

# Abuse of Police Authority and Custodial Torture in India:

## *A Critical Inquiry into Systemic Fear*

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**Abstract**—Abuse of power, be it by anybody in the system of government, ruins the entire order in the society. The aim of establishing a force by giving in powers to detain, investigate and punish civilians is to maintain social order in the society. So, the force itself should not be a reason that people are not allowed to exercise liberty. The problem of abuse of power by police is not something that started very recently. It exists for a long time now. The liberty of citizens is a priceless freedom guaranteed by the Constitution of India which shall not be curtailed by any institution of the society. Police is supposed to be the custodians of law and the judiciary is responsible for ensuring that police complies with the proper procedures established by law. But in practice, it is contrary. This study is done with the objective to explore the extent of custodial violence by police and the actions taken by the courts to mitigate the same.

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**Keywords**—Police; Custodial Violence; Abuse of Power; Enforcement of Law; Human Rights Violation

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### **I. Introduction**

First of all, torture or abuse refers to one's act of inflicting physical pain or mental agony on another person due to many reasons including punishment or even mere sadistic pleasure. Violence in custody of the police is known as Custodial Violence and it is a condemnable act, as police of a State is deployed for the purpose of protection and safety of individuals. Even in the ancient period, using the power of Dhanda (Penalty) according to Arthashastra and Dharmashastra was supposed to be done with care — that is where 'Dhandaniti' comes in. Abuse can be intangible. Maltreatment and violence has become a usual thing in almost every place in India. It is actually a serious problem that needs attention. A democratic country with a beautiful Constitution should have no essence of arbitrary violence by the custodians, ideally. We see people losing lives because of the violent methods used in the name of questioning and interrogation. The people who are affected are mostly socially and economically underprivileged. If we say the number of cases of police violence is less, we are forgetting to consider the unrecorded number of cases that are not being recorded because of fear and fatalism toward the system.

#### **1.1 Hypothesis**

This paper conjectures that, while Indian courts have evolved robust constitutional safeguards against custodial violence, systemic inertia and weak accountability by police officers results in recurrence of violation of fundamental rights of the individuals.

#### **1.2 Literature Review**

Sonali Mann and Ishita Chatterjee (2022), Custodial Violence and the Law: Literature on custodial violence highlights it as a persistent human rights violation arising from systemic flaws in law enforcement and governance. Mann and Chatterjee emphasise that despite constitutional protections and statutory safeguards under Indian law, custodial abuse continues due to weak implementation and lack of

accountability. The study also situates the issue within international human rights frameworks, underscoring that custodial violence is not merely a legal failure but a structural problem requiring institutional reform and stronger enforcement of rights.

Dr. Kamasai SVM (2021), *Judicial Dynamism and Custodial Violence*: This literature highlights custodial violence as a serious violation of the constitutional right to life and personal liberty under Article 21. Dr. Kamasai SVM emphasises that although the state possesses coercive powers to maintain law and order, their exercise must conform to the rule of law and fair procedure. The study further shows that judicial dynamism and activist interpretation by the Supreme Court have played a crucial role in developing custodial jurisprudence and providing remedies to victims of custodial abuse.

Dr. Ishita Chatterjee (2021), *Custodial Violence and the Law*: This literature highlights custodial violence as a serious violation of the constitutional right to life and personal liberty under Article 21. The study further shows that judicial dynamism and activist interpretation by the Supreme Court have played a crucial role in developing custodial jurisprudence and providing remedies to victims of custodial abuse.

M. Karthikeyan (2023), *Police Atrocity in India — A Critical Study*: This literature on police atrocity in India highlights custodial violence and police brutality as systemic human rights violations rooted in misuse of power, political interference, and institutional weaknesses. Karthikeyan's study emphasises that despite constitutional safeguards and statutory duties under the Police Act, 1861 and criminal law, police often resort to torture and coercion in the name of investigation, particularly against marginalised communities. The paper further analyses accountability mechanisms, including judicial remedies, human rights commissions, and police complaint authorities, revealing their limited effectiveness due to procedural barriers and lack of enforcement power.

A. Nirmal Singh Heera, Rajasathya K.R., N. Prabhavathi (2021), *Police Brutality and Custodial Torture in the Technological Era — Need for Anti-Torture Law in India*: This literature highlights police brutality and custodial torture as persistent violations of fundamental rights despite constitutional safeguards, judicial guidelines, and international conventions. The authors emphasise that custodial violence continues due to gaps in enforcement and accountability, even in the technological era. The study further underscores the urgent need for a comprehensive anti-torture law and stronger institutional mechanisms to curb custodial abuse and protect human rights.

