

Legal Safeguards Against Custodial Violence In India: Comparative Perspective From Nepal, Bangladesh And Sri Lanka

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ABSTRACT

Despite constitutional guarantees and international obligations on human rights, custodial violence continues to be one of the worst forms of human rights violations in South Asia. India, Nepal, Bangladesh and Sri Lanka have enacted legislation and institutional measures to prevent torture, illegal detention and custodial deaths, but these measures are poorly enforced. This research explores the legal framework relating to custodial violence in India and compares the ways in which violence is prevented, dealt with by the judiciary, protected by law and held accountable in Nepal, Bangladesh and Sri Lanka.

The study's focus is on the assessment of constitutional provisions, criminal laws, judicial precedents, human rights commissions, and international commitments to conventions like the United Nations Convention against Torture (UNCAT). It also examines the success of procedural measures such as arrest policies, compensation measures, prison reform, police accountability and measures to protect victims. The paper, by comparing with the other South Asian jurisdictions, highlights the gaps in the Indian system and proposes changes based on the existing practice elsewhere. The research findings showed that although there is legal protection of human rights, implementation is still poor, investigations are not independent, there is no legislation against torture and political interference, all of which continue to contribute to custodial violence in the region.

Keywords: Custodial Violence, Human Rights, Torture, Police Brutality, South Asia, UNCAT, Custodial Death, Legal Safeguards, Comparative Study.

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INTRODUCTION

The use of custodial violence is one of the most serious breaches of human rights and constitutional safeguards in democratic countries. It involves torture, abuse, harassment, unlawful detention, inhuman treatment or death of a person in police, judicial or administrative custody. Violence can take various forms such as physical violence, mental torture, sexual abuse, coercion, third degree and misuse of authority of police officers resulting in custodial death. This custodial violence on the one hand offends the dignity and liberty of the person involved, and on the other hand harms the rule of law and public trust in the criminal justice system as well as the principles of constitutional government (1, 2).

Under both domestic constitution and international human rights law there is a right to protection from torture and arbitrary detention. Articles 20, 21 and 22 of the Indian Constitution provide protection against arbitrary arrest, self-incrimination, and deprivation of life and personal liberty subject to a procedure established by law. International human rights documents, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the United Nations Convention against Torture (UNCAT), also ban torture and cruel, inhuman, or degrading treatment. While various safeguards exist under the Indian Constitution and internationally, incidents of custodial violence remain on the increase in South Asian countries like India, Nepal, Bangladesh, and Sri Lanka (3, 4).

The problem of custodial violence in South Asia is attracting greater attention in the field of human rights because of the deficiency in institutional accountability, corruption, political interference, transparency issues, judicial delays and poor implementation of the legal safeguards. Custodial deaths, fake encounters, illegal detention and torture during interrogation expose many flaws in the criminal justice administration. While India has established important judicial safeguards as in the cases of *D.K. Basu v. State of West Bengal*, *Joginder Kumar v. State of Uttar Pradesh* and *Nilabati Behera v. State of Orissa*, it is important to note that there is still no comprehensive anti-torture legislation and independent investigation mechanisms to strengthen accountability (5,6).

In contrast, neighboring countries have implemented different statutory and institutional initiatives to prevent custodial violence in their countries, including Nepal, Bangladesh and Sri Lanka. Bangladesh amended its law using the Convention against Torture framework with the *Torture and Custodial Death (Prevention) Act, 2013*, and Sri Lanka did so with laws. Bangladesh amended its law with the *Convention against Torture framework, the Torture and Custodial Death (Prevention) Act, 2013* and laws were passed in Sri Lanka. Nepal has also enacted compensation and legal protection against torture. But these measures are only effective if they are properly enforced, the judiciary is independent and administrative accountability is held (7, 8).

