



CUSTODIAL VIOLENCE IN INDIA: JUDICIAL SAFEGUARDS AND ARTICLE 21 PROTECTION

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INTRODUCTION

“Any torture or cruel, inhuman or degrading treatment would be offensive to human dignity and it would amount to an in-road into this right to live and would, on this concept, be outlawed by Article 21 unless it is in accordance with the procedure prescribed by the law”.

- Justice P.N Bhagwati.¹

One of the most horrible crimes in a civilised society where the Rule of Law is upheld is custodial violence. Torture in custody is a flagrant violation of human dignity. It is much more shameful to society because it is mostly carried out and committed by law enforcement officials. The court is crucial in defending people's fundamental rights as well as their human rights. Everyone must be extremely watchful for any kind of atrocity, cruel treatment, or violence against detainees, even though the legislature and executive branch have occasionally failed to address the subject of torture in custody.

The Indian judiciary has handled the numerous human rights abuses in police detention with extreme caution, initiative, promptness, and fairness. The Code of Criminal Procedure provides a wide range of arresting authority. Numerous incidents of police violence have resulted in the victim being murdered, raped, and tortured while in detention.² The extremely vague language provided in Article 21 has been effectively brought to life by the judicial intuition, transforming it into a dynamic guarantee of humane treatment, dignity, and basic care, even while in custody.

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¹ Francis Corali Mullin v Union Territory of Delhi, 1981 AIR 746

² Custody in legal means when the accused person's freedom of movement is denied by law enforcement officials.

However, in the real world, when overcrowding in cells, inadequate medical facilities, increasing usage of isolated confinement, and an increase in deaths in custody show that these systems are flawed and cannot be fixed, things shouldn't be going well, as it was also visible and also it cannot be corrected by judicial orders.³ In order to ascertain the extent to which judges have altered the inmate experience so that the Constitution's principle of benign justice is still being developed, this study will look at case law and evolving jurisprudential tendencies.

REVIEW OF LITERATURE

The kind of work that has been conducted around the issue of custodial violence in India wrangles with this issue by situating it within the broadening scope of Article 21 and the court's role in constitutionalising the criminal process. Current literature may be broadly classified into four: doctrinal evolution of Article 21, evolution of prisoner rights and custodial protections, empirical and policy studies of custodial violence and criticism of the boundary of judicial activism versus legislative and institutional reform.⁴

Article 21 development and its prison access: In its early constitutional interpretation, Article 21 has been interpreted as being construed more narrowly during the A.K. Gopalan⁵ period, which permitted any deprivation, without any substantive review, of fairness or reasonableness, of liberty according to a procedure established by legislation.⁶ *Maneka Gandhi v. Union of India* was later analysed by doctrines. The paradigm shift that brought substantive due process imported, tried to connect Articles 14, 19 and 21 and demanded procedures that lacked liberty to be fair, just and non-arbitrary.⁷ According to **Shivani Tripathi (2024)**, it is this interpretative gesture that has made it possible to examine not only the fact of custody but also the quality of treatment in police stations and prisons, such as torture, solitary confinement, and deprivation of legal advice or medical attention. This is the consistent treatment, throughout the literature, of Article 21: that it has been changed into a form of storehouse of rights, the protection of which is even extended to convicts, under trials and detainees.

Judicial protection against custodial abuse of prisoners and their rights: Article 21 is discussed in the Shivani Tripathi Research Paper in the Indian Journal of Law and Legal

³ Article -21 Of Indian constitution -. Protection of life and personal liberty.

⁴ Shivani Tripathi, Article 21 of the Indian Constitution: A Safeguard Against Arbitrary Detention, Custodial Violence and Torture of Prisoners, 7 Indian J.L. & Legal Res. 5215 (2024).

⁵ A.K. Gopalan v. State of Madras, A.I.R. 1950 S.C. 27 (India).

⁶ *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248 (India).

⁷ Legislative Reforms in India and Custodial Violence, 4 Crim. L.J. 27 (2024) (India).

Research⁸, as the foundation of the protection of human rights in the criminal justice system and, in particular, as the analysis of arbitrary arrest and custodial violence and torture of inmates. The paper follows a series of Supreme Court cases- Sunil Batra (I and II)⁹, Prem Shankar Shukla¹⁰, Hussainara Khatoon¹¹ and D.K Basu to demonstrate how the Supreme Court pushed prison and police practices into a constitutional test on how imprisonment limits freedom without destroying the rights-bearing personhood of the prisoner.

Similar themes can be found in parallel journal articles on rights of prisoners and Article 21 and on judicial pronouncements on rights of prisoners: denunciation of the routine use of handcuffs as being prima facie inhuman, dismissal or limitation of the use of extended solitary confinements, the significance of speedy trial and legal assistance as an aspect of Article 21 and the confirmation of the right to humane conditions and medical care in custody.¹² These writings demonstrate in totality how judicial protections have been developed on a case-by-case basis and that Article 21 offers the normative measure against restrictions to custodial authority.

Within this, D.K. Basu v. State of West Bengal¹³ has a special eminence in the literature as the pioneering case on arrest related protective measures; and on the use of information as to vicarious state liability and damages as a form of compensation against an offender have been identified as profitable candidates of the Court which had aimed at transforming Article 21 and 22 protections into a series of checklists of instructions on how to act in courts where the police had suffered wrongful detention or death.

STATEMENT OF PROBLEM

Made of Bone: High Incidence of Custodial Deaths despite constitutional Safeguards:

Government and NHRC statistics indicate that thousands of custodial deaths have been documented in the last few years (11,650 of 2016-2022; 2,739 of 2024) and India has now been declared a High Risk country about systematic torture, meaning that Articles 21, 20 and 22 and

⁸ Shivani Tripathi, Article 21 of the Indian Constitution: A Safeguard Against Arbitrary Detention, Custodial Violence and Torture of Prisoners, 7 Indian J.L. & Legal Res. 5215 (2024).

