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## **Title: Legal aspect of custodial violence in India: Can democracy tolerate custodial torture?**

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### **1. Abstract**

Custodial torture remains one of the most serious violations of human rights and poses a direct challenge to the principles of constitutional democracy. Although democratic governments are founded upon the ideals of liberty, equality, justice, and the rule of law, incidents of torture in police and judicial custody continue to occur across many democratic nations, including India. The persistence of custodial violence raises a fundamental question: can a democracy legitimately tolerate the use of torture by its law enforcement agencies in the name of maintaining public order, combating crime, or ensuring national security? This paper critically examines the compatibility of custodial torture with democratic governance by analysing constitutional principles, international human rights norms, judicial interpretations, and the practical realities of criminal justice administration.

The study argues that custodial torture is fundamentally incompatible with democratic values because it violates the inherent dignity of individuals, undermines the rule of law, weakens public confidence in institutions, and erodes constitutional guarantees of life and personal liberty. While some scholars and policymakers attempt to justify coercive interrogation in exceptional circumstances, such justifications fail to withstand constitutional and ethical scrutiny. The paper also examines the Indian legal framework, the role of the judiciary in protecting detainees, and the continued challenges posed by inadequate accountability, institutional culture, and delays in criminal justice reforms. It concludes that a democracy cannot sustain its legitimacy while permitting torture and that meaningful reforms are necessary to ensure transparency, accountability, and respect for human rights

## **2. Introduction**

Democracy is widely regarded as the most legitimate form of government because it derives its authority from the consent of the people and functions through constitutional principles that guarantee liberty, equality, justice, and the rule of law. Unlike authoritarian regimes, democratic societies are expected to protect the rights of every individual irrespective of social status, religion, caste, gender, or political opinion. The Constitution serves as the supreme law governing the relationship between the State and its citizens, ensuring that governmental power is exercised within legally defined limits. Among the essential characteristics of democracy is the recognition that every individual possesses inherent dignity and cannot be deprived of life or personal liberty except according to procedures established by law. Consequently, the criminal justice system in a democracy must function not merely to punish offenders but also to safeguard the rights of suspects, accused persons, prisoners, and victims alike.

Despite these constitutional commitments, custodial torture remains an alarming reality in many democratic nations. Across the world, allegations of torture, illegal detention, custodial deaths, forced confessions, and police brutality continue to emerge despite legal prohibitions. India, the world's largest democracy, has witnessed numerous cases where individuals have been subjected to physical violence, psychological abuse, and degrading treatment while in police or judicial custody. Such incidents generate public outrage, invite judicial intervention, and expose serious weaknesses in law enforcement accountability.

Custodial torture remains a grave human rights violation plaguing India's legal landscape, challenging its democratic ethos and legal frameworks. This study delves into the intricate nexus of political, legal, and societal factors contributing to the persistence of custodial torture in India. It analyzes the power dynamics, institutional deficiencies, and societal attitudes that eternalize such abuses within law enforcement agencies.

Furthermore, the study scrutinizes the legal framework governing custodial torture, including constitutional provisions, and statutory laws. It critically assesses the efficacy of existing legal mechanisms, implementation challenges, and the role of the judiciary in interpreting and enforcing anti-torture laws.

It emphasizes the imperative of political commitment, judicial independence, and public participation in upholding the rule of law and protecting human dignity. The article deals

with a holistic approach related to custodial torture, its types, constitutional provisions, and other major aspects.

### **3. Meaning and Concept of Custodial Torture**

Custodial torture refers to the infliction of physical pain, mental suffering, or psychological abuse upon a person who is under the custody or control of law enforcement authorities, prison officials, or any other public officials. It generally occurs during arrest, interrogation, detention, or imprisonment, where the victim is deprived of personal liberty and is entirely dependent on the authorities responsible for his or her safety. Custodial torture may be used to extract confessions, obtain information, punish suspects, intimidate detainees, or coerce individuals into admitting guilt. Such acts violate the fundamental principles of human dignity, personal liberty, and the rule of law, which form the foundation of every democratic society.