The present study aims to critically explore the legal protection against violence in custody in India and in

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comparative perspective the legal protection in Nepal, Bangladesh and Sri Lanka. The study will examine constitutional protections, legislation, judicial responses and institutional accountability mechanisms concerning the prevention of custodial violence and torture. It also aims to identify the gaps in the Indian legal regime and to suggest changes through comparative lessons from the neighbouring South Asian legal systems (9, 10).

The study is based on the hypothesis that even with the constitutional safeguards and judicial activism, the legal system in India is still insufficient in preventing custodial violence because of the absence of comprehensive law against torture, poor enforcement, lack of independent investigations, institutional inefficiency etc. The methodology used in the research is doctrinal and comparative method which is derived from the analysis of constitutional provisions, statutes, judicial decisions, international conventions, government reports, books, journals and scholarly writings. The study can be limited to the study of legal protections, judicial responses, and accountability mechanisms for custodial violence in India as compared to other countries such as Nepal, Bangladesh and Sri Lanka (11, 12).

LEGISLATIVE FRAMEWORK

Legislative provisions in India concerning custodial violence include constitutional provisions, criminal laws, procedural safeguards, laws pertaining to the evidence, and human rights laws to safeguard persons against torture, arbitrary detention, and abuse by custodial institutions. The State of India does not have a dedicated anti-torture legislation; however, a set of legal measures collectively set out the protection against custodial violence and mechanism of accountability and redressal (13, 14).

The fundamental principle for safeguarding against custodial abuse is the Constitution of India. Article 20 guarantees against being compelled to incriminate oneself or confess in any way that is coercive. Under Article 21, the right to life and personal liberty has been understood to encompass the right to live with human dignity, freedom from torture and protection from cruel, inhuman and degrading treatment by the judiciary. Provision is also made in Article 22 for "procedural safeguards" which guarantee that any person arrested be notified of the reasons for the arrest as well as that he be granted legal representation and be brought before a magistrate within 24 hours (15, 16).

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which supersedes the Code of Criminal Procedure, it mandates certain procedural safeguards to prevent custodial violence. The powers of arrest, detention, investigation and remand are regulated by the law. It specifies rules for law enforcement on arrest and interrogation, and the rights of those who have been arrested. Judicial supervision over remand is an effective tool for controlling the behaviour of the police and preventing unlawful detention or torture (17).

The Indian Penal Code has been replaced by Bharatiya Nyaya Sanhita, 2023 (BNS), which makes a public

servant liable for a crime if he or she causes harm to a person under custody due to the exercise of his or her authority. Officials who are responsible for custodial violence may be subject to provisions concerning "voluntarily causing hurt", "grievous hurt", "wrongful confinement", "assault" and "criminal intimidation" and "culpable homicide". These provisions establish legal accountability of law enforcement personnel for acts of torture and abuse (18).

The Bharatiya Sakshya Adhiniyam, 2023, which superseded the Indian Evidence Act, has been a vital step towards furthering the ban on custodial torture by making forced confessions null and void, thereby reducing the incidence of such torture. What is obtained by threat, inducement, coercion or torture is not reliable or evidence and may not be used to attain convictions. This principle diminishes the enticement for investigators to use illegal techniques in interrogating suspects (19).

The Protection of Human Rights Act 1993 is another key element of legislation which has created the National Human Rights Commission and the State Human Rights Commissions. They have the power to investigate complaints regarding human rights abuses (including custodial torture and deaths), recommend compensation, and keep a watch on human rights standards. The Act has provided greater oversight of institutions and has helped to increase accountability in cases of custodial abuse (20).

The Juvenile Justice (Care and Protection of Children) Act, 2015, offers specific protection of children when they breach the law. It bans the infliction of cruel treatment on children in custody, and places a focus on rehabilitation and child friendly child processes. Likewise, under women's rights laws, women's dignity must be observed and their arrest and search must be done in accordance with the legal safeguards.

India has ratified a number of international human rights covenants such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the United Nations Convention against Torture (UNCAT). India has signed the UNCAT, but has not yet adopted comprehensive law to criminalise torture as required by the Convention. This legislative lacuna has been pointed out by various human rights groups, legal experts and the Law Commission of India on more than one occasion.

