUARDS HOLD GROUND IN REALITY?

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### ABSTRACT

*Custodial violence in India remains a deeply ingrained issue, it poses a direct challenge to our constitutional commitment to human rights and the rule of law. Despite the comprehensive safeguards provided under Articles 20 and 21 of the Indian Constitution, the ground reality still reflects a disturbing continuity of torture, illegal detention, and custodial deaths. Article 20 protects individuals against self-incrimination, retrospective criminal legislation, and double jeopardy, while Article 21 guarantees the right to life and personal liberty. These provisions are intended to establish a robust framework against these extremities. However, systemic failures, poor implementation, and a culture of police impunity have severely diluted their practical impact. This paper critically examines the dissonance between constitutional ideals and their enforcement, drawing upon key Supreme Court judgments, legislative provisions such as the Code of Criminal Procedure and the Indian Evidence Act, and institutional mechanisms like the National Human Rights Commission (NHRC). This paper further explores the socio-political factors contributing to the persistence of custodial abuse, including lack of police accountability, inadequate training, and the absence of independent oversight. Through analysis of NCRB data, high-profile custodial death cases, and international standards such as the UN Convention Against Torture, this study underscores the urgent need for reform. It argues that while the constitutional text provides a theoretically sound protection mechanism, its failure lies in enforcement and institutional will. The paper concludes with concrete recommendations, including ratification of international treaties, installation of surveillance systems, independent monitoring, and fast-tracking of custodial violence cases. Only through structural reforms and a cultural shift within law enforcement*

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*can the rights enshrined in Articles 20 and 21 be effectively realized, restoring faith in constitutional governance and human dignity.*

## INTRODUCTION

### What is custodial violence?

**Custodial violence** is defined as any form of physical, psychological, or sexual abuse inflicted by law enforcement personnel on individuals in custody, which includes torture, unlawful detention, and custodial death. It violates basic human rights and constitutional guarantees under Articles 20 and 21 of the Indian Constitution.<sup>1</sup> The National Human Rights Commission describes it as “one of the worst forms of human rights violations in a civilized society.”<sup>2</sup> Despite existing legal protections, custodial violence persists due to police impunity, systemic failures, and weak enforcement of judicial safeguards.

**Articles 20 and 21** of the Indian Constitution:

### Article 20 – Protection in respect of conviction for offences

- **Clause (1):** No retrospective criminal laws: No person shall be convicted of any offence except for violation of a law in force at the time of the commission.<sup>3</sup>
- **Clause (2):** Double jeopardy: No person shall be prosecuted and punished for the same offence more than once.<sup>4</sup>
- **Clause (3):** Protection against self-incrimination (important for custodial torture): No person accused of an offence shall be compelled to be a witness against himself.<sup>5</sup>

### Article 21 – Protection of Life and Personal Liberty

Article 21 ensures that no person shall be deprived of their life or personal liberty except according to procedure established by law. The Supreme Court has expanded its scope to include the right to dignity, fair trial, legal aid, and protection from torture.<sup>6</sup>

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<sup>1</sup> Constitution of India 1950, arts 20, 21

<sup>2</sup> National Human Rights Commission, *Annual Report 2020–21* (NHRC, 2021)

<sup>3</sup> Constitution of India 1950

<sup>4</sup> Ibid

<sup>5</sup> Ibid

<sup>6</sup> Constitution of India 1950

**Judicial Interpretation and Activism:** Indian courts have played a proactive role in interpreting Articles 20 and 21 to strengthen protections against custodial violence. Key cases include:

- *Maneka Gandhi v Union of India* (1978): Expanded Article 21 to include due process.<sup>7</sup>
- *DK Basu v State of West Bengal* (1997): Laid down detailed guidelines for arrest and detention to prevent custodial abuse.<sup>8</sup>
- *Joginder Kumar v State of UP* (1994): Recognized the rights of arrested persons.<sup>9</sup>
- *Nilabati Behera v State of Orissa* (1993): Held the state liable for custodial death and awarded compensation.<sup>10</sup>

Despite these judgments, implementation has been inconsistent due to systemic and institutional inertia.