Akshat D. Jain (2025), *Criminal Justice and Human Rights — A Discussion of Custodial Violence, Pretrial Detention and Capital Punishment*: This research paper reveals that custodial violence, prolonged pretrial detention, and capital punishment systematically undermine human rights principles, particularly the rights to dignity, liberty, and life. Empirical and doctrinal studies show that these practices often function as structural failures rather than isolated violations, highlighting the need for fundamental reforms in criminal justice systems.

Hiral Vora (2024), *Police Brutality in India — Its Impact on Individuals and Their Rights*: Existing literature recognises custodial violence as a serious violation of fundamental rights and examines judicial safeguards evolved through landmark judgments. However, scholars note a persistent gap between judicial pronouncements and their effective implementation, allowing custodial abuse to continue. Shreyash Gupta (2023) identifies custodial violence and police brutality as persistent human rights violations in India, noting that despite judicial safeguards and accountability mechanisms, abuse of police power continues due to weak enforcement and systemic failures.

Raj Krishna and Kumar Mukul Choudhary (2024), *Police Violence and Custodial Deaths — Reducing Bill of Rights to Charter of Servitude*: This study examines the persistence of custodial violence in India despite constitutional safeguards and judicial guidelines. The authors argue that mechanical judicial oversight, weak institutional accountability, and poor implementation of Supreme Court directives have rendered protections against custodial abuse largely ineffective. Sourav Suman (2020), *The Police Brutality in India — A Critical Analysis*: Prior studies critically examine police brutality in India and highlight the judiciary's role in awarding compensation for violations of fundamental rights. However, the literature observes that judicial responses largely remain compensatory in nature and have failed to ensure effective accountability or structural reform.

### **1.3 Methodology**

This research primarily adopts a doctrinal method based on analysis of scholarly journal articles and commentaries as secondary sources. Relevant statutory provisions and judicial decisions are examined to interpret and evaluate the principles discussed in the literature. Comparative reading and critical synthesis are used to draw reasoned conclusions on the research problem.

## II. Overview of Recent Reports

A recent report by the Columbia Law School's Human Rights Institute has brought to light a systematic threat to journalists by state government officials through illegal detention, custodial torture, and false allegations. The Global Torture Index has placed India in the 'High Risk' category for torture by police, which is very sobering. The India Justice Report 2025 cited problems in policing in India, such as overcrowded prisons and lack of women police officials. As per the Status of Policing in India Report 2025, a dominant share of police officers justify and admit torture as a way to interrogate and investigate.

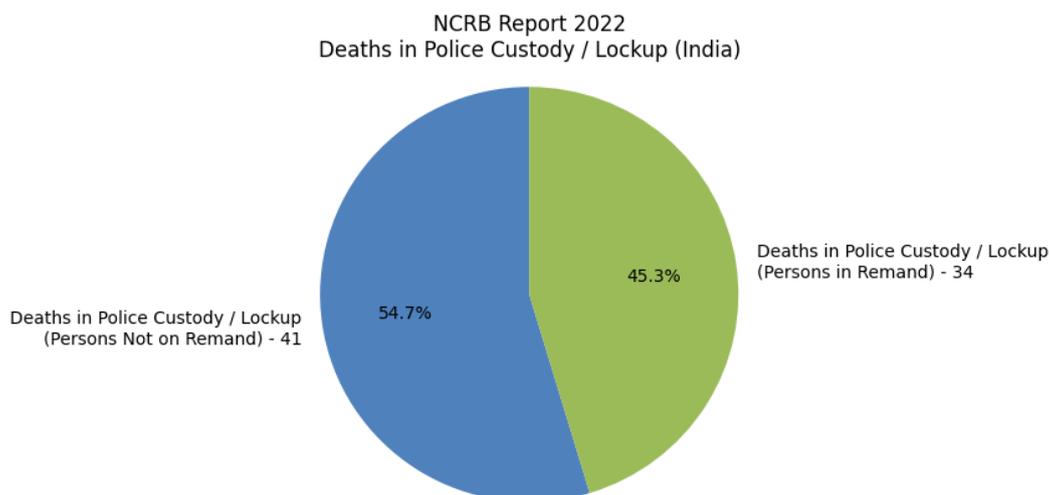


Fig. 1. Overview of custodial violence data and policing statistics in India.