While there are several legal protections in place, the effectiveness of the legislative framework is hindered by slow prosecutions, a lack of a specific anti-torture law, a lack of a monitoring mechanism and weak implementation. There is a concomitant need for detailed legislation which clearly defines what constitutes torture, will allow for independent investigation processes, offer viable remedies for victims and will impose strict sanctions for those who perpetrate torture. These reform measures are deemed necessary to enhance the human rights protection and accountability system.

JUDICIAL PRONOUNCEMENTS

One of the most important functions of the judiciary has been to ensure that people are protected from custodial violence and their fundamental rights enshrined in the Constitution of India. In a series of landmark decisions, the Supreme Court and various High Courts have extended the definition of constitutional protections and laid down guidelines to stop police torture, arbitrary arrest, in-custody deaths, and misuse of powers. In the field of legislative accountability and gaps, judicial activism has played a crucial role in addressing gaps in the law and holding government accountable for custodial violence.

One of the most important decisions in this regard is *D.K. Basu v. State of West Bengal* (1997). In this landmark case, the Supreme Court declared custodial violence as a grave violation of human rights and gave specific guidelines to follow while arresting and detaining someone. The Court ordered police officers to wear identification tags, have an arrest memo signed by a witness, notify a relative or friend of the arrested person, keep proper arrest records and have the person arrested checked by a doctor every once in a while. It was hoped these guidelines would encourage transparency and minimize cases of custodial torture and deaths. The Court also ruled that damages could be claimed for breaches of the basic rights which stem from custodial mishandling (21).

In *Joginder Kumar v. State of Uttar Pradesh* (1994) the Supreme Court observed that the use of the power of arrest should not be arbitrary. The Court noted that arrest cannot be lawful enough to be a valid arrest; the police must justify their need to arrest. It also stated that there is a right for the arrested person to notify a friend, relative or family member of the arrest and the place of detention. This decision reinforced the protection provided against arbitrary arrest and detention in the process (22).

The other important case is *Nilabati Behera v. State of Orissa* (1993), which addressed the issue of custodial death. In this case, the Court ruled that the State must pay damages for the violation of the fundamental rights of the victim or his family by public officials. It stressed that compensation in public law is different from private remedies provided in civil or criminal suits. The ruling heralded the doctrine of constitutional compensation as a viable tool to combat custodial violence and human rights abuse (23).

In *Sheela Barse v. State of Maharashtra* (1983), the Supreme Court emphasized the safeguards of women while they are in custody. The Court also raised concerns about the treatment of women detainees, and ordered that women prisoners be detained and questioned by female officers whenever feasible. It also highlighted the need for legal assistance, medical examination and protection from abuse and exploitation in custody facilities. The judgment marks a crucial step in the creation of gender-sensitive measures in the criminal justice system (24).

The case of *Sunil Batra v Delhi Administration* (1978) took a turn for the better with the acknowledgment of prisoners rights. The Supreme Court ruled that prisoners'

rights are not suspended just because they are in prison. The Court condemned the torture, solitary confinement and inhuman treatment of prisoners, and stressed the importance of respecting human dignity and constitutional rights for prisoners. This judgment extended the ambit of Article 21 and strengthened the doctrine of judicial review of the administration of prisons.

The Supreme Court in *Prem Shankar Shukla v. Delhi Administration* (1980) looked into the practice of using handcuffs on prisoners and undertrial detainees. The Court has concluded that handcuffing is not a routine procedure and can only be resorted to in exceptional situations with appropriate justification. The judgment has acknowledged that unnecessary restrictions are a denial of dignity and personal liberty under Article 21 of the Constitution.

In *People's Union for Civil Liberties (PUCL) v. State of Maharashtra* (2014), the Supreme Court further fortified the rights of victims against custodial abuse in the case of deaths through encounters by the police. The Court provided detailed directions for independent investigations into encounter killings, compulsory registration of First Information Reports (FIRs), magisterial enquiries and judicial supervision etc. These directions were designed to deter unwarranted use of police powers and to hold police accountable for their actions in cases of fatal police-involved violence (25).