⁹ Sunil Batra (I) v. Delhi Admin., (1978) 4 S.C.C. 494 (India). Sunil Batra (II) v. Delhi Admin., (1980) 3 S.C.C. 488 (India).

¹⁰ Prem Shankar Shukla v. Delhi Admin., (1980) Supp. S.C.C. 249 (India).

¹¹ Hussainara Khatoon (I) v. Home Sec'y, State of Bihar, (1979) 1 S.C.C. 81 (India).

¹² Shivani Tripathi, Article 21 of the Indian Constitution: A Safeguard Against Arbitrary Detention, Custodial Violence and Torture of Prisoners, Indian J.L. & Legal Res. 5215 (2024).

¹³ D.K. Basu v. State of W. Bengal, (1997) 1 S.C.C. 416 (India).

even Landmark cases such as D.K Basu and Sunil Batra have failed to stop the large scale infliction of custodial damage.

Lax execution of judicial and legal safeguards of Article 21: Research of Constitutional protection of custodial violence indicates that arrest regulations, terms of legal assistance, Protection against handcuffing and solitary confinement, NHRC provisions and directives, including CCTV systems and magisterial investigations are not followed actually, and through a mere formality, the evidence in the Constitutional protection of custodial violence based on Article 21- has a significant gap between the Constitutionally stipulated and the police/prison practice.

Weaknesses in the structure and legal lack of accountability and oversight: Laws on the colonial-era prisons, lack of a definite anti -torture law, the non-binding quality of most recommendations by the NHRC and the low rate at which those responsible in custody are convicted are all responsible for undermining accountability, such that the violation of life and personal liberty in custody remains largely unchecked.

RESEARCH QUESTIONS

- 1) What has the Supreme Court Interpreted and extended already Article 21 of the Indian Constitution to address Head-on Custodial Violence, such as torture, arbitrary detention and inhuman or degrading treatment of individuals under custody?
- 2) Which particular judicial protections against custodial violence have been developed under Article 21, based on landmark cases including Hussainara Khatoon, Sunil Batra, Prem Shankar Shukla and D.K. Basu, and how do they attempt to put police and prison officers in check?
- 3) How well do these Article-21-grounded protections actually work in practice in preventing custodial violence in India, and what shortcomings do we see in the protection of the full enactment of Article 21 Protection of persons in custody?

RESEARCH OBJECTIVES

- 1) To review Article 21 as interpreted and extended by the Supreme Court to safeguard persons in custody against torture, arbitrary detention and inhuman or degrading treatment.

2) To discuss the particular judicial protection measures against custodial violence that have been developed under Article 21 in some of the landmark cases like Hussainara Khatoon, Sunil Batra, Prem Shankar Shukla and D. K. Basu.

3) To critically evaluate the degree to which the protection of Article 21-based approaches are working in reality in reducing custodial violence in India as well as to identify the key lapses in the law and institutions that undermine this constitutional undertaking.

HYPOTHESIS

1) Although Article 21 has been extended to encompass dignity -guarantee with landmark cases like Maneka Gandhi, Hussainara Khatoon, Sunil Batra and D.K.Basu, none of this has helped to curb custodial violence in India owing to the failure of police and prison administrations to enforce Article 21.

2) Although Article 21 jurisprudence acknowledges that there exists a positive duty on the state to defend the life and dignity of those held in custody, there is continued custodial violence and death, implying that the positive duty to the same in practice is not being adequately fulfilled where there are no effective accountability and deterrent measures to criminalise offending officials.

RESEARCH METHODOLOGY

The research methodology is Doctrinal and Analytical, enhanced through a minimal desk-based official utilisation of statistics to investigate custodial Violence in India and judicial safeguards that are emanating out of Article 21. It is based solely on primary legal documents -Constitutional Provisions (Articles 20, 21, and 22), leading statutes (BNSS¹⁴, BNS¹⁵, BSA¹⁶, Prisoners Act 1900, Model Prison Manual 2016) and some of the high-profile Supreme Court rulings, including Maneka Gandhi, Hussainara Khatoon, and Prem Shankar Shukla¹⁷-along with NHRC guidelines and NCRB/NHRC statistics on custodial deaths. They are to be examined along with the standard commentaries on the Constitution, journal articles and reliable human-rights reports to trace the development of Article 21, determine the safeguards

¹⁴ BNThe Bharatiya Nagarik Suraksha Sanhita 2023

¹⁵ Bharatiya Nyaya Sanhita 2023.

¹⁶ Bharatiya Sakshya Adhiniyam 2023.

¹⁷ Prem Shankar Shukla v. Delhi Admin., AIR 1980 SC 1535

that were made against torture as well as arbitrary arrest, and review them critically in respect of the actual patterns of custodial violence.

ARTICLE 21 & CUSTODIAL VIOLENCE

Evolution of Article 21 From A.K Gopalan to Maneka Gandhi: This phrase is used in the form of a legal procedure in Article 21 of the Indian Constitution. It also implies that a law would be legitimate if it were passed by the Parliament using the proper process. When this concept is applied, it suggests that a person may be deprived of their life or personal freedom according to the legal procedure. *Maneka Gandhi v Union of India* (1978), following the ruling. To preserve a person's fundamental rights, the Indian judiciary utilised a liberal interpretation of the term "procedure" as defined by law, making it synonymous with the American due process of law. Article 21 of the Indian Constitution stipulates that no one may be deprived of their life or personal freedom until the legal process is followed.

In the case of *A.K. Gopalan v Government of India* (1965), political figure AK Gopalan was detained in Madras in accordance with the 1950 Preventive Detention Act. He claimed that the Preventive Detention Act violated his fundamental rights as outlined in Articles 14, 19, and 21 of the Indian Constitution. He further claimed that the phrase "procedure" as it appears in Article 21 of the law refers to due process. Article 21 of the Indian Constitution was violated as a result of the improper procedure that was applied in his case.