Custodial torture is not limited to physical violence such as beatings, electric shocks, or prolonged restraint. It also includes psychological and emotional abuse, such as threats, intimidation, sleep deprivation, prolonged solitary confinement, verbal humiliation, denial of food or medical care, and other forms of cruel, inhuman, or degrading treatment. Modern human rights jurisprudence recognizes that mental torture can have consequences as severe as physical abuse, often causing long-lasting trauma, anxiety, depression, and loss of trust in public institutions. Since the victim is under the complete control of State authorities and unable to protect themselves, custodial torture represents a serious abuse of official power and a breach of the State's legal and constitutional obligations.

From a legal perspective, custodial torture is universally condemned under international human rights law and is prohibited by constitutional guarantees protecting life, liberty, equality, and due process. Democratic legal systems require investigations to be conducted through lawful and scientific methods rather than coercion or violence. The use of torture not only undermines the credibility of criminal investigations by producing unreliable confessions but also weakens public confidence in the justice system. Therefore, custodial torture is regarded as one of the gravest violations of human rights and remains fundamentally incompatible with the ideals of constitutional democracy, accountability, and respect for the inherent dignity of every individual.

#### 4. Forms of Custodial Violence

- **Physical torture:** inflicting bodily harm to extract confessions. These actions directly contravene the protections under Article 21 of the Indian Constitution and are punishable under Sections 330 and 331 of the Indian Penal Code. Medical examinations of detainees often reveal untreated injuries, fractures, and internal bleeding—indicative of deliberate infliction of pain.
- **Mental torture:** threats, isolation, or humiliation. Victims often suffer from anxiety, depression, PTSD, and other psychiatric disorders, even after release. Unfortunately, this form of torture remains underreported due to lack of physical evidence and limited access to psychological support in prisons.
- **Sexual abuse:** a gross violation of bodily autonomy. Many such incidents go unreported due to stigma, fear of retaliation, and lack of gender-sensitive complaint mechanisms. Sexual abuse in custody not only violates bodily autonomy but also breaches international conventions, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).
- **Custodial deaths:** fatal consequences resulting from abuse or negligence. According to the NHRC, India reported over 2,100 custodial deaths in 2021–22, highlighting the critical failure in safeguarding life during detention (NHRC, 2022). According to the National Human Rights Commission (NHRC), India reported 2,152 deaths in judicial and police custody in 2021–22 (NHRC, 2022).

#### 5. Constitutional and Legal Framework

- **Article 20(3):** Protects an individual from being compelled to be a witness against themselves. This provision directly addresses the issue of forced confessions extracted under torture or coercion, which are a common feature in custodial interrogations.
- **Article 21:** Guarantees the right to life and personal liberty. The Supreme Court of India has interpreted this article to include the right to live with human dignity, and the right to protection from torture, inhuman, and degrading treatment (*Maneka Gandhi v. Union of India*, 1978). Any form of custodial abuse is a violation of Article 21.
- **Article 22(1) and (2):** Mandate that every person arrested must be informed of the reasons for their arrest, and they must be produced before a magistrate within 24 hours. This

provision seeks to prevent illegal detention and is crucial in limiting police discretion and arbitrariness

- **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS):** which supersedes the colonial-era Code of Criminal Procedure, 1973, aims to modernize India's criminal procedure system with an emphasis on accountability, transparency, and protection of citizens' rights. The new provisions provide detailed mechanisms to safeguard individuals from custodial abuse and ensure lawful arrest and detention procedures.

- **Sections 35 to 51:** These sections correspond to the earlier Sections 41 to 60A of the CrPC. They comprehensively outline the procedure for arrest and detention. Notably, Section 35 of BNSS restricts the power of arrest to circumstances where it is absolutely necessary and mandates that arrest must be carried out only after recording reasons in writing—thereby adding a crucial layer of transparency and judicial scrutiny.

- **Section 43:** Regulates the use of force during arrest. It explicitly prohibits the use of lethal force except in cases where the person being arrested is accused of a serious offence punishable with death or life imprisonment and actively resists arrest or attempts to flee. This clause reaffirms the principle of proportionality in law enforcement.

- **Section 51:** Grants the arrested person the right to a medical examination by a registered medical practitioner. This provision is essential for detecting any injuries or signs of custodial torture and for establishing a medico-legal record that could serve as vital evidence in cases of abuse or mistreatment during detention.

