

CUSTODIAL TORTURE IN INDIA: CONSTITUTIONAL FAILURE OR INSTITUTIONAL DESIGN?

- Rahul Basak¹ & Saptarnab Basu²

Abstract

Even as the Constitution makes an unambiguous pledge in Article 21 to protect life, liberty and dignity from the arbitrary whims of the State, custodial torture endures as one of the most intractable and serious human rights abuses in India's criminal justice system. In this paper we put that paradox under a microscope to see if such violence is the result of constitutional guarantees falling short or of institutional arrangements that simply let impunity run its course.

Our analysis is both doctrinal and comparative. We have looked at the constitutional text, key judicial rulings, statutory protections and Law Commission reports alongside international human rights instruments to get a measure of the legal framework as it stands today. We also set India's methods side by side with those of the United Kingdom and South Africa, as well as the UN Convention against Torture, in order to spot what best practices might be had for ensuring accountability.

The argument here is that you can not lay the blame for ongoing custodial torture at the door of weak constitutional safeguards alone. It is a product of structural failings in the police force, poor oversight, prosecution that does not deliver and no specific anti-torture law on the books. While our constitutional governance and jurisprudence is progressive enough, it has not been enough to secure institutional compliance in the absence of police accountability, proper enforcement and legislative backing. Ultimately, the study finds that for India to make good on its constitutional

¹Student of Amity Law School, Amity University Kolkata, India

²Student of Amity Law School, Amity University Kolkata, India

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promises and win back the public's faith in the rule of law, there is a need for sweeping anti-torture legislation, independent means of investigation and thoroughgoing police reform.

Keywords: Custodial Torture, Article 21, Police Accountability, Anti-Torture Legislation, Constitutional Governance.

1. Introduction

1.1 Background and Context

India has an elaborate structure of fundamental rights, yet custodial torture endures as one of the country's most intractable breaches of human rights and constitutional order.³ On paper the Constitution is clear: it affords all persons the right to life and personal liberty, equality under the law and a shield from being arbitrarily arrested. In reality, however, there is a disturbing gulf between such lofty ideals and how institutions actually operate, as evidenced by the ongoing toll of custodial violence and deaths.

The Supreme Court has been unambiguous in its view, labelling torture an affront to the rule of law and to human dignity itself. It has made plain that the State has a duty to protect anyone in its custody, no matter what they are accused of.⁴ But judicial edicts have not been enough to put an end to the problem. One still sees reports of police overstepping their authority, of coercive questioning and outright assault in custody, which serves to show that the mere existence of constitutional safeguards has not been sufficient to change the way investigations are conducted.

1.2 Statement of the Problem

That custodial torture has not been put to rest in India is proof enough that the problem has become as much an institutional one as it is a constitutional matter.⁵ You will find plenty of statutes on the books to make violence by public officials a crime, yet there is no specific anti-

³INDIA CONST. arts. 14, 20(3), 21 & 22.

⁴D.K. Basu v. State of West Bengal, (1997) 1 SCC 416; Nilabati Behera v. State of Orissa, (1993) 2 SCC 746.

⁵Law Commission of India, 273rd Report on Implementation of 'United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment' through Legislation (2017); United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted Dec. 10, 1984, 1465 U.N.T.S. 85.

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torture law to speak of – nothing that puts a clear definition on torture or sets up independent bodies to investigate and hold people to account with proper standards. In the absence of such legislation, enforcement is poor, prosecutions are put off and a kind of institutional impunity takes root. All too often, what the constitution offers in the way of protection is little more than theory.

1.3 Research Questions

This paper seeks to answer the following questions:

1. Why does custodial torture persist despite constitutional guarantees protecting life, liberty, and dignity?
2. Should India enact a comprehensive Anti-Torture legislation capable of ensuring effective accountability, prevention, and victim protection?

1.4 Research Objectives

We set out in this study to put the constitutional framework on custodial torture in India under a critical microscope and to pinpoint the institutional factors that allow it to persist. In addition, we will be making a comparative analysis of the legal safeguards put in place by the United Kingdom, South Africa and the UN, with a view to determining if India would be better served by a full-fledged Anti-Torture law to shore up its constitutional governance and accountability.

1.5 Scope and Limitations

Our research is a doctrinal one, restricted to the Indian criminal justice system as it pertains to custodial torture. Where we make comparative forays, they are to the UK, South Africa or the international standards of the United Nations. You will not find any empirical field work or surveys here; instead the study is built on the ground of constitutional text, case law, government and academic reports, and statutory instruments.