According to the Supreme Court, the Indian Constitution's Articles 14, 19, and 21 will not be violated if the government deprives someone of their freedoms in accordance with the legislative process, such as when an individual is imprisoned in accordance with the proper procedure. The Court interpreted Article 21 narrowly in this instance. The Court ruled that the method independently formed by statute is an indicator that a procedure created by statute may deny the right to life and personal liberty since it took Article 21 at face value in this case.

However, Justice Fazal Ali disagreed with the viewpoint in this case. As one of the key tenets of natural justice, he claims that the meaning of the language procedure that is enshrined in law also includes the due process of law, which states that no one should be left without a chance to be heard, or *audi alteram partem*.

In the 1978 case of *Maneka Gandhi v. Union of India*, officials confiscated Gandhi's passport in accordance with the 1967 Passports Act. The petitioner went to the Supreme Court under

Article 32, arguing that the government's decision to revoke her passport was a clear violation of her right to personal freedom under Article 21. The Preamble's goal of transforming our nation into a welfare state was accomplished by this decision, which significantly expanded the application of Article 21. The Court determined that the legal procedure should be reasonable, fair, and just. The Court stated that the legal procedure for denying someone their right to life and even their individual liberty should be fair, reasonable, and just rather than arbitrary, capricious, and disproportionate. So, a New Jurisprudence was evolved on the case on the rights of the prisoners as far as the Indian constitutional approach is concerned. The protection of the rights of the prisoners is also understood in Article 21. In light of the Indian constitutional approach, a new body of jurisprudence regarding the rights of prisoners emerged. Article 21 provides a clear understanding of the protection of prisoners' rights.

Custodial Violence: According to the conceptual framework approach, this paper will examine custodial violence and the rights of prisoners. As previously emphasised, his humanity does not render him non-human. He is still a human being and should be treated as such. He needs to be granted the same basic human rights as every guy on the planet. He must, however, be a free man with complete rights. There must be certain legal constraints and limitations on his freedom. Additionally, these limitations have to be sensible.

The Supreme Court of India has made significant decisions in matters like *DBM Patnaik v. Sunil Batra v. State of Andhra Pradesh*. The Delhi Administration has fervently argued that, in addition to being a natural person or a legal person, prisoners should be recognised as human beings. A criminal conviction does not reduce a person to the status of a non-person whose rights could be violated at the whim of the prison administration.

Fundamental Rights: In India, fundamental rights serve as the foundation for human rights. These are citizens' fundamental rights that cannot be taken away from them. Some of these rights are also granted to convicts by national legislation, including Articles 14, 19, and 21. However, it is unable to fully enforce the fundamental rights for the benefit of the inmates. The core of Article 21 is granting inmates the right to a fair trial. As imposing reasonableness in any restriction is the gist of Article 19(5), and making sweeps very like arbitrary discrimination is the bane of Article 14. All these utterances are backed by numerous decisions of both the lower and the appellate courts. Some of them are listed below.

The State of **Andhra Pradesh v Challa Ramkrishna Reddy case**: The court decided that, absent constitutional restrictions, a prisoner should be granted all fundamental rights. The Supreme Court, in the case of Prabhakar Pandurang, ruled that the mere fact that a person is in custody cannot be used to deny them their fundamental rights, and that the conditions cannot be increased to the point where the person is deprived of those rights. The Court further determined that all inmates must possess all of the rights enjoyed by free persons, with the exception of those that are lost as a necessary consequence of incarceration.

Humane Dignity and Good Condition Right to live: A person's right to live in dignity is guaranteed by the Constitution. Inmates are also granted this privilege because their conviction does not automatically make them less than human. One of the rights to life guaranteed by the Indian Constitution is this one. The reasoning behind this is that every human being's life is precious and that, for them to move on with their lives, they must be treated with dignity regardless of their circumstances. The courts have added this privilege to Article 21. It may be seen in many different situations. Among them are the following.

The Supreme Court case of **Challa Ramakrishna Reddy v State of Andhra Pradesh**. According to the court, one of the fundamental human rights guaranteed by Article 21 is the right to life. The State is not supposed to violate it since it is so fundamental. A prisoner will always be a human person, even while they are incarcerated. Since he is still a human, he is entitled to all fundamental rights, including the right to life.

The Right to Privacy: One of the most significant rights that Indian citizens possess is this. According to Article 21 of the Indian Constitution, they are fundamental to the right to life and personal liberty. Additionally, they have been applied to offenders and prisoners through various court rulings over the years. However, this is the most violated right in India. The right to privacy in the event of search and seizure was first raised in the 1950s when the Supreme Court ruled that a search by itself does not invalidate or impair an individual's right to property and that search and seizure cannot be considered as violating Article 19 (1) (f) of the Indian Constitution. Even while a search or seizure may have affected that right at the time, it is only temporary and should be seen as a fair limitation on people's rights.

Right Against Bar Fetters and Solitary Confinement: A form of incarceration known as "solitary confinement" involves the convict or prisoner being kept in a separate cell with little to no contact with other inmates. In addition, the individual's behaviour and habits are closely

observed. The purpose of solitary confinement is to punish infamous prisoners and keep them apart from regular prisoners.

In the well-known case of *Sunil Batra v. Delhi Administration*, the Supreme Court discussed solitary confinement. The court stressed that solitary confinement can be applied in extremely rare circumstances when a prisoner is alone in a cell due to his violent nature, making his confinement of the highest priority. The court also pointed out that keeping inmates in bar fetters all the time degrades them to the level of animals and deteriorates their mental health. As a result, the courts have expressed deep disapproval of solitary confinement and have made it extremely degrading and disparaging. They even believe that such restrictions go against the spirit of the Indian Constitution.

