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# **CUSTODIAL VIOLENCE AND VICTIM-CENTRIC JUSTICE: REIMAGINING STATE LIABILITY AND CONSTITUTIONAL REMEDIES**

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## **ABSTRACT**

Custodial violence is one of the most enduring breaches of constitutionalism in India, taking place in an arena where State authority is exercised with a lack of transparency and oversight. Despite the guarantees provided by Articles 14, 20, 21, and 22 of the Constitution of India, custodial violence in the form of torture, deaths, and ill-treatment continues to erode human dignity and the rule of law. This paper conducts a victim-focused constitutional analysis of custodial violence by contextualizing State liability in the context of recent criminal law reforms and judicial initiatives. It critically evaluates the Bharatiya Nyaya Sanhita, 2023 and the Bharatiya Nagarik Suraksha Sanhita, 2023, which for the first time explicitly criminalize the act of causing hurt or grievous hurt to any person by public servants for the purpose of extracting confessions or information, and provide mandatory safeguards such as compulsory magisterial inquiries under Section 197(1) of the BNSS in cases of custodial death, disappearance, and custodial rape. This paper also evaluates judicial mandates, specifically the Supreme Court's directives in the case of *Paramvir Singh Saini v. Baljit Singh*, requiring CCTV surveillance with audio-visual recording in police stations and interrogation rooms as preventive measures against custodial violence. The paper also assesses the proposed Prevention of Custodial Torture Bill, 2023/2024, tabled in the Rajya Sabha, which aims to criminalize custodial torture, compensate victims, rehabilitate them, and protect witnesses, while harmonizing the domestic legal framework with international human rights law obligations. By reviewing constitutional tort jurisprudence, such as *DK Basu vs. State of West Bengal* and *Nilabati Behera vs. State of Orissa*, the article raises questions about whether such legislative and judicial progress can effectively change custodial accountability or whether it will continue to be symbolic without independent investigation and enforcement.

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This paper contends that a victim-centered approach to custodial violence must go beyond compensatory justice and procedural repetition, instead integrating enforceable State accountability, reform, and victim participation in the criminal justice system, thus reaffirming the Constitution’s commitment to dignity, freedom, and the rule of law.

**KEYWORDS:** Custodial Violence; Victim-Centric Justice; State Liability; Constitutional Remedies; Criminal Law Reforms; Constitutional Tort Jurisprudence; Human Dignity; Rule of Law

## INTRODUCTION

Custodial violence is one of the most serious and enduring challenges to the constitutional framework in India. It is realized through extreme physical violence (beatings, electric shocks, suspension), sexual violence, psychological degradation (humiliation, threats to family members, denial of sleep), enforced disappearances, and deaths in police stations, lock-ups, interrogation rooms, and prisons.<sup>2</sup> These practices are carried out in conditions of near-certain opacity, where the power of the State is exercised in conditions of near-absolute unaccountability, with the result that a deeply ingrained culture of impunity is perpetuated, which is directly at odds with the basic tenets of the rule of law and human dignity.<sup>3</sup>

The magnitude of the problem is graphically illustrated in official statistics. The National Human Rights Commission (NHRC) recorded 2,739 custodial deaths in 2024, with police custody deaths consistently ranging between 155 and 165 per year, while judicial custody deaths (in prisons) far outnumber these and are often attributed to “natural causes,” suicides, or diseases aggravated by deliberate neglect, overcrowding, and poor medical facilities.<sup>4</sup> The initial figures for 2025 indicate that this trend continues: 165 deaths in police custody and 2,338 in judicial custody (prisons) from January to December 2025, along with 192 encounter killings.<sup>5</sup>

The Constitution of India provides explicit and robust protections. Article 14 guarantees equality before the law, Article 20(3) prohibits compelled self-incrimination (the primary driver of confession-based torture), Article 21 enshrines the right to life and personal liberty — expansively interpreted by the Supreme Court to include the right to live with human dignity and absolute freedom from torture, cruel, inhuman or degrading treatment — and Article 22 offers safeguards against arbitrary arrest and

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<sup>2</sup> Org. for the Prohibition of Torture, Global Torture Index 2025: India Factsheet (2025).