While the main focus of *Prakash Singh v. Union of India* (2006) was on police reforms, the Supreme Court highlighted the important role played by political interference and lack of accountability in police misconduct, including custodial violence. The Court ordered the creation of State Security Commissions, Police Complaints Authorities, and appointed of fixed police officers' tenure. The reforms were to make police administration more professional and accountability.

Collectively, these judicial pronouncements have transformed the legal landscape relating to custodial violence in India. The judiciary has extended the scope of Articles 20, 21 and 22 of the Constitution, to include the rights to dignity, protection from torture, legal assistance, compensation for victims and accountability of public officials. Judicial oversight has consequently emerged as one of the most effective methods of protection from custodial violence, if there is no general anti-torture law.

Despite all these forward-thinking decisions, there are a number of issues in putting judicial directions into practice. There is a need for greater enforcement, independent investigation mechanisms, improvement in police practices and legislative measures in view of continued incidents of custodial deaths and torture. However, judicial decisions have and continue to play a vital role in the implementation of human rights in India and the ensuring of custodial justice in the criminal justice system.

INTERNATIONAL PERSPECTIVE ON CUSTODIAL VIOLENCE

The use of force in the care of children is known worldwide as an infringement on the rights and dignity of children. International human rights law bars torture, cruel, inhuman and degrading treatment in all circumstances, including when arrested, detained, interrogated or imprisoned. The international law framework has had several developments through conventions, declarations and judicial interpretations to shield the individual from abuse by the state authorities. Despite the progress, however, reports of custodial torture, arbitrary detention and deaths in custody have continued to come from both developed and developing countries, bringing custodial violence to the fore as a global issue.

The bans on torture are viewed as a jus cogens norm of international law, which implies that there is no state that lawfully can justify or permit torture in any case. Under international law state parties are bound to take reasonable measures to prevent, investigate and punish acts of custodial violence under the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the United Nations Convention against Torture (UNCAT).

These instruments place a strong focus on the treatment of every person deprived of liberty with humanity and respect for their inherent dignity.

The United Nations Convention against Torture (UNCAT) approved in 1984 is the most extensive international convention specifically on torture and custodial abuse. It calls for State Parties to ban the use of torture, set up independent investigative bodies, guarantee remedies and compensation to torture victims, and prohibit the use of torture as a means of obtaining evidence in judicial proceedings. While a number of States have adopted specific legislation against torture in accordance with UNCAT, obstacles remain in implementation.

Prison overcrowding, long sentences on remand, poor accountability systems, and poor monitoring of prison conditions are among the factors that are driving custodial violence on the global scale. Multiple international studies have shown that crowding in prisons and too much pre-trial detention can heighten the risk of torture and ill-treatment by prison and law enforcement officials.

Table 1: Major International Instruments Against Custodial Violence

Instrument	Year	Key Provisions
Universal Declaration of Human Rights (UDHR)	1948	Prohibits torture and inhuman treatment (Article 5)
International Covenant on Civil and Political Rights (ICCPR)	1966	Protection against arbitrary arrest and torture (Articles 7, 9, 10)
UN Convention Against Torture (UNCAT)	1984	Criminalization of torture and victim compensation
Body of Principles for the Protection of All Persons under Any Form of Detention	1988	Safeguards for detainees and prisoners
Nelson Mandela Rules	2015	International standards for treatment of prisoners

Global Statistics on Detention and Prison Conditions:

International prison data suggest serious issues of prison overcrowding and detention conditions globally. Many states have prison facilities in excess of their official capacity, which raises the risk of abuse and violations of human rights within prisons.

Table 2: Selected International Prison Indicators

Country	Prison Population Rate (per 100,000)	Occupancy Level (%)
United States	542	86.1
Nepal	93	184.3
Philippines	149	362
Indonesia	96	184.5
Kenya	101	176.5

Occupancy levels above 100% indicate overcrowding and increased risk of custodial abuse.