### 2.1 Precedential Analysis and Practical Instances

#### 2.1.1 Outrage by Policemen: Young Woman Raped in Thiruvannamalai

On September 30, a young woman was raped by two constables of Thiruvannamalai at night, after obtaining her custody on the pretence of document verification, as herself and her brother were in Thiruvannamalai for completing a business consignment. They were natives of Andhra Pradesh who had come to Thiruvannamalai for a one-day job. The survivor, with her strength, managed to reach the Bypass road of Endal village where villagers helped her reach Government Medical College Hospital in Tiruvannamalai Town.

G. Dharmarajan, DIG, Sudhakar and V. Satish Kumar, ASP, Tiruvannamalai, conducted an inquiry. The constables were arrested, lodged in Vellore Prison, and suspended from service. Notably, Asra Garg, the SP, on the instructions of the Inspector General of Police, dismissed the constables by invoking Article 311 of the Constitution of India, which deals with the dismissal, removal, or reduction in rank of persons employed in civil capacities under the Union or a State. As of February 2026, the criminal trial for this case is ongoing.

#### 2.1.2 The Distinction Between Duty and Urge to Torture: *P.P. Unnikrishnan v. Puttiyottil Alikutty*

In this case, the victim alleged that he was wrongfully detained and was tortured in custody for four days without registering a case or producing him before the Court in Perambra Police Station. The Supreme Court denied immunity under Section 197 of the CrPC to the police officers involved and held that 'there must be a reasonable nexus between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.'

#### 2.1.3 Custodial Death: *Nilabati Behera v. State of Orissa*

In this case, a woman reported the custodial death of her son. The Supreme Court ruled that the death occurred due to custodial torture, thereby violating the fundamental rights of the deceased, and awarded compensation. This judgment established a landmark precedent for state accountability in cases of custodial deaths and the constitutional obligation to compensate victims.

#### **2.1.4 The Infamous Sathankulam Case**

A father, Jayaraj (aged 60), and his son, Benicks (aged 31), were pathetically tortured to death in police custody. The crime alleged by the police was keeping their shop open for some time beyond allowed hours during the COVID-19 curfew. Police have a routine of using torture as procedure with little or no accountability. The magistrate investigating the case reported that the police did not cooperate, destroyed evidence, and also insulted him during the investigation.

These deaths occurred very soon after the killing of George Floyd by a police officer in the United States. Justice Chandru observed that the Magistrate never looked at the accused: 'If he had seen them with bleeding injuries or uncomfortable standing posture, he should have asked police about them. But he writes in the remand order "no complaints". When you don't even see them, where is the question of complaint.' Justice Chandru further added that it is the job of the Magistrate to enquire after physically seeing the accused and to ensure compliance with the 11 guidelines laid down in *D.K. Basu v. State of West Bengal* regarding rights to legal aid and access to medical care.

### **III. Pre-Trial Punishment: How the Police Station Pronounces Guilt**

In books, a police station is a locale to report, raise complaints, and seek protection — at times even help. It ideally has to be a site where one can walk up to and seek immediate law enforcement. But in reality, it has earned a reputation of terror. The way riders try to dodge away on a street where traffic police are waiting to check documents — even when people have every document in order — is one indicator that shows the basic human tendency to fear the uniform, as there can be bad conduct when involved with Khaki.

Police stations are deciding whether the accused is innocent or not through cruel methods of interrogation and investigation, instead of sticking to the ambit of 'accused person'. Even after precedents such as *D.K. Basu v. State of West Bengal*, wherein the Supreme Court promulgated guidelines to be adhered to during arrest and detention, and most importantly *Nilabati Behera v. State of Orissa*, in which the Court set the rule to compensate custodial deaths, there are still many cases reported on custodial torture. Even after the judiciary aimed to deal with this crucial matter in a systemic way, acknowledging it as a paramount issue in the country, its intensity has not diminished.

It would be very unfair for the people of the country if the police station decides the verdict in criminal cases. The judiciary should be the only entity for passing the verdict. The social factors that a person deals with after coming out of pre-trial detention are pathetic. The society brands him/her as a criminal no matter whether they have been acquitted.

### **IV. Towards a Coherent Accountability Framework**

In this technological era, it is actually plausible to curb custodial violence. Technology can move dark chambers into glass-rooms that are transparent, which is essential for a democratic nation like ours.

