



Custodial Violence and Constitutional Human Rights in India: Safeguards, Accountability Gaps and Reform Priorities

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Abstract

Police brutality in custody is a direct challenge to constitutional government because the state assumes control over the body, movement and immediate safety of the detained person. This paper examines custodial violence in India through a doctrinal and socio-legal review of constitutional guarantees, criminal-procedure safeguards, judicial decisions and accountability institutions. It argues that Indian law contains substantial protections under Articles 14, 20, 21 and 22 of the Constitution, supported by the Bharatiya Nagarik Suraksha Sanhita, 2023, the Protection of Human Rights Act, 1993 and leading decisions such as *D.K. Basu v. State of West Bengal*, *Joginder Kumar v. State of Uttar Pradesh* and *Nilabati Behera v. State of Orissa*. Nevertheless, the preventive value of these rules is weakened by informal detention, poor documentation, coercive interrogation, delayed medical examination, weak complaint mechanisms, political interference and institutional control over evidence. The paper proposes a rights-respecting custody framework based on verifiable arrest records, prompt legal and family access, independent medical documentation, reliable audio-visual recording, meaningful judicial scrutiny, independent investigation and transparent publication of outcomes. It concludes that police effectiveness and human rights are mutually reinforcing because evidence-based investigation and accountable custody improve both legitimacy and the quality of criminal justice.

Keywords: Custodial violence, human rights, police accountability, Article 21, police reform, India

1. Introduction

Police custody is one of the clearest situations in which public authority and individual vulnerability meet. A person who has been arrested cannot freely leave, choose the conditions of detention or independently preserve evidence of what occurs inside a police station. The police, by contrast, control the premises, records, witnesses, movement and access to medical or legal assistance. This imbalance creates a special constitutional responsibility. When force is used unnecessarily, when interrogation becomes punishment, or when a detained person is denied basic procedural safeguards, the injury is not only personal. It affects the credibility of the justice system and the legitimacy of the state itself.

The expression police brutality is sometimes used loosely to describe any harsh encounter with the police. A legally useful definition must be narrower. In this paper, police brutality refers to excessive, unnecessary, disproportionate, punitive, discriminatory or deliberately cruel conduct by police personnel, as well as serious institutional failures that

enable such conduct. It may include custodial assault, torture, sexual abuse, unlawful restraint, threats, denial of medical care, forced confession, disappearance from official records and death associated with abuse. It does not include force that is lawfully authorised, necessary for a legitimate purpose and proportionate to an actual threat. The distinction protects citizens from abuse while recognising that police may sometimes need to use controlled force.

India has developed an extensive constitutional and judicial framework governing arrest and custody. The problem is therefore not a complete absence of law. It is the recurring gap between formal guarantees and the conditions required for reliable compliance. Safeguards are least effective when detention is not promptly recorded, lawyers and relatives are kept away, medical examinations lack independence, station cameras do not operate, and complaints are investigated by the same hierarchy that controls the evidence. This paper examines that implementation gap and identifies reforms capable of turning legal rights into routine practice.

2. Constitutional and Statutory Foundations

Article 21 of the Constitution provides that no person shall be deprived of life or personal liberty except according to procedure established by law. The Supreme Court has interpreted this guarantee to include fairness, dignity and protection against arbitrary state action. Custody does not suspend these rights. Indeed, the state's responsibility becomes more exacting because the detained person cannot protect himself or herself in the ordinary way. Article 14 adds equality before law and equal protection of the laws, which is relevant where coercive practices disproportionately affect poor persons, Scheduled Castes, tribal communities, religious minorities, migrants, women or other socially vulnerable groups.

Article 20(3) protects an accused person from being compelled to be a witness against himself or herself. Coercive interrogation undermines this right and also damages the reliability of criminal investigation. A confession produced through violence may be false, incomplete or strategically shaped to stop immediate pain. Such methods can contaminate evidence, redirect investigation away from the actual offender and weaken prosecution. Article 22 requires communication of the grounds of arrest and access to legal representation, while also requiring production before a magistrate within the legally prescribed period. These protections create external visibility at the stage when the risk of abuse is highest.