## LEGISLATIVE & INSTITUTIONAL SAFEGUARDS

A range of legislative provisions and institutional mechanisms have been enacted in India to curb custodial violence, though their impact remains limited by enforcement failures.

- **Criminal Procedure Code (CrPC):** Sections 41, 46, 49, 54, and 176 of the CrPC outline guidelines for arrest, prohibit excessive force, mandate medical examination of accused persons, and authorize judicial inquiry into custodial deaths.<sup>11</sup> These provisions aim to ensure transparency and accountability during arrest and detention.
- **Indian Evidence Act, 1872:** Section 25 of the Act makes confessions made to police officers inadmissible in court to deter forced confessions.<sup>12</sup> Section 24 further invalidates confessions obtained under threat, inducement, or coercion.
- **Protection of Human Rights Act, 1993:** This Act establishes the National Human Rights Commission (NHRC), which is empowered to investigate human rights

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<sup>7</sup> *Maneka Gandhi v Union of India* AIR 1978 SC 597

<sup>8</sup> *DK Basu v State of West Bengal* AIR 1997 SC 610

<sup>9</sup> *Joginder Kumar v State of UP* (1994) 4 SCC 260

<sup>10</sup> *Nilabati Behera v State of Orissa* (1993) 2 SCC 746

<sup>11</sup> Code of Criminal Procedure 1973, ss 41, 46, 49, 54, 176

<sup>12</sup> Indian Evidence Act 1872, ss 24–25

violations, including custodial violence.<sup>13</sup> The NHRC issues guidelines, intervenes in cases, and submits reports to the government.

- **Police Reforms:** In *Prakash Singh v Union of India* (2006), the Supreme Court mandated the implementation of comprehensive police reforms across states, including fixed tenures for officers and the separation of investigation and law and order functions to enhance accountability and professional autonomy, and even the establishment of Police Complaints Authorities to enhance accountability.<sup>14</sup> However, compliance by states has been uneven and often cosmetic.
- **Legal Aid and Representation:** Under the Legal Services Authorities Act, 1987, legal aid is guaranteed for undertrials and persons in custody to ensure representation and prevent abuse.<sup>15</sup>
- **Custodial Surveillance:** The Supreme Court in *DK Basu* also emphasized the need for maintaining arrest records and producing detainees promptly before magistrates.<sup>16</sup> Recent initiatives have included directives for installation of CCTV cameras in police stations and lock-ups, as per Supreme Court guidelines in *Paramvir Singh Saini v Baljit Singh*.<sup>17</sup>

These safeguards are comprehensive in design but often fail in practice due to weak monitoring mechanisms, lack of awareness, bureaucratic resistance, and absence of political will.

## GROUND REALITY- STATISTICS & CASE STUDIES

Despite strong constitutional and legal protections, custodial violence remains deeply embedded in India's criminal justice system. Official data from the National Crime Records Bureau (NCRB) shows that more than 100 custodial deaths are reported annually; however, convictions in these cases are extremely rare. Between 2017 and 2021, over 450 custodial deaths were reported, yet charges were filed in only a fraction of these cases, and actual convictions were even fewer.<sup>18</sup> This gap reflects a breakdown in accountability mechanisms and a culture of impunity within law enforcement.

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<sup>13</sup> Protection of Human Rights Act 1993

<sup>14</sup> *Prakash Singh v Union of India* (2006) 8 SCC 1

<sup>15</sup> Legal Services Authorities Act 1987

<sup>16</sup> *DK Basu (n 8)*

<sup>17</sup> *Paramvir Singh Saini v Baljit Singh* (2020) 13 SCC 439

<sup>18</sup> National Crime Records Bureau, *Crime in India 2021* (Ministry of Home Affairs, Government of India 2022) ch 16.