Free Legal Aid and the Right to Appeal: The Criminal Procedure Code's power to appeal from the Sessions Court to the High Court first has long been seen as a fundamental component of civilised jurisprudence and a component of fair procedure. As demonstrated in the case of *M.H. Hoskot v. State of Maharashtra*, all actions that result in the productive right to appeal are required, and any action or omission that establishes the right is unjust and illegal. The Court made it clear that there are two components to the right to appeal, even though it is regarded as a component of the fair procedure:

- 1) giving the prisoner a copy of the verdict in time for them to file any appeals
- 2) Giving free legal services to a prisoner who is impoverished or otherwise incapable of obtaining legal representation when doing so is necessary to further the interests of justice.

According to this decision, the Supreme Court of India also determined that the right to free legal aid at state expense for an accused person who was unable to hire an attorney because of poverty, indigency, or incommunicado status constituted the fair, just, and reasonable procedure implied in Article 21.

“Justice Krishna gave a forceful declaration that Right to free legal aid is the responsibility of the State and not a charity of Government.”

Right to Speedy Trial: Justice delayed is justice denied is very true to say. All prisoners are entitled to a speedy trial regardless of the nature of the crime he has committed. Speedy trial is said to be one of the components of the criminal justice delivery system. When one has been accused, he should be brought under quick trials to ensure that he is able to be punished because

of the crime he has committed or absolved in case the accusation is not proven to be true. In addition, Section 346 of the BNSS also entails the right to a speedy trial. Assuming that this provision of the BNSS is followed and applied in the actual sense, all complaints and questions of prisoners might be answered.

The Supreme Court ruled in *AR Antulay v. RS Nayak* and gave broad principles to be followed by an accused convicted of a crime case, but it did not give an exact period within which such offences ought to be tried. It was stated by the court that the right to a speedy trial is derived from Article 21 and it encompasses within its scope all the stages of investigation such as inquiry, trial, appeal, revision and re-trial. The accused cannot be denied his right to a prompt trial simply because he hasn't requested one, the court further stated. It also reiterated that the length of a trial should be decided by taking into account a number of elements, such as the type of crime, the number of accused, the number of witnesses, etc. In the interest of natural justice, the court attended to the finality and concluded that the conviction would be overturned if the convict's right to a prompt trial had been infringed.

The Right to Bail: The right to bail is another part of the right to life that is protected under the Indian Constitution as of right now. This was the main focus of the **Babu Singh v. State of U.P.** lawsuit. According to the Court, depriving an accused person of their personal freedom by refusing to grant them bail without a valid reason would be equivalent to depriving them of their article 21 rights. The highest court ruled that the right to bail was mentioned under Article 21 in the right to personal liberty, and its denial would amount to deprivation of personal liberty that could be conferred according to the procedure that was defined by the law.

Right to Medical Treatment and Health: The right to health is significant. The Constitution of India has a provision that ensures that every person is entitled to the maximum degree of both mental and physical health. The Supreme Court of the land, in a series of verdicts, has ruled that the right to health care is an important aspect of Article 21. Article 21 of the Constitution leaves an implication of duty on the State to protect the life of an individual.

In *Parmannd Katara v. Union of India* (1899), the court considered that a physician working in a government hospital has an obligation to provide any kind of life-saving medical assistance. In fact, every physician has a professional obligation to provide his services to patients (as any individual) with the knowledge and care necessary to protect their life. As a result, no legal

body may interfere to prevent medical professionals from carrying out their duties and obligations.

Comparative Analysis: International Standards and Indian Constitution: Custodial violence is not only a domestic constitutional matter but basically a human rights matter that has international law criteria that outlaws torture and any other absolute form of cruel, inhuman, or degrading treatment. International law has come to treat the ban on the use of torture as a peremptory norm (*jus cogens*) and as such it binds all States regardless of whether the particular treaty was ratified or not.

In Article 5 of the Universal Declaration of Human Rights (UDHR)¹⁸ No one shall be tortured or subjected to cruel, barbaric, or degrading treatment or punishment, according to a clear statement. It is categorically stated that no person should be subjected to torture or cruel, inhuman or degrading treatment or punishment. The UDHR is not legally binding on its own, but it has established the normative and moral basis of contemporary human rights law and has greatly shaped the interpretation of constitutions across the globe.

As a signatory to the International Covenant on Civil and Political Rights (ICCPR), India is covered by Article 7¹⁹; there is an explicit prohibition of torture, cruel, inhuman or degrading treatment or punishment. Article 10²⁰ also requires that any individual who is denied any liberty should be treated humanely and with respect to his or her intrinsic dignity. The provisions provide an international duty to guarantee humane treatment of detainees in India.

Additionally, the Convention against Torture and other forms of cruel, inhuman, or degrading punishment (UNCAT)²¹ commits the State Parties to criminalise torture, make immediate and thorough investigations, and issue redress to the victims. India is a signatory to UNCAT, which it signed in 1997. Under the guidance of the Supreme Court of India, the international conventions in harmony with the fundamental rights have always been viewed as being read into domestic law. In the landmark decision in *Vishaka v. State of Rajasthan*²², the Court reasoned that international instruments should be used to influence constitutional interpretation when there is no conflicting domestic law. The aforementioned premise strengthens the

¹⁸ Universal Declaration of Human Rights 1948, art. 5

¹⁹ International Covenant on Civil and Political Rights art. 7, Dec. 16, 1966, 999 U.N.T.S. 171.

²⁰ Id. art. 10(1).

²¹ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment arts. 2, 4, 12–14, Dec. 10, 1984, 1465 U.N.T.S. 85.

²² *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241, 249–50 (India); A.I.R. 1997 S.C. 3011 (India).

argument that Article 21 must be interpreted in a way that is consistent with international anti-torture laws.