#### **4.1 Legal Regime Addressing Custodial Torture**

In India, custodial torture is prohibited through a constitutional, statutory, judicial, and international framework that has recently been reshaped by the new criminal laws enacted in 2023. Constitutionally, Article 21 guarantees the right to life and personal liberty, which the Supreme Court has consistently interpreted to include protection against torture and cruel, inhuman, or degrading treatment; Article 20(3) protects individuals from compelled self-incrimination; and Article 22 mandates procedural safeguards upon arrest, including the right to be informed of grounds of arrest and to consult a legal practitioner.

Under the newly enacted *Bharatiya Nyaya Sanhita, 2023 (BNS)*, which replaces the Indian Penal Code, custodial torture is not defined as a standalone offence, but acts amounting to torture are punishable under provisions relating to voluntarily causing hurt or grievous hurt, extortion of confession, wrongful confinement, culpable homicide, and murder, all of which apply equally to public servants. The *Bharatiya*

Nagarik Suraksha Sanhita, 2023 (BNSS), replacing the Code of Criminal Procedure, mandates production before a magistrate within 24 hours of arrest, provides for medical examination of the arrested person, requires maintenance of arrest records, and continues the requirement of a judicial inquiry in cases of custodial death or rape.

The Bharatiya Sakshya Adhiniyam, 2023, replacing the Indian Evidence Act, retains the principle that confessions caused by inducement, threat, or promise are inadmissible and generally excludes confessions made to police officers, thereby discouraging coercive interrogation practices. Additionally, the Protection of Human Rights Act, 1993 empowers the National and State Human Rights Commissions to inquire into custodial violence and recommend prosecution or compensation. At the international level, India is bound by Article 7 of the ICCPR, which prohibits torture and cruel, inhuman, or degrading treatment, and is a signatory (though not yet a ratifying State) to the United Nations Convention Against Torture (UNCAT). Judicial precedents such as *D.K. Basu v. State of West Bengal* and *Nilabati Behera v. State of Orissa* further constitutionalise safeguards and compensation for custodial abuse.

#### **4.2 Statutory Anti-Torture Framework**

The paramount goal of a new Anti-Torture Framework dedicated to custodial violence should be eliminating fear between people and the police. Both entities should be on the same pedestal, though authority should not be looked down upon. There should be authority within prescribed limits. The balance between the police not abusing their power and citizens having ease of approaching law enforcement should be struck. Trust-building, transparency, and accountability should be attained through practically workable measures.

Such a framework should provide a comprehensive definition of custodial torture that includes physical torture, psychological coercion, sexual violence, third-degree methods, custodial humiliation, and threats. It must cover all kinds of torture in police custody, transit custody, judicial custody, and any detention by state authorities, by defining 'public servant' broadly.

#### **4.3 Independent Investigative Mechanisms**

Establishment of an Independent Custodial Violence Investigation Authority at the state level is highly necessary. Mandatory transfer of cases to this authority in cases of custodial death, custodial rape, or serious injury in custody should be a rule, ensuring independence from the police department itself.

#### **4.4 Data Transparency and Digital Surveillance Measures**

CCTV cameras should be installed in every single police station with data retention safeguards. Body-worn cameras during arrests and interrogation should be mandatory. Mandatory medical examination at the entry and exit of custody should be prescribed. Public reporting of annual custodial violence data should be facilitated to enable democratic oversight.

#### **4.5 Victim-Centric Provisions**

To ensure that justice is not something that comes delayed or by chance, interim compensation, witness protection for complainants, and access to free and effective legal aid should be provided by the government. Psychological counselling and rehabilitation support for custodial violence victims must also form part of any comprehensive framework.

### **V. Conclusion and Suggestions**

Custodial violence is the rust in the justice system. It is a good sign that crimes by police officers are being reported, but on the other hand we also have to account for the unreported cases due to fear of consequences. The possibility of the number of cases on this particular issue coming down to a single digit a year is extremely doubtful considering the mental aggression held by some in Khaki. The collective image of fear of the uniform must be mitigated through proper measures.

The way forward includes: mandatory audio-visual recording in police stations and body cameras on uniforms with safeguards against tampering; mandatory intimation to family of the arrested person; geotagging during arrests and detention; psychological training to officials to handle accused persons and civilians in accordance with human dignity; and, ultimately, enactment of a dedicated Prohibition of Custodial Violence Act by the legislature.

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