

Understanding Systemic Failures in Preventing Human Rights Abuse in Police Custody: A Policy Analysis

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Abstract:

This study critically examines the systemic failures contributing to human rights abuse in police custody in India, with a specific focus on legal, institutional, and policy-level gaps. Despite the existence of comprehensive constitutional and statutory safeguards—such as Articles 21 and 22 of the Indian Constitution, Sections 330 and 331 of the Indian Penal Code, and directives from landmark judgments like *D.K. Basu v. State of West Bengal*—incidents of custodial torture and deaths remain alarmingly frequent. Through doctrinal research, analysis of NHRC reports, case law, and policy documents, the study reveals that weak implementation, ineffective oversight by institutions like NHRC and SHRCs, political interference, and a lack of police accountability mechanisms have allowed a culture of impunity to persist. Marginalized communities, especially Dalits and minorities, are disproportionately affected, exposing systemic bias and social injustice. The study argues for robust institutional reforms, including the establishment of independent custodial monitoring bodies, mandatory video recording of interrogations, and the ratification of international human rights treaties such as UNCAT. Ultimately, the research underscores the urgent need to transform India's custodial framework from one of repression to one of accountability and rights protection.

Keywords: Custodial violence, human rights, police reforms, systemic failure, NHRC, constitutional safeguards, D.K. Basu, accountability, UNCAT, India.

1. Introduction

The right to life and liberty is universally acknowledged as the cornerstone of human rights, enshrined in both international legal frameworks and domestic constitutions. Yet, one of the gravest violations of this fundamental right occurs in places meant to protect it—within police custody. Custodial violence, which includes torture, humiliation, extortion, and even death at the hands of law enforcement, remains a deeply entrenched problem in India. Despite a sophisticated constitutional structure and various legal and institutional mechanisms, the persistence of human rights abuse in police custody raises serious concerns regarding systemic failures and policy gaps in the country's justice system. India has witnessed an alarming number of custodial deaths and incidents of police brutality over the past decades. According to the National Human Rights Commission (NHRC), hundreds of cases are reported annually, though many more go undocumented due to fear, lack of awareness, or procedural obstacles (NHRC, 2023). These abuses not only violate the dignity of individuals but also erode public trust in the criminal justice system. As observed by Baxi (2002), such systemic violence is not a deviation but an operational feature of state authority when rule of law is subordinated to political convenience and institutional impunity.¹ The Indian Constitution, under Article 21, guarantees the right to life and personal liberty, while Article 22 mandates safeguards against arbitrary arrest and detention. Judicial interpretations, particularly in *D.K. Basu v. State of West Bengal* (1997), have laid down procedural requirements during arrests to curb abuse. However, implementation of these guidelines remains questionable. Despite the constitutional and statutory protections, custodial deaths and physical abuse in detention continue to rise, exposing glaring failures in enforcement, monitoring, and accountability

¹ Baxi, U. (2002). *The Future of Human Rights* (2nd ed.). Oxford University Press.

mechanisms (Singh, 2020; Kapoor, 2019). ²The Indian Penal Code (IPC) criminalizes acts of torture and abuse by police officers under Sections 330 and 331, while Section 302 covers cases of custodial deaths as murder. The Code of Criminal Procedure (CrPC) under Section 176 mandates magisterial inquiry into custodial deaths. Yet, Rao (2015) highlights that prosecutions under these sections are rare due to institutional resistance, poor investigation, and political interference. This systemic inefficacy underscores the urgent need for policy-level reforms beyond mere legal provisions. Internationally, India is a signatory to the United Nations Convention Against Torture (UNCAT) but has not ratified it, reflecting its hesitance to commit to binding international norms (United Nations, 1984).³ This legal vacuum allows custodial torture to persist without standardized international oversight. Human Rights Watch (2009) observed that systemic dysfunction, corruption, and abuse are deeply entrenched in Indian police operations, where confessions extracted under duress are often preferred over scientific investigations. Their report, *Broken System*, details how institutional inertia and political complicity allow such practices to continue with impunity. Scholars and legal analysts have provided critical evaluations of these failures. Joshi (2017) argues that the criminal justice system prioritizes expediency over ethics, compelling law enforcement to extract confessions through coercion. This approach, he suggests, is exacerbated by poor infrastructure, inadequate training, and chronic understaffing in police departments. Jain (2024), in a recent empirical review, confirms that even after the Supreme Court's intervention, the implementation of arrest and detention guidelines is inconsistent, especially in states with high political and communal volatility.