- **Section 198:** Mandates a judicial inquiry in all cases of death, disappearance, or alleged rape in custody. This provision strengthens the mechanism of judicial oversight in custodial settings and is intended to prevent impunity. However, concerns remain about the independence, timeliness, and thoroughness of such inquiries, especially when state police are tasked with initial investigations.

- **The Bharatiya Nyaya Sanhita (BNS), 2023,** which has replaced the Indian Penal Code (IPC), incorporates specific provisions addressing torture and custodial deaths while retaining and restructuring earlier protections under IPC Sections 330, 331, and 302. The following sections are now applicable under the new legal framework:

- **Section 73:** This section criminalizes voluntarily causing hurt or grievous hurt to extort a confession or information. It is particularly relevant in custodial settings where law

enforcement officials use physical torture to extract statements from detainees. The provision prescribes stringent punishments for such acts, especially when committed by public servants during official duties.

- **Section 101:** Deals with the offence of murder, including custodial deaths caused by torture, excessive use of force, or deliberate neglect. If a police officer is found guilty of causing the death of a person in custody, they may be prosecuted under this section. The provision allows for life imprisonment or death penalty, depending on the gravity of the act and judicial findings.

- **Section 112:** Addresses causing death by negligence, applicable in custodial situations where death results from deliberate omission to provide medical care or through unsafe detention practices that lead to fatal consequences.

- **The Protection of Human Rights Act, 1993,** was enacted by the Indian Parliament with the objective of providing a robust institutional framework for the promotion and protection of human rights. The Act defines human rights as the rights relating to life, liberty, equality, and dignity guaranteed by the Constitution or embodied in international covenants enforceable by Indian courts. This legislation plays a critical role in addressing custodial violence, torture, and other forms of state-inflicted human rights abuses.

## 6. Legal Gaps and Institutional Failures

- **Absence of a Specific Law Against Torture:** India is yet to ratify the UN Convention Against Torture (UNCAT), and the Prevention of Torture Bill, 2010, lapsed.

- **Weak Enforcement:** Conviction rates in custodial death cases remain abysmally low.

- **Inadequate Oversight:** Internal inquiries are often biased; external mechanisms like judicial inquiries are rare.

- **Impunity and Delayed Justice:** Police personnel often escape accountability due to lack of evidence, threats to witnesses, and institutional protection.

## 7. Role of National Human Rights Commission (NHRC) and State Human Rights Commissions (SHRCs)

They play a pivotal role in India's institutional response to custodial violence and related human rights violations. Created under the Protection of Human Rights Act, 1993, these

commissions are tasked with the promotion and protection of fundamental human rights, including the right to life, dignity, and protection from torture.

#### **i. Mandate and Jurisdiction**

Under Section 12 of the Protection of Human Rights Act, the NHRC is empowered to:

- Investigate complaints of custodial deaths, torture, illegal detention, and denial of timely medical care.
- Undertake suo motu inquiries into cases involving serious human rights violations.
- Visit jails, detention centers, and police lock-ups to examine living conditions.
- Review existing constitutional and legal safeguards and recommend reforms.
- Promote awareness through human rights literacy, research, and training.

#### **ii. Achievements in Addressing Custodial Violence**

The NHRC has significantly contributed to:

- Bringing national attention to underreported cases of custodial torture and death.
- Recommending monetary compensation to victims or their families.
- Issuing guidelines for arrest procedures, medical examination of detainees, and police accountability.
- Releasing annual reports and data that expose trends in custodial abuse, helping civil society and the judiciary to act.

### **8. Judicial Approach Towards Custodial Torture**

The Indian judiciary has consistently recognized custodial torture as one of the gravest threats to constitutional democracy. Through a series of landmark judgments, the Supreme Court has expanded the scope of fundamental rights and imposed procedural safeguards designed to prevent abuse by investigating agencies.

- **D.K. Basu v. State of West Bengal**, the Supreme Court described custodial violence as a direct assault on human dignity and laid down detailed guidelines governing arrest and detention. These guidelines require police officers to identify themselves, prepare arrest memoranda, notify relatives of the arrested person, conduct medical examinations, maintain custody records, and ensure judicial oversight. These

safeguards remain among the most significant judicial measures against custodial torture.