Moreover, in the landmark decision of *D.K. Basu v. State of West Bengal*,²³ the Court observed, when laying down arrest guidelines, specifically recognised India as having a mandate to act regarding international human rights instruments, the State of West Bengal. The ruling indicates that there was an effort to internalise international standards of human rights into the constitutional article 21.

Nevertheless, the international standards and the constitutional jurisprudence align their doctrine; nonetheless, the constitutional jurisprudence does not prevent custodial violence. This makes a grave constitutional issue, as the national interpretation of Article 21 by the judiciary in India seems to abide by the international human rights commitments, yet the effectiveness of implementation of the standards is feeble. The difference between normative commitment and institutional compliance is at the centre of the current research. Therefore, Article 21 should be evaluated not only in terms of international standards but at the core of determining whether it meets the intended effect of India's human rights commitments in a judicial window expansion of the enjoyment thereof.

JUDICIAL SAFEGUARDS UNDER ARTICLE-21 CONSTITUTIONALISATION OF CUSTODIAL DIGNITY.

The Article 21 expansion is one of the most ground-breaking changes in Indian constitutional law. What was originally a limited procedural guarantee has now been transformed into a substantive, dignity-focused protection against the excesses of the State, especially in custody cases, wherein the person is at his weakest.

Custodial violence goes to the foundation of constitutional morality. When one is detained or put in jail, the State takes full control of his/her freedom. There is an increased constitutional responsibility with that control. The Supreme Court has repeatedly pointed out that taking away liberty does not imply taking away humanity. A succession of landmark decisions has gradually constitutionalised the administration of prisons, the process of arresting persons and their custodial treatment at the Court.

²³ *D.K. Basu v. State of West Bengal* (1997) 1 S.C.C. 416, 433–34

Prison Walls Do Not Silence the Constitution: Sunil Batra: The decision in *Sunil Batra v. Delhi Administration* can be defined as a watershed of Indian prison jurisprudence.²⁴ The case was a result of a letter that was written by a prisoner who was complaining of inhuman treatment and torture by his jail facilities. The Supreme Court considered the letter as a writ petition - an indication that no one can be deprived of access to justice simply because an individual is in jail behind bars.

The Court discarded the colonial concept of prisoners as objects of discipline that have no rights. Very eloquently, Justice V.R. Krishna Iyer noted that “prisoners are persons” and they have all the fundamental rights except the rights that are restricted by valid law.²⁵ The Court scrutinised the aspect of legality of solitary prison confinement and custodial cruelty. It believed that this kind of treatment, unless strictly licensed by law and in the case of concrete circumstances, is what is against Article 21²⁶. According to the ruling in the case, everyone has the right to live with dignity, even if they are incarcerated.

Three revolutionary things were done in this case:

- It put the prison administration to a constitutional test or under scrutiny.
- It humanised prisoners by recognising their inherent dignity.
- It expanded locus standi, enabling Judicial intervention in custodial abuse cases.

In such a way, *Sunil Batra* made it possible to change prisons from closed institutions of executive power to areas of constitutional discipline.

Speedy Trial and Humane Treatment: Defend the Invisible Prisoner: While *Sunil Batra* focused on convicted prisoners, *Hussainara Khatton v. State of Bihar* exposed the suffering of undertrial prisoners.²⁷ This was highly disturbing as the Court was presented with shocking statistics that thousands of people had been kept in detention without trial, some of them for longer periods than the maximum penalty for their offence. The Supreme Court stated that the right to a speedy trial was implied in Article 21.²⁸ Slow justice, particularly towards the poor and the marginalised group, was identified as a breach of the Constitution. The rationale behind

²⁴ *Sunil Batra v. Delhi Administration (Sunil Batra I)*, (1978) 4 S.C.C. 494

²⁵ *Id.* at 511.

²⁶ *Id.* at 518–19.

²⁷ *Hussainara Khatton (I) v. Bihar State*, (1980) 1 S.C.C. 81

²⁸ *Id.* at 89.

the Court decision was rather practical but rudimentary: freedom cannot be redemptory to structural inefficiency. This ruling took a fresh look at criminal procedure by making it a human rights concern. It acknowledged that indefinite detention is in itself a custodial injustice.

In the case of *Prem Shankar Shukla v. Delhi Administration*, the Court responded to the Delhi Administration, where a regular procedure of handcuffing prisoners during transit was considered as a matter of routine.²⁹ The Court believed that arbitrary but not unjustifiable handcuffing is a matter of indiscrimination and violates the Constitution unless supported by documented reasons. The ruling emphasised that human dignity should not be restrained by security issues. The restraints have to be extraordinary and not automatic. By declaring routine handcuffing unconstitutional, the Court came out strongly in support of the notion that even an accused individual applies to receive constitutional respect.

These cases, when combined, reinforced Article 21, as they did by appreciating:

- Speedy trial as a principle right.
- Insurance against degrading treatment.
- Restrictions on executive discretion at custodial control.

They signalled the developmental rise of a rights-based criminal justice system.

D.K. Basu: Arrest Powers under the Indian Constitutional Discipline: In the case of *D K Basu v State of Bengal*,³⁰ it was the most elaborate judicial reaction to custodial violence. The Court recognised the nauseating increase in custodial deaths and torture nationwide, and it came to appreciate that arbitrary arrest authority can be easily abused.

The Court, in a historic step, outlined mandatory requirements that should be adhered to during arrest and detention. These included:

- Clear identification of police officers.
- Arrest memo preparation that is certified by an eyewitness.
- Notifying a relative or a friend.
- Check-ups with a doctor for medical examination.

²⁹ *Prem Shankar Shukla v. Delhi Administration*, (1980) 3 S.C.C. 526

³⁰ *D.K Basu v. State of Bengal*, (1997) 1 S.C.C. 416

- Bringing before a magistrate within 24 hours.