Policy-level inadequacies also play a significant role. The Protection of Human Rights Act, 1993, which established the NHRC, is intended to serve as an independent body for monitoring human rights violations, including those in police custody. However, its recommendations are non-binding and often ignored by state authorities (NHRC, 2023).⁴ Pratap and Kumar (2025) further argue that the lack of autonomy, budgetary constraints, and delayed inquiries severely restrict the NHRC's capacity to act as a deterrent against custodial violence. Their analysis also points out that many states have failed to establish State Human Rights Commissions (SHRCs) or effective Police Complaints Authorities, despite explicit recommendations by the Law Commission of India (2000) and Second Administrative Reforms Commission.⁵ The judiciary, although proactive at times, has been unable to sustain institutional pressure on the executive to prevent custodial deaths. *Nilabati Behera v. State of Orissa* (1993) was a landmark case where the Supreme Court awarded compensation for a custodial death, recognizing it as a violation of Article 21. Yet, follow-through in similar cases has been sporadic. Legal scholars like Bhattacharyya (2016) note that while Indian courts have set strong precedents, the police administration and political establishment often delay or dilute their implementation.⁶ Several reports by civil society organizations and watchdogs reinforce these conclusions. Amnesty International (2021) emphasizes that the lack of CCTV coverage in police lock-ups, limited access to legal aid, and fear of reprisal prevent victims or their families from filing complaints. Furthermore, Human Rights Watch (2016) in its *Bound by Brotherhood* report, reveals the fraternity culture within police departments that discourages internal whistle-blowing and facilitates cover-ups. This internal solidarity is a major barrier to ensuring transparency and accountability. Adding to this, Singh & Singh (2025) conducted an extensive analysis of custodial torture cases in Northern India and found that marginalized communities—particularly Dalits, Muslims, and tribal populations—face disproportionate levels of abuse. This reinforces the systemic bias within law enforcement and suggests that custodial violence is not just a legal issue but also a socio-political one. Rao (2018) similarly identifies caste, class, and religious fault lines as key factors in determining how individuals are treated in police custody. There have been some promising policy suggestions in academic and policy circles. Jain (2024) recommends mandatory forensic audits and the introduction of *independent*

² Kapoor, S. K. (2019). *Human Rights under International Law and Indian Law* (4th ed.). Central Law Agency.

³ United Nations. (1984). *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (UNCAT). <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture>

⁴ National Human Rights Commission. (2023). *Annual Report 2022–23*. New Delhi: NHRC. <https://nhrc.nic.in/reports/annual-reports>

⁵ Law Commission of India. (2000). *152nd Report on Custodial Crimes*. Ministry of Law and Justice, Government of India. <https://lawcommissionofindia.nic.in/reports/rep152.pdf>

⁶ Bhattacharyya, D. (2016). Custodial violence, police accountability and judicial response in India. *Journal of Indian Law and Society*, 7(1), 23–45.

custodial review boards that function outside the police hierarchy. Indulia (2024) suggests stricter judicial monitoring of compliance with arrest and detention procedures, including contempt proceedings against non-complying officers.⁷ Pratap and Kumar (2025) advocate the establishment of *time-bound redressal mechanisms* and *public defenders* at every police station to ensure that rights of the accused are upheld from the moment of arrest.⁸ The present study seeks to analyze these systemic failures not in isolation, but as a comprehensive policy failure. It aims to assess how a lack of coordination between laws, oversight institutions, and enforcement agencies allows human rights abuses to persist in police custody. The research will critically evaluate existing legal frameworks, institutional limitations, and judicial interventions. It will also compare Indian practices with international best practices in countries such as the United Kingdom and South Africa to draw actionable insights.

2. Literature Review

The issue of custodial violence in India represents a critical breach of fundamental human rights and a serious challenge to constitutional democracy. The literature on this subject reveals persistent systemic failures within India's criminal justice and law enforcement institutions. Scholars, human rights organizations, and judicial interpretations have repeatedly highlighted how structural inadequacies, legislative shortcomings, and poor enforcement of accountability mechanisms contribute to widespread abuse in police custody.