The 2020 custodial deaths of P. Jayaraj and his son J. Bennix in Tamil Nadu illustrate the brutality that persists in police custody. Both were arrested for allegedly keeping their shop open past curfew hours during the COVID-19 lockdown. Eyewitness reports and post-mortem findings suggested that they were subjected to extreme torture, resulting in their deaths.<sup>19</sup> The incident sparked nationwide outrage, forcing authorities to arrest the involved police personnel. Yet, such outcomes are exceptions, not the rule.

Multiple systemic flaws hinder the delivery of justice in custodial violence cases-

**Delayed or Denied FIRs:** Police departments are often reluctant to file First Information Reports against their own, leading to denial or delay in registration.<sup>20</sup>

**Intimidation and Threats:** Victims' families and witnesses are frequently pressured into silence, weakening the investigation process.<sup>21</sup>

**Poor Medical and Forensic Practices:** In many cases, medical examinations are delayed or manipulated, and injuries are inadequately documented, making it difficult to establish custodial torture.<sup>22</sup>

**Ineffective Oversight:** Internal inquiries often lack independence and transparency. Statutory bodies like the NHRC and SHRC have limited authority to enforce their recommendations.<sup>23</sup>

Moreover, access to legal aid, particularly in rural and marginalized communities, remains minimal. Though mandated under the Legal Services Authorities Act 1987, implementation is inconsistent, leaving undertrials vulnerable.<sup>24</sup> The lack of fast-track courts for custodial violence cases leads to prolonged litigation, which discourages victims and families from pursuing justice.

Caste, class, and socio-economic status play a significant role in determining vulnerability. Marginalized communities, including Dalits, Adivasis, and religious minorities, are

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<sup>19</sup> Aathira Konikkara, 'How Two Men Died in Tamil Nadu Police Custody' *The Caravan* (30 June 2020) <https://caravanmagazine.in/crime/tamil-nadu-sathankulam-custodial-deaths> accessed 20 May 2025.

<sup>20</sup> Human Rights Watch, *Bound by Brotherhood: India's Failure to End Killings in Police Custody* (HRW, 2016) <https://www.hrw.org/report/2016/12/19/bound-brotherhood/indias-failure-end-killings-police-custody> accessed 20 May 2025.

<sup>21</sup> Amnesty International India, *Torture in India: A State of Denial* (AI, 2019).

<sup>22</sup> Asian Centre for Human Rights, *Torture Update: Custodial Torture and Deaths in India* (ACHR, 2020).

<sup>23</sup> NHRC Annual Report 2021–22 (NHRC, 2022).

<sup>24</sup> Legal Services Authorities Act 1987, s 12.

disproportionately represented among custodial violence victims.<sup>25</sup> This points to deeper structural inequalities that the current legal framework fails to address adequately.

Thus, while the constitutional safeguards under Articles 20 and 21 are robust on paper, ground realities reveal a troubling disconnect between law and practice. Urgent reforms in enforcement, training, and accountability are essential to make these rights meaningful.

### **REASONS FOR THE DISCONNECT:**

Despite robust constitutional and statutory protections, custodial violence persists as a systemic failure in India. The disconnect between legal safeguards and ground realities is attributed to several entrenched structural and cultural factors:

**1. Implementation Deficit:** Judicial directives such as those in *D K Basu v State of West Bengal* are often ignored in practice. Arrest registers are either incomplete or manipulated, medical examinations are not promptly conducted, and magistrates are not always informed within 24 hours as required under Section 57 of the CrPC<sup>26</sup>. CCTV cameras mandated by the Supreme Court in *Paramvir Singh Saini v Baljit Singh* are frequently non-functional or the footage is unavailable<sup>27</sup>.

**2. Police Impunity and Departmental Protectionism:** Police officers accused of custodial abuse often face little to no disciplinary action. Departmental inquiries are opaque and often biased, resulting in minor penalties or quiet transfers rather than prosecution. This culture of impunity is reinforced by political patronage and a lack of public accountability<sup>28</sup>.

**3. Ineffective Oversight Mechanisms:** Although the NHRC and SHRCs are tasked with monitoring human rights violations, their powers are largely recommendatory. Their findings are routinely ignored by state authorities, and they lack the power to enforce punishments or initiate prosecutions<sup>29</sup>.