This protection was proclaimed as enforceable in Articles 21 and 22.³¹

The second important fact involved in D.K. Basu is that the compensation was considered a public law remedy when a basic right is violated³². The Court went further than criminal prosecution and ushered in the doctrine of constitutional tort - making the State pay money damages as a result of abusing custody of the Indian young person. The case also declared that the international obligations of India are not compatible with torture. D.K. Basu subjected the powers of arrest to strict judicial control in constitutional terms. It turned abstract rights into action protection.

Impact and Significance of Doctrine and Human Rights: The jurisprudence emerging from these cases reflects three fundamental principles.

- Dignity survives incarceration.
- There is a constitutional restriction of executive discretion.
- The State has a positive duty to preserve the persons under custody.

Article 21 ceased to adhere to procedural legality. Today it represents justice, sanity, and dignity towards humanity, but this strength of doctrine is the opposite of ground realities. The phenomenon of the persistent occurrence of custodial violence creates a concern of its own: the question is whether the constitutional safeguards are so extensive that it is possible to go on with instances of the violations? This conflict between normative constitutionalism and practical implementation is the major question of the given research. A strong human-rights architecture has been established by the judiciary, yet it can only be applauded to transform when well implemented. This section therefore addresses how Article 21 jurisprudence has thus become a potent weapon against custodial violence.

IMPLEMENTATION GAPS AND STRUCTURAL DEFICITS IN PREVENTING CUSTODIAL VIOLENCE.

Continuing Reality of Custodial Deaths: Failed Constitutional Promise: According to Article 21 of the Indian Constitution, no one may be deprived of their life or personal freedom

³¹ Id. at 437–38.

³² Id. at 439–40.

unless a complex legal process is followed. This has been extended in judicial interpretation of the clause to encompass dignity and humane treatment and resistance to torture. The truth about custodial violence in India, though, is a great contradiction.

The **National Human Rights Commission (NHRC)** claims that over 11,000 deaths in custody took place between 2016 and 2022³³. These are police custody -as well as judicial custody deaths. In its Crime in India reports, the **National Crime Records Bureau (NCRB)** also records deaths in police custody every year.³⁴

Consider the successful national coverage of the case of the custodial death of J. Jayaraj and J. Bennix (2020), which is widely reported as the **Thoothukudi (Tuticorin) custodial death case (2020)** in Tamil Nadu, reportedly caused by alleged police brutality, which highlighted the problem of custodial brutality. In the incident, it was demonstrated that custody violence still occurs despite the Supreme Court's rules and constitutional protections.

These are not unrelated incidences. They indicate a gap in the enforcement structure. Assuming that Article 21 is the core of constitutional protection, in the case where there are repeated custodial deaths, this suggests that its essence is not entirely felt in practice.

Arrest Safeguards through BNSS, 2023: Norms v. Practice: In *D.K. Basu v. State of West Bengal*, the Supreme Court made elaborate those arrest rules to discourage custodial torture. These involved a compulsory arrest memorandum, medical examination, as well as notification of relatives. This has been replaced by principles that are working under the *Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)*

Under BNSS:

- Arrest should be done on reasonable suspicion.
- The individual arrested should be notified about the reasons that led to arrest.
- The accused should be brought to a Magistrate within 24 hours.
- Medical diagnosis should take place.

³³ National Human Rights Commission (NHRC), Annual Reports (2016–2022),

³⁴ National Crime Records Bureau, Crime in India (latest edition), Ministry of Home Affairs, Government of India.

Nevertheless, recommendations of the National Human Rights Commission (NHRC) repeatedly suggest that in some cases that involved custodial deaths, statutory and judicial protection measures were not applied in spirit or meaning, but were applied only in a formality.³⁵ Reported weaknesses within magisterial inquiry have included taking a long time to intimate the family members, failure to provide full arrest documentation, lack of independent witnesses during such arrest, and inconsistency during the medical examination of detainees.

In *Joginder Kumar v. State of U.P.*³⁶, the Supreme Court unequivocally ruled that an arrest must be made because of need rather than because it is lawful. The Court cautioned that arbitrary arrest of people endangers personal liberty as provided by Article 21 and that the right to arrest should never be carelessly and robotically applied.

Although this is a clear judicial directive, there has been empirical evidence to show that arrest still remains a common tool in investigations. The National Crime Records Bureau (NCRB) published Prison Statistics India 2022. The number of undertrial prisoners is about 75 per cent of the overall population in Indian prisons. The report goes further to state that the occupancy rate in national prisons is more than 131 percent in which systemic overcrowding.³⁷

This overcrowding is disproportionately applied to under-trial inmates; people who are, in the eyes of the law, innocent. After a long period of pre-trial detention, they are more susceptible to any custodial hazards such as violence, negligence, and poor medical attention. Moreover, the Crime in India, 2022 records display the cases of death in custodial development that happened in 2022, and the conviction rates in cases of custodial violence are considerably low, which is a sign of inefficiency in the accountability measures.

Read these empirical results with the judicial warning in *Joginder Kumar*, and a distressing trend is seen. On paper, constitutional and judicial safeguards are in place, but their application is unevenly applied. Arrest is still extensively utilised, pre-trial detention is still long, and jail deaths are still reported each year. In this way, the information supports the hypothesis of the

³⁵ National Human Rights Commission Custodial Death Case Reports & Advisories (various years)

³⁶ *Joginder Kumar v. State of U.P.* (1994) 4 S.C.C.260(India); AIR .1994 S.C.1349 (India)

³⁷ National Crime Records Bureau, Prison Statistics India 2022, ch.3 (Ministry of Home Affairs, Government of India)

study: India does not experience custodial violence since no laws exist to protect women, but it fails to implement them, enforce them, and hold institutions responsible.