The Bharatiya Nagarik Suraksha Sanhita, 2023, which replaced the Code of Criminal Procedure for contemporary criminal procedure from 1 July 2024, retains important safeguards relating to arrest, information to relatives or nominated persons, medical examination, health and safety, production before a magistrate and the limit on detention without judicial authority. The Protection of Human Rights Act, 1993 provides the institutional foundation for the National Human Rights Commission and State Human Rights Commissions. These bodies can inquire into violations, recommend compensation and monitor government action, although their practical influence depends on resources, timely cooperation and implementation of recommendations.

International standards reinforce the same principles. India is a party to the International Covenant on Civil and Political Rights and has signed, though not ratified, the Convention against Torture. The United Nations Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms require legality, necessity, proportionality, restraint and accountability. The revised Istanbul Protocol provides guidance for effective investigation and documentation of torture and ill-treatment. These standards do not replace domestic law, but they offer a coherent benchmark for evaluating custody practices.

3. Judicial Development of Custodial Safeguards

The Supreme Court has repeatedly treated unlawful custody and custodial violence as constitutional wrongs. In *Joginder Kumar v. State of Uttar Pradesh*, the Court rejected the idea that the existence of a legal power to arrest automatically justifies every arrest. Arrest must be connected to a legitimate investigative need and should not be used casually. This principle was strengthened in *Arnesh Kumar v. State of Bihar*, where the Court sought to reduce

unnecessary arrest and required greater accountability in the use of statutory arrest powers. These decisions are important because each avoidable arrest expands the number of persons exposed to custodial risk.

D.K. Basu v. State of West Bengal remains the central judicial authority on arrest and detention safeguards. The Court required, among other protections, identification of arresting officers, preparation of an arrest memo, notification to a relative or friend, entry of arrest information in official records, medical examination and production of relevant documentation before the magistrate. The importance of these requirements lies in their preventive design. They create a chain of information outside the immediate control of the arresting team. When properly followed, they make secret detention more difficult and provide evidence for later review.

Nilabati Behera v. State of Orissa confirmed that compensation may be awarded in public law for violation of fundamental rights, including custodial death. The decision recognised that ordinary private-law remedies are not always sufficient when the state has violated Article 21. In *State of Madhya Pradesh v. Shyamsunder Trivedi*, the Court also acknowledged the evidentiary difficulty of custodial violence, since direct witnesses are often police personnel and documentary evidence remains under institutional control. This reality supports a greater reliance on independent medical evidence, recording systems and adverse scrutiny where basic records are missing without explanation.

Judicial attention has expanded from documentary safeguards to technological visibility. In *Paramvir Singh Saini v. Baljit Singh*, the Supreme Court directed installation of CCTV cameras in police stations and offices of investigative agencies, with coverage of important areas and arrangements for storage. Technology can preserve evidence and deter misconduct, but only if cameras operate, recordings are retained for a meaningful period, access is not controlled solely by the station under complaint, and unexplained malfunction attracts review. A camera that is absent, pointed away, switched off or overwritten too quickly provides symbolic compliance rather than accountability.

4. Why Custodial Violence Persists

One explanation is the continuing influence of a command-oriented police culture. Indian policing developed under colonial administration, where the central purpose was maintenance of order and protection of government authority. Constitutional democracy requires a different professional identity based on service, legality and equal citizenship, yet organisational habits do not change merely because legal language changes. Hierarchy, secrecy and occupational solidarity can discourage officers from questioning unlawful orders or reporting colleagues. When promotion and recognition are connected mainly to rapid case disposal, arrest numbers or confessions, investigators may face incentives to prefer coercive shortcuts over careful evidence collection.

Political interference is a second concern. Police and public order are State subjects, and elected governments are entitled to set lawful policy priorities. Improper interference arises when transfers, postings, arrests or investigations are

influenced for partisan or personal reasons. Frequent transfer can weaken professional independence and encourage officers to satisfy powerful interests. The Supreme Court's directions in *Prakash Singh v. Union of India* sought to address these problems through State Security Commissions, fixed tenure, separation of investigation from law-and-order work and Police Complaints Authorities. Uneven implementation has limited their transformative effect.