<sup>3</sup> REDRESS, Torture Normalised: State Violence in India 12–15 (2025).

<sup>4</sup> Nat’l Hum. Rts. Comm’n, Monthly Salient Statistics (2024)

<sup>5</sup> Nat’l Hum. Rts. Comm’n, Newsletter, Jan. 2026, at 4–6.

detention.<sup>6</sup> Despite this constitutional architecture, enforcement remains profoundly inadequate due to systemic factors: near-zero convictions, reliance on internal police inquiries, procedural delays, and the persistent shield of prior sanction requirements.<sup>7</sup>

This paper adopts a **victim-centric constitutional framework**, shifting the analytical focus from State-centric procedural compliance to the rights, experiences, and recovery of survivors. It prioritises the victim’s entitlement to truth-seeking, effective and prompt reparation, meaningful participation in proceedings, comprehensive rehabilitation (medical, psychological, social, and livelihood), and enforceable guarantees of non-repetition — principles directly derived from the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law (2005).<sup>8</sup> The analysis critically examines constitutional tort jurisprudence, the Bharatiya Nyaya Sanhita (BNS) and Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, the Supreme Court’s Paramvir Singh Saini directives, and — with particular emphasis — the Prevention of Custodial Torture Bill, 2024.<sup>9</sup>

## CONSTITUTIONAL AND PRE-REFORM LEGAL FRAMEWORK

The progressive expansion of Article 21 by the Supreme Court provided the doctrinal foundation for accountability in custodial violence. In the case of *Rudul Sah v. State of Bihar* (1983), the Supreme Court awarded compensation of ₹30,000 for illegal detention, establishing a new precedent by holding that the violation of fundamental rights is sufficient to attract public law remedies under Article 32, despite the doctrine of sovereign immunity.<sup>10</sup> This was reaffirmed in the case of *\*Maneka Gandhi v. Union of India\** (1978), which held that “procedure established by law” must be fair, just, and reasonable, and in the case of *\*Francis Coralie Mullin v. Administrator\** (1981), where the Court held that torture, cruel, inhuman, or degrading treatment constitutes a denial of the right to life with human dignity under Article 21.<sup>11</sup> Article 20(3) further safeguards against self-incrimination, which directly addresses the coercive method of extracting confessions that is the root cause of most custodial torture.<sup>12</sup>

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<sup>6</sup> India Const. arts. 14, 20(3), 21, 22.

<sup>7</sup> REDRESS, *supra* note 2, at 18–22.

<sup>8</sup> G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (Dec. 16, 2005)

<sup>9</sup> The Prevention of Custodial Torture Bill, 2024, Bill No. LVIII of 2024 (Rajya Sabha, India).

<sup>10</sup> *Rudul Sah v. State of Bihar*, (1983) 4 S.C.C. 141 (India).

<sup>11</sup> *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248 (India); *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 S.C.C. 608 (India).

<sup>12</sup> India Const. art. 20(3)

The pre-2023 legal safeguards were weak and ineffective. The Indian Penal Code (IPC) dealt with certain acts through Sections 330 (voluntarily causing hurt to extort confession), 331 (grievous hurt for the same purpose), and 348 (wrongful confinement to extort). The Indian Evidence Act, 1872 (Sections 25 and 26), declared custodial confessions to be inadmissible, and CrPC Section 76 required production before a Magistrate within 24 hours.<sup>13</sup> But the requirement of prior sanction under CrPC Section 197 to prosecute public servants made it a nearly insurmountable hurdle, and the magisterial inquest under CrPC Section 176 was often merely a mere formality with very low rates of compliance.<sup>14</sup> Two major decisions were made to fill these gaps:

*Nilabati Behera v. State of Orissa (1993)*: The Supreme Court granted compensation of ₹1,50,000 to the mother of a young man who died in police custody with multiple injuries. It clearly laid down the vicarious liability of the State under Articles 32 and 226 for violation of Article 21, held compensation as a separate public law remedy distinct from private tort actions, and held that the State is not immune from liability in custodial deaths.<sup>15</sup>

*DK Basu v. State of West Bengal (1997)*: Faced with the disturbing number of custodial deaths, the Court framed 11 mandatory and binding guidelines, which include: “Arrest memos to be prepared and signed by witnesses, intimation to relations within 8-12 hours, medical examination at the time of arrest and every 48 hours by a qualified doctor, right to meet lawyer during interrogation, production before magistrate within 24 hours, and meticulous record-keeping.” Failure to do so was held to be punishable as contempt of court and also liable for departmental action.<sup>16</sup>

These judgments promoted compensatory justice and preventive measures, but these were mostly reactive in nature. The role of victims was insignificant, investigations remained dominated by the police, and there was no legal provision for the rehabilitation process or investigation. The reports of NHRC have always emphasized the fact that there were thousands of custodial deaths with very few prosecutions, which revealed the need for criminalization and enhanced procedural safeguards.<sup>17</sup>

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<sup>13</sup> Indian Penal Code §§ 330, 331, 348 (1860) (prior to 2023 repeal); Indian Evidence Act, 1872, §§ 25–26; Code of Criminal Procedure § 76 (1973) (prior to 2023 repeal).

<sup>14</sup> Code of Criminal Procedure §§ 197, 176 (1973) (prior to 2023 repeal).

<sup>15</sup> *Nilabati Behera v. State of Orissa*, (1993) 2 S.C.C. 746 (India).

<sup>16</sup> *D.K. Basu v. State of W.B.*, (1997) 1 S.C.C. 416 (India).

<sup>17</sup> Nat'l Hum. Rts. Comm'n, Annual Reports (various years); Org. for the Prohibition of Torture, *supra* note 1.

## RECENT CRIMINAL LAW REFORMS: BNS AND BNSS, 2023

The Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhinyam, which came into force on 1 July 2024, are the most extensive reforms of colonial-era criminal laws in India. These bring victim-oriented provisions, technology integration, and specific provisions against custodial violence.<sup>18</sup>

As per BNS 2023:

Section 120(1) makes the voluntary causing of hurt by any person (including public servants) to extort confession or information an offense, punishable with a maximum of 7 years' imprisonment and fine.

The statutory explanation specifically aims at police officers torturing suspects for confessions.<sup>19</sup>

Section 120(2) increases punishment to 10 years for grievous hurt caused for the same purpose.<sup>20</sup>

Other new features include the use of gender-neutral language, community service for petty offenses, mandatory forensic analysis for serious crimes, Zero FIR facility, and digital evidence management.

The BNSS 2023 enhances procedural safeguards:

### PROCEDURAL SAFEGUARDS INCLUDE

Section 196 prescribes a magisterial inquiry by a Judicial Magistrate in all cases of custodial death, disappearance, or alleged custodial rape. It provides for the presence and participation of the family members, documentation of evidence, issuance of orders for autopsies or exhumations, and submission of a comprehensive report within 24 hours.<sup>21</sup>

Complementary safeguards include arrest memo (Section 36), notification of immediate family members (Section 48), access to counsel during interrogation (Section 38), obligation to protect the arrested person's health and safety (Section 56), and mandatory audio-video recording of searches and seizures (Section 105).<sup>22</sup>

These safeguards partially codify the DK Basu guidelines and are the first to criminalize confession-extraction violence by public functionaries. But the initial implementation trends (2024 to mid-2026) are disheartening. The conviction rate under BNS Section 120 remains negligible due to deep-rooted investigative biases, evidence tampering, and the continued preponderance of police influence in preliminary investigations. The NHRC continues to record a large number of custodial deaths without

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<sup>18</sup> Bharatiya Nyaya Sanhita, 2023 (Act No. 45 of 2023); Bharatiya Nagarik Suraksha Sanhita, 2023 (Act No. 46 of 2023).