**4. Lack of Independent Investigations:** Most custodial violence cases are investigated by the same police departments accused of the abuse, undermining impartiality. Independent

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<sup>25</sup> Commonwealth Human Rights Initiative, *Looking Through the Lens: Gendered and Intersectional Impacts of Custodial Violence* (CHRI 2022).

<sup>26</sup> Code of Criminal Procedure 1973, s 57; *D K Basu v State of West Bengal* AIR 1997 SC 610.

<sup>27</sup> *Paramvir Singh Saini v Baljit Singh* (2020) SCC OnLine SC 965.

<sup>28</sup> Amnesty International India, *Torture in India: A State of Denial* (2016) <https://amnesty.org.in> accessed 23 May 2025.

<sup>29</sup> Protection of Human Rights Act 1993, s 13; NHRC Annual Report 2022–23.

investigative bodies are either absent or underutilized, and even judicial magistrates often rely on police reports without sufficient scrutiny.

**5. Judicial Delays and Procedural Hurdles:** Custodial violence cases are bogged down in prolonged litigation. Victims and their families often face economic and social barriers in accessing justice. The low conviction rate less than 30% in such cases, reflects a justice system skewed in favour of the perpetrators.

**6. Societal Acceptance and Normalization:** Public perception often condones custodial torture as a necessary evil for crime control, diminishing the urgency for systemic reform. This societal apathy weakens civil society pressure for accountability.

**7. International Obligations Ignored:** India signed the United Nations Convention Against Torture (UNCAT) in 1997 but has yet to ratify it. Without a dedicated anti-torture law, international norms remain unenforceable domestically<sup>30</sup>.

To bridge this, India must adopt a multi-pronged approach legal reform, institutional restructuring, independent monitoring, and public sensitization, to ensure that constitutional guarantees are not merely theoretical but functionally meaningful.

## **RECOMMENDATIONS & WAY FORWARD**

Addressing custodial violence in India requires more than just formal constitutional safeguards; it demands a holistic reform strategy encompassing legislation, institutional overhaul, technological enforcement, and public accountability. While Articles 20 and 21 of the Constitution provide significant protections, their implementation remains undermined by systemic apathy and institutional inertia.

A critical first step is the ratification of the United Nations Convention Against Torture (UNCAT), which India signed in 1997 but has yet to ratify. Ratification, followed by the enactment of comprehensive anti-torture legislation, would formally criminalise custodial torture, codify procedural safeguards, and create dedicated redressal mechanisms for victims.

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<sup>30</sup> United Nations Convention Against Torture (UNCAT), 1984; Government of India, 'Status of Ratification' (MEA, 2023).

Such a statute should define torture in line with Article 1 of the UNCAT and prescribe deterrent penalties and mandatory reporting obligations for custodial staff<sup>31</sup>.

Independent and transparent investigation of custodial violence is equally crucial. Investigations must be carried out by autonomous agencies not connected with the accused department, preferably under judicial oversight, as suggested by the Law Commission and Supreme Court<sup>32</sup>. Current practices often rely on the same police departments accused of wrongdoing, perpetuating impunity and undermining credibility.

Reinforcing the authority of the National and State Human Rights Commissions (NHRC/SHRC) is another necessary reform. While these bodies are empowered under the Protection of Human Rights Act 1993, their recommendations are not binding and are frequently disregarded by state machinery. Granting these institutions statutory enforcement powers, along with greater budgetary and functional autonomy, will enhance their role as custodians of custodial accountability.

Equally essential are police reforms. The directives issued in *Prakash Singh v Union of India* mandated fixed tenures, separation of investigative and law and order functions, and police accountability commissions<sup>33</sup>. Despite these directives being reiterated in multiple judgments, implementation has been slow and inconsistent.

Technological interventions such as CCTV surveillance in police stations, mandated in *Paramvir Singh Saini v Baljit Singh*, should be standardised nationwide<sup>34</sup>. This includes maintaining secure and tamper-proof storage of footage for a minimum of 18 months, with regular audits by independent oversight committees.

