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CUSTODIAL VIOLENCE IN INDIA: LAW AND ACCOUNTABILITY

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In March 2026, the Union government informed Parliament that India had recorded 170 custodial deaths in the financial year 2025-26 alone, extending a troubling five-year trend in which the annual figure has never dropped below 140.¹ Custodial deaths have turned into figures in official reports rather than indicators of a deeper crisis within the criminal justice system. This raises an uncomfortable question: how can a country with an extensive constitutional and judicial framework against custodial abuse continue to witness such limited accountability?

The constitutional foundation against custodial violence lies in **Article 21**, which guarantees that no person shall be deprived of life or personal liberty except by procedure established by law. Over the years, the Hon'ble Supreme Court has interpreted this provision to include the right to live with dignity and protection from torture while being in State custody.² **Article 22** supplements this guarantee by providing safeguards against arbitrary arrest and detention³. The court gave practical effect to these guarantees in **Nilabati Behera v. State of Orissa (1993)**, holding that the State is liable to pay compensation for a custodial death as a public-law remedy, ensuring that constitutional rights do not end once a person enters police custody.⁴

Judicial safeguards were further strengthened in **D.K. Basu v. State of West Bengal (1997)**, where the Court laid down eleven mandatory guidelines governing arrest and detention. The guidelines required police officers to prepare an arrest memo witnessed by an independent person, inform a relative or friend of the detainee, conduct regular medical examinations,

¹Custodial Deaths at 170 This Year, Accountability Nearly Absent: Govt Data, <https://m.thewire.in/article/government/custodial-deaths-at-170-this-year-accountability-nearly-absent-govt-data/amp> (last visited on July 19, 2026)

² INDIA CONST. art. 21.

³ INDIA CONST. art. 22.

⁴ Nilabati Behera v. State of Orissa, (1993) 2 SCC 746 (India).

maintain proper custody records, and the right to consult a lawyer during interrogation.⁵ Recognising the importance of these guidelines, Parliament later incorporated many of them into the **Code of Criminal Procedure** through Sections 41B to 41D.⁶ More recently, with a view to improve transparency and deter custodial abuse, the Apex Court in **Paramvir Singh Saini v. Baljit Singh (2021)**, directed all police stations to install CCTV cameras with audio and night-vision capabilities, and to constitute independent oversight committees to review the footage.⁷

Despite these safeguards, enforcement remains the weakest part. While the National Human Rights Commission recommended compensation in many custodial death cases, disciplinary proceedings were initiated only in a negligible number, and prosecutions were virtually absent. The data placed before Parliament shows this gap between legal protection and actual accountability. Between 2016 and 2022, the Commission recommended compensation in only 1,184 custodial death cases, ordered disciplinary action in a mere 21, that is barely 0.18 per cent of the total, and secured not a single prosecution.⁸ The One such obstacle is **Section 197 of the Code of Criminal Procedure**, now retained as **Section 218 of the Bharatiya Nagarik Suraksha Sanhita, 2023**, which requires prior government sanction before prosecuting public servants for acts performed in the discharge of official duties. Although intended to protect honest officials from baseless litigation, the provision has frequently delayed or prevented prosecution in custodial violence cases.⁹ Similarly, despite the Supreme Court's directions, CCTV cameras in many police stations remain non-functional or footage is unavailable precisely when custodial incidents occur, significantly weakening oversight.¹⁰

Legislative reform has stalled alongside judicial and executive enforcement. The Law Commission's 273rd Report recommended a standalone anti-torture statute and ratification of the UN Convention Against Torture, both still pending since India signed but never ratified the Convention in 1997.¹¹ Without a dedicated offence of “torture,” custodial violence is

⁵ D.K. Basu v. State of West Bengal, (1997) 1 SCC 416 (India).

⁶ Code of Criminal Procedure (Amendment) Act, 2008, No. 5, Acts of Parliament, 2009, §§ 41B–41D (India).

⁷ Paramvir Singh Saini v. Baljit Singh (2021), 1 SCC 184 (India).

⁸ Justice Behind Bars-Reforming Custodial Norms, <https://www.drishtias.com/daily-updates/daily-news-editorials/justice-behind-bars-reforming-custodial-norms>, (last visited on July 19, 2026).

⁹ Code of Criminal Procedure, 1973, § 197, No. 2, Acts of Parliament, 1974 (India); Bharatiya Nagarik Suraksha Sanhita, 2023, § 218, No. 46, Acts of Parliament, 2023 (India).

¹⁰ Suspecting Non-Compliance of Supreme Court's Order on CCTV Cameras in Police Stations, <https://www.livelaw.in/high-court/punjab-and-haryana-high-court/punjab-haryana-high-court-supreme-court-order-on-cctv-camera-in-police-station-not-complied-by-punjab-247405>, (last visited on July 19, 2026).

¹¹ Law Commission of India, Report No. 273, Implementation of United Nations Convention against Torture through Legislation (2017).

prosecuted, if at all, under the ordinary provisions on hurt and culpable homicide, provisions that were never designed to address the inherent power imbalance of custodial interrogation.

The impact of this failure is not evenly distributed. Studies and government data consistently show that victims of custodial violence disproportionately belong to marginalised communities, including Dalits, Adivasis, Muslims, migrant workers, and economically weaker sections. Limited access to legal assistance, financial constraints, and social vulnerability make it far more difficult for these groups to seek justice or challenge police misconduct. As a result, custodial violence is not merely a law enforcement issue but also a question of equality, dignity, and access to justice.¹²

Addressing this crisis requires stronger implementation rather than entirely new constitutional principles. Three changes would do more than another circular. Custodial death inquiries should be transferred, as a rule rather than an exception, to an investigating agency independent of the police force implicated, consistent with the spirit of the *Prakash Singh* directives separating investigation from law-and-order policing.¹³ Station House Officers should face personal, not merely institutional, liability when CCTV systems are found non-functional during a custodial incident. And Parliament should finally act on the Law Commission's 2017 recommendation and enact a standalone law defining and criminalising custodial torture.

None of these reforms calls for inventing new constitutional principles for protection of individuals under the State custody, as the Article 21 and *D.K. Basu* guidelines already states what needs to be stated. What is missing is the institutional will to make the guideline outlast the headline. A justice system is measured less by how it punishes the guilty, than by how it protects the powerless in the rooms where power is most unchecked, that is the interrogation cell and the police lock-up.¹⁴

¹² Custodial Deaths in India: Implications, Recommendations & More, <https://www.nexttias.com/ca/current-affairs/26-09-2025/custodial-deaths-india>, (last visited on July 19, 2026).

¹³ *Prakash Singh v. Union of India*, (2006) 8 SCC 1 (India).

¹⁴ *supra* note 8.