<sup>19</sup> Bharatiya Nyaya Sanhita § 120(1) (2023).

<sup>20</sup> Id. § 120(2).

<sup>21</sup> Bharatiya Nagarik Suraksha Sanhita § 196 (2023)

<sup>22</sup> Id. §§ 36, 48, 38, 105.

a corresponding rise in accountability, thus emphasizing that procedural reforms alone cannot overcome structural impunity without external monitoring and cultural change within law enforcement agencies.<sup>23</sup>

## **JUDICIAL MANDATES: PARAMVIR SINGH SAINI AND CHALLENGES OF COMPLIANCE**

In the case of *Paramvir Singh Saini vs. Baljit Singh* (2020), the Supreme Court of India laid down detailed guidelines for the installation of audio-visual recording CCTV cameras with night vision capabilities in every police station, lock-up, corridor, interrogation room, and central investigating agencies' (CBI, NIA, ED, etc.) premises. The footage was to be retained for a minimum of 18 months, with visible posters of rights. Oversight committees were to be formed at the Central, State, and District levels to monitor the installation, maintenance, and redressal of grievances.<sup>24</sup>

However, the implementation of these guidelines has been grossly inadequate. During the hearings in November 2025, the Supreme Court was visibly dissatisfied, reprimanding the Centre and States for non-functional cameras and questioning whether the government was taking the Court “very lightly.” Suo motu cases continued into 2026, with recent custodial deaths directly attributed to the failure of CCTV cameras.<sup>25</sup> Despite the constitutional mandate of Article 21, the preventive value of this directive has remained largely unactualized because of poor maintenance, lack of real-time monitoring, and limited access to footage for victims and their families.<sup>26</sup>

## **THE PREVENTION OF CUSTODIAL TORTURE BILL, 2024**

Introduced in the Rajya Sabha on 7 February 2025 by Shri Manoj Kumar Jha (Private Member's Bill No. LVIII of 2024), the Prevention of Custodial Torture Bill, 2024 is the most comprehensive, progressive, and victim-centric legislative initiative to date to fill the systemic void in the Indian legislative framework on custodial crimes. As of February 2026, the Bill is still pending without being referred to a Select Committee or any further discussion in Parliament, much like the earlier private

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<sup>23</sup> Nat'l Hum. Rts. Comm'n, Newsletter, Jan. 2026, supra note 4.

<sup>24</sup> *Paramvir Singh Saini v. Baljit Singh*, (2021) 1 S.C.C. 184 (India).

<sup>25</sup> *The Hindu* (Nov. 25, 2025)

<sup>26</sup> *Id*

members' bills and the government-introduced Prevention of Torture Bill, 2010 (passed in the Lok Sabha but lapsed in the Rajya Sabha).<sup>27</sup>

The Statement of Objects and Reasons carefully situates the Bill within Article 21's guarantee against torture and assault (as judicially interpreted in *D.K. Basu v. State of West Bengal*, 1997), the Law Commission's 273rd Report (2017) on the recommendation to ratify the UNCAT Convention, the "critical gaps" identified by the Rajya Sabha Select Committee on the 2010 Bill, and the relentless statistics of the NHRC on custodial violence. The Bill's "pre-eminent" aim is thus preventive, punitive, reparative, and protective: it aims to make custodial torture a separate and aggravated offence, provide harsh punishment, structured compensation and rehabilitation, and protect victims, complainants, and witnesses, thus harmonizing domestic law with India's international obligations under the UN Convention Against Torture, signed in 1997 but still unratified.<sup>28</sup>