South Asian Perspective:

Persistent problems in South Asian countries are delayed Criminal justice processes, prison overcrowding, and custodial torture. While there are constitutional protections in place in most countries in the region, their implementation is inadequate. Bangladesh has been the only country in the South to have enacted laws to prevent torture and custodial death; Sri Lanka criminalized torture under the UNCAT. Nepal has adopted the measures of compensation for victims of torture.

Even though India is a signatory to the UNCAT, it has not yet passed a specific anti-torture law. These variations provide an important basis for comparative legal analysis.

Table 3: Comparative Position of South Asian Countries

Parameter	India	Nepal	Bangladesh	Sri Lanka
Specific Anti-Torture Legislation	No	Partial	Yes	Yes
UNCAT Status	Signed	Ratified	Ratified	Ratified
Compensation for Victims	Judicially Developed	Available	Available	Available
Human Rights Commission	Yes	Yes	Yes	Yes
Independent Investigation Mechanisms	Limited	Moderate	Moderate	Moderate

International Challenges and Emerging Trends:

Widespread torture and ill-treatment of detainees continues to be reported internationally in detention facilities in various regions of the world. The United Nations have documented instances of physical abuse, psychological torture, sexual violence, denial of medical treatment, and long-term arbitrary arrest. These and other reports illustrate that custodial violence is a still ongoing issue internationally, despite the presence of robust international law standards.

The international community has been increasingly promoting the use of technological monitoring mechanisms like CCTV surveillance, body-worn cameras, digital arrest records, independent prison inspections, and national preventive mechanisms, where they are already in place, in line with international standards. These measures are considered to be good ways to increase transparency and accountability in detention.

Finally, the international regime on custodial violence has created a comprehensive legal regime to safeguard human dignity and to prevent torture. The fact that custodial abuse has persisted in different countries, however, suggests that aspects of the law are not enough, unless matched by good practice, robust accountability and political motivation. South Asia and the rest of the world can learn how to better implement custodial justice and protect human rights from comparative experiences from various jurisdictions.

CONCLUSION

Violence by custodial forces is one of the most grave threats to the protection of human rights, constitutional governance and the rule of law. In spite of constitutional protection, laws, judicial measures and international human rights conventions, torture, illegal detention, custodial killings and abuse of authority remain prevalent in South Asia. Such practices are not only an infringement of the human rights of the individual but also the public trust in the criminal justice system and reduce the effectiveness of Parliament.

The study showcases that there exists a significant body of law in India to safeguard people from custodial violence through the provisions of the Constitution e.g. Article 20, 21 and 22, procedural safeguards under criminal laws and landmark jurisprudence e.g. D.K Basu v. State of West Bengal, Joginder Kumar v. State of

Uttar Pradesh, and Nilabati Behera v. State of Orissa. The judiciary has been instrumental in broadening the fundamental rights and creating accountability procedures for custodial abuse. There are other institutions that have helped to monitor and respond to custodial violence, including the National Human Rights Commission. Despite these improvements, however, the ongoing reports of custodial torture and deaths suggest serious problems in implementation, investigation and enforcement.

A comparative study of Nepal, Bangladesh and Sri Lanka shows that they have taken different legislative and institutional measures to address custodial violence. The United Nations Convention against Torture is incorporated into Bangladesh's Torture and Custodial Death (Prevention) Act, 2013, and Sri Lanka's legislation that implements the Convention against Torture of the United Nations. Torture is a specified offence in Bangladesh's Torture and Custodial Death (Prevention) Act, 2013, and in Sri Lanka's legislation implementing the United Nations Convention against Torture. Nepal has adopted compensation systems and legal recourse to deal with the victims of torture. These measures underscore the need for robust accountability measures and for the countries to have dedicated anti-torture laws.