Prison Overcrowding: An Organisational Factor to Custodial Injury: The problem of custodial violence is not limited to police stations, but goes as far as prison environments. According to NCRB Prison Statistics India, they note that the national occupancy percentage in Indian prisons is over 130 %; some States even report over 150 percent over crowding. Indian prisons operate at an occupancy rate exceeding 130% nationally, with some states reporting more than 150% overcrowding. A Large proportion of inmates are undertrial prisoners.

Overcrowding leads to:

- Increased inmate conflict
- Deformation of mental health.
- Reduced supervision
- Poor accessibility of health care centres.

The Supreme Court emphasised in *Sunil Batra v. Delhi Administration*³⁸ that inmates do not give up their fundamental rights at the prison gate. However, the underlying conditions which justify a constitutional safeguard like staff shortages and underdeveloped infrastructure are put in perspective by the India Justice Report,³⁹ which notes the lack of staff in prisons and poor budgetary allocation per prisoner. In the cases where institutions are weak in structure, protection of rights becomes secondary. In this way, prison overcrowding itself becomes an indirect but powerful factor contributing to custodial abuse and neglect.

Accountability Deficit and Sanction Requirement under the BNSS: Accountability mechanisms are challenged when issues related to custody violence are reported. The provisions of section 218 of the Bharatiya Nagarik Suraksha Sanhita, 2023, have a pre-requirement that the prosecution of public servants requires prior government sanction related to actions taken in the exercise of official duty. As much as this provision is trying to shield honest officers against frivolous cases, it will only postpone prosecution in real cases of custodial violence. Delayed sanction undermines evidence and influences the view of witnesses

³⁸ *Sunil Batra v. Delhi Administration* (Sunil Batra I), (1978) 4 S.C.C. 494

³⁹ Tata Trusts et al., India Justice Report (latest edition).

and minimises chances of conviction. There is data in NCRB that the rate of conviction in cases of death under custody is extremely low relative to the number of cases being registered.⁴⁰ Numerous cases are lingering.

In *Nilabati Behera v State of Orissa*⁴¹, the Supreme Court in *State of Orissa* identified constitutional compensation as a remedy in the form of a public law. Compensation is, however, not punitive. It is not a guarantee of criminal liability of officials who were found guilty.

The structural deficit hence is in:

- Absence of independent investigation agencies.
- Delayed sanction process
- Weak witness protection
- Institutional bias

Without credible accountability, deterrence remains weak.

Organisational Culture and Justification of the Excessive Force: On top of legal loopholes and procedural hurdles, the institutional culture supports the perpetuation of custodial violence; in certain instances, the use of coercive interrogation techniques is informally justified as reasonable measures that would aid in an effective investigation. Such an attitude goes against constitutional morality and international human rights norms. Communities that are marginalised tend to be impacted disproportionately. The economic vulnerability diminishes the ability of the family of victims to take up legal redress. Therefore, custodial violence is not just a legal failure, but it is indicative of stronger structural and cultural problems inside the criminal justice system.

The statistics of NHRC and NCRB, alongside the examples of judicial cases and actual life, are a clear indication that India has a good constitutional and judicial framework which helps to avoid custodial violence. However:

- There are high levels of custodial death.

⁴⁰ National Crime Records Bureau, *Crime in India (Custodial Death Case Outcomes)*.

⁴¹ *Nilabati Behera v. State of Orissa* (1993) 2 S.C.C. 746

- Overcrowded prisons
- Low conviction rates
- Prosecution delayed because of the requirement of sanctions.
- Poor institutional regulation.

Agree upon the fact that the crisis is in the failure of implementation and lack of structural accountability. Thus, the research hypothesis is proven right in that custodial violence will only be continued not because there are no legal mechanisms in place, but because of the inefficiency of policing and institutional flaws.

CONCLUSION AND SUGGESTIONS

Conclusion: The present research analysed the problem of custodial violence in India based on constitutional provisions of Article 21, judicial protection, and international standards. The research aimed to establish whether the legal provisions in place are sufficient, whether there is still a lapse in the enforcement, and whether there ought to be structural changes to close the gap between the guarantees of the constitution and the actual conditions on the ground.

The study confirms that India has a good constitutional and judicial base of safeguarding personal liberty. Article 21, when broadly construed by the Supreme Court, will ensure that there is not merely life but a dignified life. By setting precedents like *D.K. Basu v State of West Bengal* (1997), *Joginder Kumar v State of UP* (1994) and *Nilabati Behera v State of Orissa* (1993), the judiciary has provided detailed principles that regulate the process of arrest, the safeguards of custody and damages in case of violation. These judgments show that constitutional jurisprudence in India is categorically against torture, arbitrary arrest and abuse of custody.

Nevertheless, the results of the research indicate that, even with these precautions, custodial violence is still taking place. According to the reports presented by NCRB, the empirical evidence shows cases of custodial deaths, large proportions of undertrial prisoners, and overcrowding of the prison environment. These facts imply that the existence of safeguards is present in theory, but in practice, they are not uniform. Arrest guidelines can be formally adhered to without necessarily being implemented substantially. Checks and balances are operational, but accountability is occasionally postponed or undermined.

The hypothesis of this study, which states that the lack of legislation is not the primary cause of the issue; rather, it is the inadequate way in which it is implemented. The problem of discrepancy between constitutional commitments and institutional reality is the key issue. Human rights norms on international levels support the absolute ban on torture, and even though the Indian constitution interpretation is in line with international legal requirements in spirit, the legal and administrative processes need to be strengthened to enforce the law.

This study thus finds that the issue of Custodial violence is a structural governance issue as well as a one-sided legal one. To be a transformative guarantee, safeguards should work in practice and be consistent with Article 21. Dignity as a constitutional obligation should be projected well into the custody area that is where the power disparity between the state and the individual is at its highest.