Baxi (2002) emphasizes that human rights violations, including torture and deaths in police custody, are symptomatic of a larger failure of governance and institutional justice. His work contextualizes custodial abuse not just as an isolated administrative failure but as part of a broader denial of the rule of law and democratic oversight. This argument finds support in Rao's (2015) study, which presents detailed case analyses from various Indian states and links custodial torture to institutionalized impunity and lack of judicial urgency.⁹

The Constitution of India (1950) provides a robust legal framework to protect individual liberty, especially through Articles 21, 22, and 32. However, Singh (2020) and Kapoor (2019) have observed that constitutional safeguards remain largely ineffective due to enforcement gaps. The Protection of Human Rights Act, 1993, though aimed at institutionalizing human rights enforcement through the National Human Rights Commission (NHRC), suffers from limitations in mandate and punitive powers. The Indian Penal Code (IPC) and the Code of Criminal Procedure (CrPC) also include provisions such as Sections 330, 331, 302, and 176 respectively, which criminalize torture and allow inquiry into custodial deaths. Yet, convictions under these provisions remain rare, revealing serious lapses in prosecution and investigative will (Rao, 2015).¹⁰

The landmark Supreme Court case *D.K. Basu v. State of West Bengal* (1997) laid down detailed guidelines for arrest and detention to prevent custodial torture. Despite this, studies such as Jain (2024) and Singh & Singh (2025) note that implementation remains weak, particularly in rural and underdeveloped districts. The NHRC's Annual Report (2023) records hundreds of custodial deaths, many of which go unpunished, reflecting a lack of follow-up, delayed inquiries, and poor compensation mechanisms.

Human Rights Watch (2009, 2016) and Amnesty International (2021) have also produced compelling empirical reports pointing out a culture of impunity within Indian police forces. Their findings suggest that despite legislative tools, custodial deaths are not adequately investigated, and victims' families face intimidation, procedural hurdles, and prolonged delays in justice. For example, *Bound by Brotherhood* (HRW, 2016) illustrates how police complicity, lack of independent oversight, and communal/political bias further complicate the enforcement of human rights in custody. These reports also argue for the ratification of the UN

⁷ Indulia, B. (2024). Custodial torture in India: Intersection of criminal law and constitutional rights. SCC Online Insights. <https://www.sconline.com/blog/post/2024/03/23/custodial-torture-in-india-intersection-of-criminal-law-and-constitutional-rights/> (SCC Online)

⁸ Pratap, A. N. S., & Kumar, R. K. (2025). Systemic challenges in preventing custodial deaths in India. *Indian Journal of Law and Human Rights*, 5(1). (ijlr.iledu.in)

⁹ Rao, M. S. (2015). *Custodial Crimes and Human Rights: A Study of Custodial Torture in India*. Mohit Publications. (Focused case studies and analysis of custodial violence and state inaction in India.)

¹⁰ Protection of Human Rights Act, 1993. Government of India.

(Establishes the NHRC and outlines its powers and procedures to investigate human rights violations).

Convention Against Torture (UNCAT), which India has signed but not yet ratified, signaling a weak commitment to global standards (United Nations, 1984).

Joshi (2017) discusses the structural imbalance in India's criminal justice system, particularly how overburdened and under-trained police personnel resort to custodial violence as a tool for forced confessions and quick case closures. His research underscores the need for comprehensive police reforms, which are repeatedly recommended in reports such as the Law Commission of India's 152nd Report (2000).¹¹ The report points out that absence of video recording in interrogation rooms, the lack of forensic reliance in investigations, and inadequate sensitization programs for law enforcement officials contribute significantly to human rights violations.

Contemporary academic articles also reflect on policy lapses. Pratap and Kumar (2025) analyze RTI data and NHRC records to establish that custodial deaths are underreported and legal proceedings are delayed significantly due to lack of coordination between state machinery and central enforcement agencies. Their study reveals that existing policies are either poorly disseminated or inadequately resourced for ground-level implementation. Similarly, Indulia (2024) critiques the dualism between law in theory and law in practice. She argues that while judicial precedents emphasize dignity and procedural fairness, the executive wing often undermines these rights due to lack of oversight and accountability structures.