Operational stress also matters. Long duty hours, inadequate staffing, poor investigation resources, pressure to resolve cases quickly and exposure to violence can impair judgement. These conditions do not excuse brutality, but they help explain why reform must include professional capacity and officer welfare as well as punishment. Evidence-based interviewing, forensic assistance, sufficient investigators and meaningful supervision reduce reliance on coercion. A system that demands immediate results while denying investigators the time and resources needed for lawful investigation creates predictable risk.

The complaint process often presents a conflict of interest. A victim may be required to complain to the same police organisation whose personnel are accused. Officers control station records, CCTV systems, custody registers and access to colleagues who may be witnesses. Delay can lead to lost footage, altered records or pressure on complainants. Police Complaints Authorities were intended to provide independent scrutiny, but in several jurisdictions they have faced limited staffing, uncertain powers, poor public visibility or dependence on government departments. A complaint body without its own investigative capacity cannot reliably correct the imbalance between the complainant and the institution.

5. Custodial Vulnerability and Unequal Citizenship

Police brutality does not affect all citizens in the same way. Poverty shapes access to lawyers, medical care, media attention and social influence. A person without stable housing or identity documents may be more easily detained informally and may struggle to notify relatives. Caste and tribal status can affect whether a complaint is registered, whose account is believed and how police authority is experienced. Religious minorities may approach the police with reduced confidence where policing during communal conflict is perceived as partial. Women and gender minorities face specific risks of sexualised humiliation, threats and barriers to reporting abuse.

These inequalities give Article 14 practical importance. Formal equality is insufficient where some groups lack the resources required to activate legal safeguards. Custody notification must therefore be verifiable rather than dependent on the detainee's social power. Legal aid should be accessible at the earliest stage, not only after a person reaches court. Medical examination must permit confidential disclosure of injury. Complaint forms and procedures should be available in accessible language, and oversight bodies should be reachable from rural and remote areas. Equality in custodial protection requires institutional design that anticipates unequal starting positions.

6. A Rights-Respecting Custody Framework

A credible reform strategy should begin with an auditable

arrest process. The time, place and grounds of arrest, the identity of the officers, the condition of the arrested person and the notification made to a relative or nominated person should be recorded in a form that cannot be easily altered. The arrested person should receive understandable information about rights and should have timely access to legal assistance. Where literacy or language is a barrier, oral explanation and interpretation should be provided. Supervisors should review arrest necessity and compliance, particularly in offences where arrest is not automatically required.

Medical protection is equally important. Examination should be sufficiently independent to identify injuries, permit confidential disclosure and preserve photographic or clinical evidence. Repeat examination may be necessary where custody continues. Post-mortem procedures in custodial deaths should follow standardised forensic protocols and should not depend entirely on information supplied by the police unit under investigation. The state should preserve scene evidence, station records, call logs, duty rosters and recordings immediately after a serious incident.

Recording technology should be governed as an evidence system, not treated as equipment procurement. Rules must specify camera coverage, retention periods, audit logs, responsibility for maintenance, access by courts and oversight bodies, and consequences for unexplained failure. Body-worn cameras may be useful in selected arrest and public-order contexts, but activation rules and privacy safeguards are necessary. Technology cannot determine whether force was legally justified, yet it can significantly improve the factual basis on which that judgement is made. Independent investigation is essential for deaths, serious injury, torture allegations and sexual abuse in custody. Investigators should be institutionally separate from the unit involved and should have immediate power to secure evidence. Judicial scrutiny at remand should be substantive rather than mechanical. Magistrates should confirm that arrest documents exist, examine visible injuries, provide a private opportunity to report ill-treatment and ask whether legal or family access was provided. Oversight becomes meaningful when each institution knows that another institution can verify its actions.

Finally, reform must reshape professional incentives. Human-rights training should be recurrent, practical and linked to supervision, appraisal and promotion. Investigation should reward evidence quality rather than confession or speed alone. Officers who report unlawful conduct should be protected. Public reporting should distinguish custodial deaths, torture allegations, complaints, disciplinary outcomes, prosecutions and compensation. Transparent data can reveal repeated problems and allow evaluation of whether reforms are working.