Section 3 defines custodial torture in a progressive, UNCAT-compliant manner: "Any public servant, or any person abetted by or acting with the consent or acquiescence of a public servant, who intentionally inflicts physical or mental suffering on a person in detention, custody, administrative detention, or post-conviction imprisonment, for the purpose of (a) obtaining information or a confession from the victim or a third person; (b) punishing the victim or a third person for a real or suspected act; or (c) intimidating or coercing the victim or a third person on discriminatory grounds including caste, religion, gender, race, place of residence, language, or sexual orientation." The Explanation clause widens the crime considerably from physical violence to encompass denial of food or water, immersion of the head, asphyxiation methods, administration of psychoactive substances, ill-treatment of relatives, and acts of shaming or humiliation—openly acknowledging psychological, dignity-violating, and indirect harm that the narrow "hurt/grievous hurt" construct of BNS Section 120 is ill-equipped to address. A thoughtfully drafted proviso exempts actions that are legal under established legal processes, thus safeguarding against abuse of the law to target genuine law enforcement efforts while keeping the definition strong.<sup>29</sup>

Section 4 brings in the crucial procedural innovation of reverse burden of proof. After the prima facie case of custodial torture has been made out, the burden shifts to the accused public servant to prove that the offence was neither intentional nor done with his/her consent or acquiescence thereto. This is a direct response to the insurmountable evidentiary hurdles that victims face in police-controlled

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<sup>27</sup> The Prevention of Custodial Torture Bill, 2024, *supra* note 8.

<sup>28</sup> *Id.* Statement of Objects and Reasons.

<sup>29</sup> *Id.* § 3

settings, where medical records, witnesses, and CCTV footage are commonly tampered with or destroyed.<sup>30</sup>

Sections 5, 7, and 8 provide graded, deterrent punishment: for custodial torture/attempt, rigorous imprisonment for not less than three years, extendable to ten years, along with a fine of ₹1 lakh; if death ensues, punishment is imprisonment for life along with fine; for custodial sexual assault, rigorous imprisonment for ten years to life. Abetment or acquiescence by a public servant shall also attract the same liability. These sections establish a separate, aggravated offence of custodial torture with minimum sentences, which is significantly more severe than the general hurt provisions in BNS/BNSS.<sup>31</sup>

Section 6 provides a truly restorative compensation and rehabilitation scheme. The fine is to be paid directly to the victim as compensation. Furthermore, the appropriate Government (Central or State) is authorized to grant interim and final compensation for rehabilitation on the basis of a wide list of factors: the gravity of the injury (physical, mental, or resulting in death), lost educational or employment opportunities, material damages and loss of earning capacity, medical and psychological treatment costs, legal costs, the age of the victim, family responsibilities, and the needs of dependents. In the case of death, dependents are entitled to similar relief. This needs-based approach radically transforms the ad-hoc and discretionary compensation scheme of Nilabati Behera into a statutory and victim-oriented right for full restoration of dignity and livelihood.<sup>32</sup>

Section 10 lays down a continuing positive duty on State Governments to protect victims, complainants, and witnesses from threats, violence, intimidation, or secondary trauma from the time of filing the complaint until protection is no longer needed.<sup>33</sup> Notice may be taken within two years (Section 9), which gives more flexibility than general limitation periods, while Section 11 makes it clear that the Act is supplementary and does not derogate from existing laws.<sup>34</sup>

From a victim-oriented viewpoint, the Bill represents a paradigm shift. With its comprehensive definition, reverse burden of proof, minimum deterrent sentences, rehabilitation-laddered compensation, and continuous witness protection, the Bill collectively uplifts victims from passive complainants to active rights-holders with claims to truth, justice, participation, and non-repetition. In comparison to BNS/BNSS, which provide merely limited criminalization for “hurt” and procedural

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<sup>30</sup> Id. § 4.

<sup>31</sup> Id. §§ 5, 7, 8.

<sup>32</sup> Id. § 6.

<sup>33</sup> Id. § 10.