International comparisons also provide insight. ScienceDirect (2018) analyzes best practices from countries like the UK and South Africa, which have adopted independent police complaints authorities and third-party custodial audits to ensure transparency. The article suggests that India's failure to replicate such mechanisms—despite recommendations from the Second Administrative Reforms Commission—has contributed to its poor human rights record in detention centers and lockups.¹²

Another important dimension is the socio-political aspect of custodial torture. Rao (2018) and Bhattacharyya (2016) both note that marginalized communities—particularly Dalits, Muslims, and Adivasis—are more likely to be victims of police violence. These systemic biases are often reinforced through discriminatory practices in law enforcement and lack of representation in grievance redressal systems. This adds a layer of intersectional injustice to the issue of custodial human rights violations.¹³

To address these systemic failures, Jain (2024) proposes the establishment of independent custodial justice review boards, which are separate from police administrative control and have power to recommend disciplinary and criminal action. Singh & Singh (2025) suggest reforms including real-time CCTV monitoring in all lockups, time-bound magisterial inquiries, protection of whistleblowers, and compensation for victims' families as per judicial guidelines. These recommendations highlight the urgent need for a structural shift in how India enforces its human rights obligations under both domestic and international law.

3. Research Methodology

The present study adopts a socio-legal and policy analysis approach, combining doctrinal research (statutory, constitutional, and case law analysis) with empirical methods (RTI data, NHRC reports, interviews with stakeholders, and secondary data analysis). This methodology is designed to investigate how legal safeguards are implemented, and where the systemic failures persist in preventing custodial human rights abuses.¹⁴

3.1 Data Collection Techniques

The study relies on both primary and secondary sources for comprehensive analysis:

- **Primary Sources:**

- **Legal documents** such as statutory laws, constitutional provisions, and Supreme Court/High Court judgments (e.g., *D.K. Basu v. State of West Bengal*, *Nilabati Behera v. State of Orissa*).
- **RTI (Right to Information) responses** filed with the Police Departments, NHRC, and District Magistrates of selected states (e.g., Uttar Pradesh) for custodial death data, FIRs filed, departmental inquiries initiated, and compensation awarded.

¹¹ Joshi, S. K. (2017). *Human Rights and Criminal Justice System in India*. Regal Publications.

¹² Basu, D. K. v. State of West Bengal, AIR 1997 SC 610.

¹³ Jain, P. (2024). Custodial violence and its impact: Legal safeguards, NHRC, and landmark judgments. SSRN Electronic Journal. Advance online publication. <https://doi.org/10.2139/ssrn.4946758> (IJRPR, SSRN)

¹⁴ Human Rights Watch. (2009). *Broken System: Dysfunction, Abuse and Impunity in the Indian Police*. Human Rights Watch. <https://www.hrw.org/report/2009/08/04/broken-system/dysfunction-abuse-and-impunity-indian-police>

- **Interviews and semi-structured questionnaires** with legal experts, human rights activists, police officials (serving/retired), and affected families (optional based on feasibility).
- **Secondary Sources:**
- Academic books, law review articles, and policy reports.
- Annual reports from the National Human Rights Commission (NHRC) and Amnesty International, Human Rights Watch, etc.
- Reports from the Law Commission of India and the Second Administrative Reforms Commission.
- Media archives and verified news reports on notable custodial death incidents.

3.2 Sampling Technique

- The sample will include:
- 5–10 police officers (serving or retired) from districts with recorded cases of custodial violence.
- 5–8 human rights lawyers and activists who have pursued such cases.
- 2–3 victims or families of deceased individuals in custodial death cases (confidential and consent-based).
- Geographic focus will be placed on districts from Uttar Pradesh, especially Moradabad and Rampur, due to their high incidence of reported cases.

3.3 Legal Frameworks and Acts

- **The Constitution of India, 1950**
- Particularly **Article 21** (Right to Life), **Article 22** (Protection against arbitrary arrest), and **Article 32** (Right to constitutional remedies). These articles are the foundation of custodial protection jurisprudence in India.
- **Indian Penal Code, 1860 (IPC)**
- Relevant sections include **Section 330** (voluntarily causing hurt to extort confession), **Section 331**, and **Section 302** (punishment for murder in custodial death cases). These provisions criminalize torture and unlawful custodial harm.
- **Code of Criminal Procedure, 1973 (CrPC)**
- Contains key procedural safeguards such as **Section 41** (arrest procedure), **Section 46** (manner of arrest), **Section 49** (restraint of arrested person), and **Section 176** (mandatory magisterial inquiry in custodial deaths).
- **Protection of Human Rights Act, 1993**
- Establishes the **National Human Rights Commission (NHRC)** and **State Human Rights Commissions (SHRCs)**, giving them power to inquire into custodial deaths, recommend compensation, and seek accountability.
- **Indian Evidence Act, 1872**
- Under **Section 24** and **Section 25**, confessions made to police under threat or coercion are inadmissible, reinforcing protection from custodial abuse during interrogation.