The practical value of this framework lies in its ability to protect lawful officers as well as detainees. Reliable records can disprove false allegations, clarify when force was necessary and identify medical emergencies that were addressed promptly. Accountability should therefore be presented within police organisations as a professional safeguard rather than only as an external sanction. The objective is not to make officers passive in dangerous situations. It is to ensure that coercive authority is exercised

for a lawful purpose, can be explained through evidence and remains proportionate to the threat confronted.

Federal diversity also requires careful implementation. State police organisations differ in legislation, resources, recruitment, station infrastructure and oversight arrangements. National constitutional standards must remain uniform, but operational reform should include state-level plans with measurable timelines. Independent audits can examine arrest documentation, functioning cameras, medical access and complaint disposal. Public comparison should use consistent indicators and should recognise both genuine improvement and reporting differences.

7. Conclusion

Custodial violence is not an unavoidable consequence of policing. It is a failure of legality, professional practice and institutional accountability. India possesses a substantial constitutional and judicial framework, but rights become effective only when arrest, detention and interrogation are made visible and reviewable. The most important reforms are therefore preventive as well as remedial: necessary arrest, immediate recording, notification, legal access, independent medical documentation, reliable audio-visual evidence, meaningful judicial review and independent investigation.

The continuing constitutional task is to ensure that safeguards operate before harm occurs, not only after litigation. Each stage of custody should generate evidence that can be independently checked. Practical visibility is the strongest bridge between rights on paper and rights in practice.

A further priority is coordination among police supervisors, magistrates, medical officers, legal-aid institutions and human-rights bodies. Custody protection fails when each institution assumes that another has verified compliance. Shared protocols and time-stamped records can allocate responsibility clearly and reduce gaps through which abuse or neglect remains unnoticed.

Remedies should also respond to the needs of families. Timely information, access to inquiry records, legal assistance and reasoned communication about case status can reduce the secondary harm caused by uncertainty. Compensation is important, but it cannot substitute for truth, accountability and institutional learning.

Police leadership has a decisive role in changing everyday norms. Clear instructions against informal detention, punishment-oriented interrogation and manipulation of records must be reinforced through inspection and promotion decisions. Officers are more likely to follow rights standards when lawful conduct is visibly rewarded and misconduct is addressed consistently.

The reform framework should be evaluated periodically. Independent audits can examine a sample of arrest records, medical reports, CCTV retention logs and remand documentation. Findings should be published in aggregate form so that institutions can identify recurring weaknesses without compromising ongoing investigations or personal privacy.

Public trust depends on fair procedure as much as on final outcomes. A person who is treated respectfully, informed of the reason for arrest and given access to assistance is more likely to regard police authority as legitimate, even when

detention itself is unwelcome. Procedural justice therefore contributes directly to cooperation and public safety.

The law should also recognise that omission can be as significant as direct violence. Failure to obtain medical care, deliberate non-recording of detention or destruction of relevant footage may expose a person to serious harm. Accountability systems must examine these institutional failures alongside allegations of physical assault.

Ultimately, custody reform requires continuity rather than occasional campaigns. Training, technology and oversight should be funded as permanent elements of police administration. Temporary attention after a prominent case may produce short-term compliance, but lasting improvement depends on routine verification across ordinary stations and less visible communities.

Universities, police academies and legal-service institutions can contribute through evidence-based training and independent evaluation. Research partnerships should test whether specific reforms improve documentation, reduce unnecessary arrest and increase confidence in complaint handling. Evaluation results should be published so that successful practices can be adapted across states while ineffective measures are revised rather than maintained for symbolic value.

Rights-respecting custody also strengthens criminal justice. Coercive interrogation produces unreliable evidence, damages public cooperation and diverts attention from professional investigation. Police organisations gain legitimate authority when their decisions can withstand legal and factual scrutiny. The state cannot defend the rule of law through methods that deny the rule of law to persons in its custody. Effective policing and human dignity must therefore be treated as complementary obligations rather than competing priorities.

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