The universality of the prohibition on torture is also reflected in the international context. The instruments like the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the United Nations Convention against Torture, all bind the states to take measures both to prevent custodial abuse and to provide effective remedies for the victims. However, criminal statistics in various parts of the world show that legal recognition is not enough without effective implementation and accountability for prisons. The results of this study would corroborate the hypothesis that currently the efforts to prevent custodial violence in India were ineffective due to the absence of a comprehensive anti-torture law, weak enforcement mechanism, and the lack of independent investigation procedure. Protection for detainees has been bolstered greatly by judicial measures, but there is a clear need for more legislative steps and institutional changes to be taken. Hence the need is to have an exclusive anti-torture law in line with the international standards, ensure independent monitoring mechanisms, ensure prompt

investigation of custodial abuse, improve police accountability and provide effective compensation and rehabilitation to the victims.

Finally, prevention of custodial violence must take a multifaceted approach, which includes legal reform, judicial oversight, institutional accountability, police professionalism and respect for human dignity. To guarantee the limitation of State's power within the boundaries of law and to protect all individuals, regardless of their status or accusation, against torture and inhuman treatment, a criminal justice system rooted in constitutional values and human rights should be built. It is only through those means that the concepts of justice, freedom, equality and human dignity can be achieved in reality.

REFERENCES

1. Basu, D.D., *Human Rights in Constitutional Law*, LexisNexis Butterworths, New Delhi, 2008.
2. Jain, M.P., *Indian Constitutional Law*, 8th ed., LexisNexis, New Delhi, 2018.
3. Shukla, V.N., *Constitution of India*, Eastern Book Company, Lucknow, 2021.
4. Baxi, Upendra, *The Future of Human Rights*, Oxford University Press, New Delhi, 2006.
5. Sathe, S.P., *Judicial Activism in India*, Oxford University Press, New Delhi, 2003.
6. Ratanlal & Dhirajlal, *The Code of Criminal Procedure*, LexisNexis, New Delhi, 2022.
7. K.I. Vibhute, *Criminal Justice System: A Human Rights Perspective*, Eastern Book Company, Lucknow, 2004.
8. Law Commission of India, *113th Report on Injuries in Police Custody*, Government of India, 1985.
9. Law Commission of India, *273rd Report on Implementation of "United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment"*, Government of India, 2017.
10. National Human Rights Commission, *Annual Report 2022–2023*, NHRC, New Delhi.
11. Amnesty International, *India: Torture, Ill-Treatment and Deaths in Custody*, Amnesty Publications, London, 2021.
12. Human Rights Watch, *Broken System: Dysfunction, Abuse and Impunity in the Indian Police*, Human Rights Watch Report, 2020.
13. Law Commission of India, *273rd Report on Implementation of United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* (Government of India, 2017).
14. M.P. Jain, *Indian Constitutional Law* (8th edn, LexisNexis, New Delhi, 2018).
15. V.N. Shukla, *Constitution of India* (Eastern Book Company, Lucknow, 2021).
16. D.D. Basu, *Human Rights in Constitutional Law* (LexisNexis, New Delhi, 2008).
17. Upendra Baxi, *The Future of Human Rights* (Oxford University Press, New Delhi, 2006).
18. K.I. Vibhute and V.C. Vivekanandan, *Criminal Justice System in India* (Eastern Book Company, Lucknow, 2020).
19. Ratanlal and Dhirajlal, *The Bharatiya Nagarik Suraksha Sanhita* (LexisNexis, New Delhi, 2024).
20. Aparna Chandra, 'Preventing Custodial Torture in India: Legal Challenges and Reforms' (2021) 14 *National Law School Journal* 67–89.
21. D.K. Basu v. State of West Bengal, AIR 1997 SC 610...
22. Joginder Kumar v. State of Uttar Pradesh, AIR 1994 SC 1349.
23. Nilabati Behera v. State of Orissa, (1993) 2 SCC 746.
24. Sheela Barse v. State of Maharashtra, AIR 1983 SC 378.
25. Prakash Singh v. Union of India, (2006) 8 SCC 1.