1.6 Research Methodology

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In keeping with a doctrinal approach, the paper makes use of judicial precedents, statutes, parliamentary records, Law Commission Reports and the relevant scholarship. We also apply a comparative lens to India's legal standing vis-à-vis select foreign jurisdictions and international norms so as to ferret out the best in legislative practice and where institutional reform might be called for.

1.7 Chapter Scheme

There are six chapters to the paper. After way of introduction, we turn to the constitutional protections from custodial torture and the institutional logic of why it endures. A comparison is then drawn with the frameworks of the UN, South Africa and the UK. Later on we assess the case for an all-encompassing anti-torture statute in India and put forward some reforms before ending on the question of whether what we see in India is a failure of the constitution or, at root, a crisis of institutional design.

2. Constitutional Architecture Against Custodial Torture in India

2.1 Constitutional Philosophy of Human Dignity

At the heart of the Indian Constitution is the belief that human dignity is the very bedrock of constitutional governance and must not be put at risk, whether in the course of a criminal probe or lawful detention.⁶ While there is no express ban on torture in the text, the guarantees of Part III leave no room for doubt: the State is under a clear mandate to refrain from any treatment that is cruel, degrading or inhuman. In the Constitution's view, the State is to be a protector of individual liberty, not an agent of coercion. For that reason, to employ torture in the name of getting confessions or information is to run counter to the rule of law, democratic governance and constitutional morality.⁷

The Supreme Court has made it plain on more than one occasion that being in the hands of the State does not strip a prisoner or an arrestee of his fundamental rights. If anything, the State's constitutional duties are all the more exacting when it has taken away a man's personal liberty.

⁶INDIA CONST. pmb.; INDIA CONST. arts. 14 & 21.

⁷Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

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Custodial violence is thus more than a case of overzealous police; it is an injury done by the State to the individual's dignity, a direct violation of the Constitution.⁸

2.2 Article 14: Equality Before Law

Under Article 14, the law is to be applied with equal protection and without discrimination, putting a stop to any arbitrary use of power by the State.⁹ The Supreme Court has built up a doctrine of arbitrariness which requires executive action to be fair and reasonable. Torture fails this test as it is, by definition, an arbitrary recourse to force that vitiates procedural fairness.

But the import of Article 14 is not just formal equality. It means investigative bodies have to wield their statutory powers in an accountable way. Should they turn to custodial violence rather than proper evidence-gathering, they are in breach of both statute and the equal protection afforded by Article 14.¹⁰ You cannot justify custodial torture as a valid technique of investigation; the Constitution will not countenance public power that is based on caprice instead of legality.

2.3 Article 20(3): Protection Against Self-Incrimination

No person charged with an offence can be made to testify against himself – Article 20(3) is perhaps the most potent of the constitutional bulwarks against the kind of torture that happens in custody.¹¹ A system of justice that is any good would not tolerate confessions won by intimidation or physical force. This privilege keeps evidence voluntary and stops authorities from using improper means to put someone away.

The Supreme Court gave this provision a broad reading in *Nandini Satpathy v. P.L. Dani*.¹² It was held that the right to remain silent if your answers could lead to liability is not confined to the courtroom but holds during police questioning as well. The Court was clear that agencies cannot extract disclosure through coercion, be it physical or psychological. In doing so, it turned

⁸*Sunil Batra v. Delhi Administration* (Sunil Batra I), (1978) 4 SCC 494; *Sunil Batra v. Delhi Administration* (Sunil Batra II), (1980) 3 SCC 488.

⁹INDIA CONST. art. 14.

¹⁰*E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3; *Ajay Hasia v. Khalid Mujib Sehravardi*, (1981) 1 SCC 722.

¹¹INDIA CONST. art. 20(3).

¹²*Nandini Satpathy v. P.L. Dani*, (1978) 2 SCC 424.

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what might have been seen as a mere procedural formality into a real check on custodial abuse. Taken together, Articles 14 and 20(3) make it evident that the Constitution has no place for methods of investigation that are coercive or discriminatory. And yet one sees from the frequency of torture that these guarantees are often better observed in the courts than in the daily work of the police.¹³

2.4 Article 21: Right to Life and Personal Liberty

At the heart of the Constitution's protection from custodial torture is Article 21, which ensures that no one can be made to forfeit his life or personal liberty save in accordance with a procedure set by law.¹⁴ In this way it forms the bedrock of such protections. But the Supreme Court has not been content with a narrow reading; through its progressive interpretation it has given Article 21 a much wider scope. The "life" spoken of here is not an animal existence but one of dignity. As a result, the Court has come to see the article as covering everything from the right to legal aid and a fair investigation to humane treatment and freedom from torture. Any form of custodial torture, for whatever purpose, is therefore an unconstitutional infringement on a person's liberty and dignity.¹⁵

There is a firm understanding in the Court that those in police or judicial custody are still due the full measure of their fundamental rights, barring any lawful restrictions that come with detention. This places a heavy constitutional onus on the State to look after the well-being of its detainees. Should the State fall short of this duty, it becomes constitutionally answerable for any abuse or deaths under its watch.