4. Analysis and Discussion

The analysis focuses on identifying recurring patterns, policy loopholes, and systemic inefficiencies contributing to human rights violations in police custody. Drawing from legal texts, NHRC reports, judicial precedents, and field observations, the discussion maps the disjunction between law in theory and its implementation in reality. The key findings reveal that despite a well-established legal framework, institutional resistance, weak oversight, and lack of political will continue to undermine custodial protections.¹⁵

Key Areas of Exploration

- **Implementation Gap in Constitutional and Statutory Safeguards:** Although Articles 21 and 22 of the Constitution and Sections 330/331 of IPC exist, their enforcement is sporadic due to weak internal discipline, corruption, and absence of accountability.

¹⁵ Amnesty International. (2021). India: Time to End Impunity for Custodial Torture and Deaths. <https://www.amnesty.org/en/documents/asa20/4032/2021/en/>

- **Ineffectiveness of Oversight Bodies like NHRC and SHRC:** Most recommendations by the NHRC are non-binding and often delayed or ignored by state authorities, rendering the institution toothless in ensuring justice for victims of custodial abuse.
- **Judicial Activism versus Executive Inaction:** While courts have delivered progressive judgments (e.g., *D.K. Basu*), the executive machinery, especially the police department, often delays or dilutes their implementation due to bureaucratic and political pressure.
- **Systemic Bias Against Marginalized Communities:** Analysis of custodial violence data reveals that Dalits, Muslims, and the poor are disproportionately affected, indicating casteist and classist patterns in enforcement.
- **Absence of Institutional Reforms and Police Accountability:** Despite repeated recommendations from commissions and civil society, police reforms—such as independent complaints authorities or custodial audits—remain unimplemented, allowing impunity to persist.

5. Findings and Discussion for this study

The study finds that human rights abuse in police custody in India is not merely a result of individual misconduct but is deeply rooted in systemic and institutional failures. Despite constitutional safeguards under Articles 21 and 22, and specific legal provisions in the IPC, CrPC, and Evidence Act, custodial torture and deaths persist due to poor implementation, lack of independent oversight, and entrenched police impunity. Oversight bodies like the NHRC and SHRCs, though statutorily empowered, often function without enforceable authority, and their recommendations are rarely acted upon. Judicial interventions such as in *D.K. Basu v. State of West Bengal* have laid out detailed procedural safeguards, but executive inertia and inadequate police reforms have hindered their impact. Moreover, data suggests that vulnerable groups such as Dalits, minorities, and economically weaker sections are more frequently subjected to custodial abuse, reflecting a pattern of systemic discrimination. The absence of structural reforms, including the non-establishment of independent police complaints authorities, ineffective training, and political interference, further contribute to the culture of impunity. These findings underscore the urgent need for policy transformation, institutional accountability, and stronger implementation mechanisms to protect human rights in custody.¹⁶

6. conclusion

The overall conclusion of this study affirms that custodial violence in India is not an aberration but a manifestation of deep-rooted systemic failures across legal, institutional, and policy domains. Despite a robust constitutional and statutory framework aimed at protecting individuals from abuse—such as Articles 21 and 22 of the Constitution and key provisions in the IPC and CrPC—implementation remains ineffective due to lack of political will, administrative inertia, and entrenched police impunity. Oversight bodies like the NHRC have limited powers and their recommendations often go unheeded, while judicial pronouncements like *D.K. Basu v. State of West Bengal* have not been fully institutionalized in police practices. The disproportionate targeting of marginalized communities further highlights the socio-political bias within the custodial system. The study concludes that without structural reforms such as independent police complaints authorities, mandatory custodial monitoring, and the ratification of the UN Convention Against Torture, custodial spaces will continue to be zones of unchecked violence. Therefore, a rights-based, transparent, and accountable policing model is essential to restore public trust and uphold the rule of law in a democratic society.¹⁷

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¹⁶ The Constitution of India, 1950. Government of India.

(Relevant Articles: 21 – Right to Life and Personal Liberty; 22 – Protection against arrest and detention; 32 – Right to Constitutional Remedies).

¹⁷ Indian Penal Code, 1860. Government of India.

(Relevant Sections: 330 – Voluntarily causing hurt to extort confession; 331 – Voluntarily causing grievous hurt; 302 – Punishment for murder).

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