- **Nilabati Behera v. State of Orissa**, the Supreme Court held that the State bears constitutional responsibility for custodial deaths caused by its officials. The Court recognized compensation as an effective public law remedy for violations of fundamental rights, thereby strengthening governmental accountability.
- **Joginder Kumar v. State of Uttar Pradesh**, the Court emphasized that arrest should not become a routine exercise of police power. It observed that unnecessary arrests violate personal liberty and increase the likelihood of custodial abuse. The judgment reinforced the principle that police discretion must always remain subject to constitutional limitations.
- **Sheela Barse v. State of Maharashtra**, the Supreme Court highlighted the vulnerability of women detainees and directed authorities to ensure humane treatment, legal assistance, and protection against abuse during custody. The judgment recognized that vulnerable sections of society require additional safeguards against custodial violence.

Collectively, these decisions establish that constitutional democracy cannot permit torture as an investigative method. Judicial interpretation has transformed the right to life into a comprehensive guarantee of dignity, fairness, and protection against arbitrary State violence.

## **9. Can Democracy Tolerate Custodial Torture? – A Critical Analysis**

The question of whether democracy can tolerate custodial torture has generated considerable debate among legal scholars, policymakers, and security experts. Some argue that extraordinary circumstances such as terrorism, organized crime, or threats to national security may justify the use of coercive interrogation in exceptional cases. According to this perspective, the protection of society may sometimes require temporary restrictions upon individual rights.

However, this argument faces serious constitutional, ethical, and practical objections. First, torture fundamentally violates the rule of law by allowing executive authorities to exercise unchecked power over individuals. Once exceptions are created, it becomes difficult to define their limits, leading to gradual normalization of abuse. Secondly, empirical evidence demonstrates that torture often produces unreliable information because victims frequently

confess falsely to end their suffering. Consequently, torture may hinder rather than assist criminal investigations.

From a constitutional standpoint, permitting torture undermines the legitimacy of democratic institutions. Democracy derives its authority not from coercive force but from adherence to constitutional principles and public accountability. A government that violates human dignity in pursuit of law enforcement ultimately weakens the moral authority upon which democratic governance depends.

Furthermore, custodial torture disproportionately affects economically weaker sections, marginalized communities, migrants, and individuals lacking access to effective legal representation. This selective vulnerability deepens social inequalities and erodes public confidence in the justice system. Instead of strengthening security, torture alienates communities whose cooperation is essential for effective policing.

Modern democracies increasingly recognize that scientific investigation, forensic evidence, technological advancements, witness protection, and professional policing provide more reliable methods of crime detection than coercive interrogation. Investment in institutional capacity therefore represents a more sustainable solution than reliance upon unlawful violence.

## **10. Conclusion**

Custodial torture remains one of the most serious challenges confronting constitutional democracies. Although governments possess a legitimate responsibility to maintain law and order, such responsibility must always be exercised within the limits imposed by constitutional principles and the rule of law. The use of torture represents a failure of democratic governance because it replaces legality with arbitrary power, undermines human dignity, weakens judicial oversight, and destroys public confidence in criminal justice institutions.

India has developed an extensive constitutional framework protecting life, liberty, and dignity through Articles 14, 20, 21, and 22, complemented by progressive judicial interpretation. Nevertheless, the persistence of custodial violence demonstrates that legal safeguards alone are insufficient without effective implementation, institutional accountability, independent investigation, and police reforms. The judiciary has repeatedly affirmed that prisoners and detainees retain their fundamental rights and that torture cannot be justified under any

circumstance. However, judicial pronouncements must be supported by administrative commitment and legislative action.

Ultimately, democracy cannot legitimately tolerate custodial torture because doing so would contradict the very values upon which democratic governance is founded. A constitutional democracy is measured not by the severity with which it punishes offenders but by the fairness, humanity, and legality with which it administers justice. Respect for human dignity, transparency in law enforcement, and accountability of public officials remain indispensable conditions for preserving both the rule of law and public confidence in democratic institutions. Only by rejecting torture unequivocally and embracing rights-based policing can a democracy fulfil its constitutional promise of justice, liberty, equality, and dignity for all.

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