2.5 Article 22: Safeguards Against Arbitrary Arrest

¹³Law Commission of India, 273rd Report on Implementation of "United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment" through Legislation (2017).

¹⁴INDIA CONST. art. 21.

¹⁵Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608; Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

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Article 22 is there to back up Article 21, putting in place procedural checks on arbitrary arrest and detention.¹⁶ It is a guarantee that an arrested man will be told why he is being held, can be defended by the lawyer of his choosing and will be brought before the nearest Magistrate in twenty-four hours. Such provisions are meant to put a stop to secret detentions and the kind of overreach on the part of the police.

Yet how well Article 22 works in practice is a matter of institutional good faith. If you have arrest procedures flouted or are denied counsel in the first few hours of custody, then what should be a shield against torture is reduced to a mere formality.¹⁷ For that reason, early judicial oversight is essential if constitutional liberties are to be preserved.

2.6 Judicial Expansion of Custodial Rights

The Supreme Court has seen fit to go beyond the letter of the statute in order to make constitutional rights into something the police must abide by when they are making an arrest or holding a detainee.¹⁸ Take the case of *D.K. Basu v. State of West Bengal*, where the Court laid down hard and fast rules on everything from medical exams to keeping in touch with family, all to curb custodial excesses.¹⁹ Or *Joginder Kumar v. State of Uttar Pradesh*, which made clear that an arrest cannot be done by rote and has to be a matter of necessity, not just statutory power.²⁰

Then there is *Nilabati Behera v. State of Orissa*, in which the Court held that compensation for a custodial death is a public law remedy that follows straight from an Article 21 violation, thus making the State accountable.²¹ And in *Sheela Barse v. State of Maharashtra*, the focus was on the need for humane treatment, of women prisoners in particular, and for safeguards against violence.²² All of which shows that even without an anti-torture statute on the books, judicial activism has put teeth into the Constitution's protections.

Critical Observation

¹⁶INDIA CONST. art. 22.

¹⁷*Joginder Kumar v. State of U.P.*, (1994) 4 SCC 260.

¹⁸*Sunil Batra v. Delhi Administration (Sunil Batra II)*, (1980) 3 SCC 488.

¹⁹*D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

²⁰*Joginder Kumar v. State of U.P.*, (1994) 4 SCC 260.

²¹*Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746.

²²*Sheela Barse v. State of Maharashtra*, (1983) 2 SCC 96.

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One could say that the constitutional defences against custodial torture are far more robust on paper than they are in the institution.²³ The Supreme Court has used purposive interpretation to build out a normative framework based on due process and equality. And yet you only have to look at the frequency of custodial deaths and torture to see the implementation gap. With prosecution of officials running behind schedule and oversight weak, there is little to speak of in the way of accountability. The prohibition on torture is largely theoretical. It would seem India's problem is not a lack of constitutional safeguards but the inability of its institutions to put them into practice.

3. Why Does Custodial Torture Continue? A Crisis of Institutional Design

3.1 Colonial Legacy of Policing

To make sense of why custodial torture endures in India, one has to look at the colonial underpinnings of the country's policing system, a structure that put State control ahead of any notion of individual rights.²⁴ The Police Act of 1861 was put in place right on the heels of the 1857 Revolt with a clear purpose: to build a force that could quash dissent and uphold imperial power, not to serve the citizenry. Even though India is now governed by a democratic Constitution with its attendant fundamental rights, the way policing is done on the ground has not shed much of this colonial DNA. You will still find an investigative ethos that puts a premium on obedience, force and getting a confession, leaving scientific rigour and constitutional accountability to take a back seat.²⁵

²³Law Commission of India, 273rd Report on Implementation of "United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment" through Legislation (2017); National Human Rights Commission, Annual Report (latest available edition).

²⁴Police Act, 1861; National Police Commission, First Report (1979).

²⁵Prakash Singh v. Union of India, (2006) 8 SCC 1; Second Administrative Reforms Commission, Fifth Report: Public Order (2007).