<sup>34</sup> Id. §§ 9, 11.

inquiries without reverse burden or rehabilitation obligations, the Bill specifically targets psychological trauma, discriminatory intent, and long-term survivor recovery. If passed or properly incorporated into the new criminal laws, it would represent the strongest legislative expression of enforceable State liability under Article 21 to date.<sup>35</sup> While it is not perfect, its current form is limited by its status as a Private Member's Bill, which has limited chances of being passed; its failure to include an independent investigative authority or police training reforms; and its two-year cognizance period, which may still leave out complaints filed belatedly by marginalized or geographically distant victims. However, in terms of prevention, punishment, and comprehensive reparative justice, it remains the most viable legislative avenue for a paradigm shift in State responsibility for custodial violence.<sup>36</sup>

## **CRITICAL ANALYSIS: TOWARDS GENUINE VICTIM-CENTRIC JUSTICE**

Although the BNS/BNSS reforms and Paramvir Singh Saini notifications indicate legislative and judicial will, the NHRC statistics of high custodial deaths (165 police + 2,338 judicial in 2025) indicate that symbolism continues to dominate actual reform. Police-dominated investigations, a lack of functional CCTVs, and a lack of convictions under BNS Section 120 indicate serious implementation gaps.<sup>37</sup>

Victims' participation is still merely symbolic, compensation remains ad-hoc and inadequate for rehabilitation, and the progressive elements of the 2024 Bill (reverse burden and structured remedies) continue to be unintegrated. India's failure to ratify UNCAT means that the entire system remains reactive and disintegrated, disregarding international best practices on prompt and independent investigation and full reparation.<sup>38</sup>

True victimism requires the establishment of independent review bodies, a national custodial victims' welfare fund, annual sensitization programs for police officers, the adoption of community policing approaches, and the full domestication of UNCAT obligations.<sup>39</sup>

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<sup>35</sup> REDRESS, *supra* note 2, at 28–32.

<sup>36</sup> Law Comm'n of India, Rep. No. 273, Implementation of the United Nations Convention Against Torture (2017).

<sup>37</sup> Nat'l Hum. Rts. Comm'n, Newsletter, Jan. 2026, *supra* note 4.

<sup>38</sup> Org. for the Prohibition of Torture, *supra* note 1

<sup>39</sup> REDRESS, *supra* note 2, at 35–40.

## CONCLUSION

Custodial violence is a deep-seated violation of the constitutional principles under Articles 14, 20(3), 21, and 22. The judicial innovations in the cases of Rudul Sah to Nilabati Behera and DK Basu, along with the BNS/BNSS provisions and the directives in Paramvir Singh Saini, have established crucial instruments. However, the unending statistics and the low accountability indicate their poor transformative potential.<sup>40</sup>

The Prevention of Custodial Torture Bill, 2024 is the strongest victim-focused template to have emerged so far, with its broad definition of torture, reverse burden of proof, graded punitive measures, rehabilitation-linked compensation, and legal witness protection. The implementation or incorporation of these would signal a major transition towards restorative justice.<sup>41</sup>

However, deeper structural changes are still imperative: modernization or striking down of the colonial Police Act, 1861; setting up of independent complaint bodies and a National Custodial Justice Commission with self-authorizing investigation powers; forming a specific Custodial Victims' Welfare Fund for immediate interim relief, psychological counseling, and rehabilitation of livelihoods; making annual human rights and non-coercive investigation training mandatory; and implementing community policing strategies to regain public confidence. Signing on to the UN Convention Against Torture, with complete domestication, is non-negotiable.<sup>42</sup>

The victim must be resituated as an active agent with a role to play as a rights-bearing individual entitled to legal representation in magisterial inquiries, access to CCTV footage, and a voice in the rehabilitation process. Victim-centered justice is not a gesture of state largesse but the minimum constitutional obligation of the State under Article 21. Only through the enforcement of accountability, restorative justice, and transformation can custodial violence be abolished and the State's solemn promise to human dignity and the rule of law in the Constitution be fulfilled in earnest.<sup>43</sup>

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<sup>40</sup> Supreme Court jurisprudence synthesis (Rudul Sah, Nilabati Behera, DK Basu, Paramvir Singh Saini).

<sup>41</sup> The Prevention of Custodial Torture Bill, 2024, *supra* note 8

<sup>42</sup> REDRESS, *supra* note 2, at 42–45.

<sup>43</sup> India Const. art. 21.