Suggestions: Considering the results of this research, the reform should be meaningful, and thus it needs to be multidimensional to improve the technological, legislative, administrative and institutional deficits. It is suggested that the following measures can help enhance the protection of personal liberty and decrease custodial abuse in modern India.

One of the most drastic and urgent changes is the one that will bring CCTV surveillance into all custody locations. Although installation has been guided in several settings, they do not adhere to it, and they also fail to maintain it properly. Cameras should be operational and have audio-video functionality and secure digital storage facilities. Their functioning is supposed to be checked periodically by an independent monitoring mechanism, and the footage should be kept within a legally required term. The action would go a long way in minimising evidentiary battles, increasing transparency, discouraging malpractices, and at the same time shielding honest officers against false claims.

The other reform that has been established is having a comprehensive anti-torture legislation enacted. Even though the provisions of the constitution and the judgments of the courts deplore custodial violence, the lack of a special statutory framework poses ambiguity in the prosecution and responsibility. This gap in the legislation would be sealed by implementing a specific law specifying the meaning of torture, providing strict punishment, and imposing obligatory investigation practices. The integration of structured victim compensation mechanisms would also enhance accountability and restate the state's dedication to human dignity.

Strict application of arrest safeguards is also required. Arrest must be approached as a necessity and not a normal way of doing things. Electronic records of memorandum of arrest, direct communication with family members, and mandatory medical check-up accompanied by independent certification should be strictly tracked. Supervisory audit and responsibility of departments on non-observance can be taken to ensure that procedural safeguards are actually functioning and not as a ritual. With a decreased incidence of unwarranted imprisonment and transparency in the first instance, exposure to custodial vulnerability can be greatly reduced.

There is also the need to reform policing practices institutionally. Training in human rights sensitivity and training in constitutional ethics should be incorporated in police training curricula. The officers need to be armed with scientific and evidence-based investigative methods, which will lead to less coercive interrogation. Systemic pressures, including the need to separate investigative mandate and routine law and order tasks, can ease systemic pressures that occasionally lead to procedural shortcuts. Long-term reform requires a change of institutional culture.

Another key area is to deal with prison overcrowding and the large number of undertrial prisoners. The congestion in the prisons can be mitigated by liberalising bail conditions on minor offences, efficient application of speedy trial procedures, and encouraging non-custodial solutions. The overcrowding undermines the surveillance systems and makes them more vulnerable, so minimising unnecessary incarceration has a direct effect on constitutional rights protection.

Lastly, the independent oversight bodies should be fortified and made to have real accountability. Increased investigative power and organised compliance systems should be features of human rights commissions and supervisory bodies. Regular public reporting of correctional circumstances can promote openness and rebuild public confidence. Institutional bias is diminished, and infractions are less likely to go unpunished when oversight functions autonomously and efficiently. When combined, these recommendations seek to close the gap between constitutional principles and practical application found in this study. The foundation of democratic administration is the defence of individual liberty, which calls for persistent institutional commitment. The constitutional promise of dignity under Article 21 can only be fully realised in custodial environments when safeguards are applied honestly and consistently.

REFERENCES

- Bharatiya Nagarik Suraksha Sanhita 2023
- Bharatiya Nyaya Sanhita 2023
- Bharatiya Sakshya Adhiniyam 2023
- Shivani Tripathi, Article 21 of THE INDIAN CONSTITUTION: A SAFEGUARD AGAINST ARBITRARY DETENTION, CUSTODIAL VIOLENCE, AND TORTURE OF PRISONERS, 7 Indian J.L.&Legal Research; Volume VII Issue VI
- Hemanta Bhuyan, Bhupali Saikia; The role of the judiciary with relation to custodial death in India, International Journal of Advances in Engineering and Management (IJAEM), Volume 2, Issue12, pp:10-15
- Dr K.Latha, Role of Indian Judiciary in Granting Protection Against Custodial Violence: A Legal Analysis; International Journal of Law Management & Humanities, Vol.7 Iss. 3
- Sandra Jini Saju, Critical Analysis of Custodial Violence and Role of Indian Judiciary in India, Indian Journal of Integrated Research in Law; Volume II Issue VI
- Suresh Chandra Sagar and Uday Veer Singh, Legislative reforms in India and custodial violence: A legal upgradation in the present scenario; International Journal of Criminal, Common, Statutory Law 2024; 4(2): 214-2161
- Sandra Jini Saju, Critical Analysis of Custodial Violence and Role of Indian Judiciary in India, Indian Journal of Integrated Research in Law; Volume II Issue VI
- Suresh Chandra Sagar and Uday Veer Singh, Legislative reforms in India and custodial Violence: A legal upgradation in the present scenario; International Journal of Criminal, Common, Statutory Law 2024; 4(2): 214-2161
- Vishaka v. State of Rajasthan, A.I.R. 1997 S.C. 3011
- D.K. Basu v. State of West Bengal, (1997) 1 S.C.C. 416, 433–34
- Hussainara Khatoon (I) v. State of Bihar, A.I.R. 1979 S.C. 1360
- Prem Shankar Shukla v. Delhi Administration, (1980) 3 S.C.C. 526
- Joginder Kumar v. State of U.P., (1994) 4 S.C.C. 260 (India)
- Nilabati Behera v. State of Orissa, (1993) 2 S.C.C. 746
- National Crime Records Bureau, Prison Statistics India 2022 (Ministry of Home Affairs, Govt. of India)

- National Crime Records Bureau, Crime in India 2022 (Ministry of Home Affairs, Govt. of India)
- National Human Rights Commission, Custodial Death Case Reports & Advisories (various years)
- Universal Declaration of Human Rights art. 5
- International Covenant on Civil and Political Rights art. 7
- Law Commission of India, 273rd Report on Implementation of United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (2017)
- Amnesty International, Torture in India 2019: Update on Torture and Ill-Treatment in India