Judicial reform must include the establishment of special fast-track courts to hear custodial violence cases and the creation of victim-witness protection schemes to ensure safety and cooperation during trials<sup>35</sup>. Without timely adjudication, victims are often left without redress, and perpetrators remain unpunished.

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<sup>31</sup> United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (UNCAT), art 1.

<sup>32</sup> Law Commission of India, 'Report No. 273: Implementation of the United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment through Legislation' (2017).

<sup>33</sup> *Prakash Singh* (n 14)

<sup>34</sup> *Paramvir Singh* (n 17)

<sup>35</sup> Asian Centre for Human Rights, *Torture Update: Custodial Deaths and Impunity in India* (2022) <https://www.achrweb.org> accessed 24 May 2025.

Furthermore, strengthening legal aid infrastructure is imperative. Detainees must have immediate access to a legal representative upon arrest, as reinforced in *Khatri v State of Bihar*<sup>36</sup>. Simultaneously, public awareness campaigns must educate citizens about their rights during arrest and detention under the CrPC and the Constitution.

Finally, empowering civil society and the media is essential. Human rights organisations and journalists play a critical role in exposing abuse and shaping public discourse. Their protection under law from harassment and surveillance is vital for democratic oversight of custodial practices.

In sum, combating custodial violence requires more than judicial pronouncements—it requires a shift in institutional ethos, legal reform, and democratic vigilance. Only through such concerted efforts can the lofty ideals of Articles 20 and 21 be transformed into lived realities for every citizen.

## CONCLUSION

Custodial violence is not merely a legal aberration but a grave violation of human dignity and democratic values. Despite the formidable constitutional safeguards provided under Articles 20 and 21, and a spectrum of judicial pronouncements affirming the inviolability of personal liberty and protection from torture, the practical enforcement of these rights remains critically deficient. The persistence of custodial torture, often unreported, under-investigated, and inadequately punished, underscores the disconnect between constitutional theory and operational reality in India's criminal justice system.

This research reveals that while legislative frameworks and institutional bodies exist to deter custodial misconduct, their ineffectiveness stems from a lack of accountability, the absence of political will, and systemic inertia. Police impunity, bureaucratic delays, and judicial inefficiency compound the issue, leaving victims with little or no recourse to justice.

To truly uphold the spirit of the Constitution, custodial settings must be restructured into spaces where dignity, due process, and human rights are respected. This transformation requires a multi-pronged approach: enacting dedicated anti-torture legislation, empowering oversight mechanisms, implementing comprehensive police reforms, and raising societal awareness.

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<sup>36</sup> *Khatri v State of Bihar* (1981) 1 SCC 627.

Equally, the role of civil society, the judiciary, and the media must be reinforced to ensure transparent and accountable governance.

Ultimately, the fight against custodial violence is a test of India's commitment to the rule of law and constitutional morality. Only through sustained legal reform, institutional vigilance, and civic participation can the promise of Articles 20 and 21 be realised in both letter and spirit, reaffirming the foundational values of justice, liberty, and human dignity.

### **FUTURE RESEARCH DIRECTIONS**

While this paper has analysed the constitutional safeguards and realities of custodial violence in India, several avenues remain open for deeper exploration. Future research could focus on comparative analyses between India and other common law jurisdictions to identify best practices in combating custodial abuse. Empirical studies examining the effectiveness of existing oversight bodies, such as NHRC and State Human Rights Commissions, would provide valuable insights into their operational challenges and impact.

Another important direction is to assess the socio-economic and gendered dimensions of custodial violence, exploring how marginalized groups experience and navigate the criminal justice system differently. The role of technology, particularly body-worn cameras and digital evidence preservation, merits further examination for its potential to transform custodial accountability.

Ultimately, future scholarship must aim to bridge the gap between legal norms and practical enforcement, ensuring that constitutional guarantees translate into tangible protection of human rights within custodial settings.