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It is true there have been statutory and constitutional advances, but they have not been enough to overhaul the model we inherited. Various commissions and expert panels have made it plain that police hierarchies are set up to reward those who can put away a conviction, not necessarily those who secure evidence in a strictly legal fashion. Coercive methods are thus seen as a convenient shortcut. In short, custodial torture is with us not simply because some officers break the law, but because the institution itself has not evolved far enough from its colonial past.²⁶

3.2 Confession-Oriented Criminal Investigation

The very culture of investigation in India is confession-driven and that is a major structural reason for custodial abuse.²⁷ You may have a legal system that will not count an involuntary confession as evidence, but success for an investigator is often judged by how quickly he can pin a suspect to a crime. That kind of pressure makes investigators favour a confession to the exclusion of more scientific approaches like forensics or financial tracing.

Article 20(3) of the Constitution is supposed to be a bulwark against self-incrimination and coercive questioning. Yet when your performance is measured by case disposal figures and not the quality of your work, torture is an expedient tool, not some aberration from proper procedure.²⁸ It erodes faith in the justice system and opens the door to wrongful prosecutions and false confessions. The fact that we still see such practices shows that constitutional ideals have yet to displace the institutional pull of expediency.

3.3 Institutional Culture of Police Impunity

²⁶National Police Commission, Eighth Report (1981).

²⁷INDIA CONST. art. 20(3); Indian Evidence Act, 1872, §§ 24–26 (corresponding provisions now reflected under the Bharatiya Sakshya Adhiniyam, 2023 regarding inadmissibility of involuntary confessions).

²⁸Nandini Satpathy v. P.L. Dani, (1978) 2 SCC 424; Law Commission of India, 273rd Report on Implementation of the United Nations Convention against Torture (2017).

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There is a simple reason custodial torture goes on: the authority of the institution outweighs its accountability.²⁹ An officer charged with violence in custody can expect to face off against procedural delays and departmental loyalty, with disciplinary action a long time coming. This breeds a feeling that you can get away with things in the course of an investigation. It is treated as an occupational hazard rather than a constitutional offence.

The Supreme Court has been at pains to point out that such abuses are a threat to the rule of law, but a court order will not change behaviour if the means of enforcement are wanting. An institution that does not mete out discipline for misconduct will come to see it as normal, and what was once an exception becomes the rule.³⁰

Put together, the colonial legacy, the drive for confessions and the lack of consequences paint a consistent picture. Custodial torture is a product of institutional incentives that prefer coercion to constitutional policing; it is not for want of guarantees.³¹ This imbalance is what allows the violence to persist, notwithstanding all the judicial intervention of recent decades.

3.4 Weak Accountability Mechanisms

Despite repeated judicial condemnation of custodial torture, institutional accountability mechanisms continue to suffer from structural weaknesses that significantly reduce the likelihood of meaningful consequences for offending officials.³² The effectiveness of any constitutional safeguard ultimately depends upon credible enforcement. However, disciplinary proceedings, criminal prosecution, and judicial processes frequently operate in isolation, resulting in fragmented accountability and prolonged impunity. This institutional deficiency weakens deterrence and reinforces the perception that custodial violence is an occupational hazard rather than a serious constitutional offence.

(a) Departmental Inquiries

²⁹D.K. Basu v. State of West Bengal, (1997) 1 SCC 416.

³⁰Joginder Kumar v. State of U.P., (1994) 4 SCC 260; Sunil Batra v. Delhi Administration (II), (1980) 3 SCC 488.

³¹Prakash Singh v. Union of India, (2006) 8 SCC 1; Law Commission of India, 273rd Report (2017).

³²Law Commission of India, 273rd Report on Implementation of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment through Legislation (2017).

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Departmental inquiries often fail to function as effective accountability mechanisms because they are conducted within the same institutional hierarchy whose conduct is under scrutiny.³³ Internal disciplinary proceedings frequently suffer from delays, limited transparency, and concerns regarding institutional bias. In several instances, allegations of custodial violence are treated as administrative misconduct rather than violations of fundamental rights, thereby reducing the seriousness with which such complaints are investigated. The absence of independent oversight further diminishes public confidence in these proceedings and contributes to a culture of organisational solidarity rather than institutional accountability.

(b) Criminal Prosecution Against Police Officers

The criminal prosecution of police personnel accused of custodial torture remains exceptionally difficult due to procedural barriers and evidentiary challenges.³⁴ Victims are often unable to produce direct evidence because the alleged acts occur within police custody, where independent witnesses are generally unavailable. Moreover, obtaining prosecution sanctions, prolonged investigations, and institutional reluctance to prosecute fellow officials frequently delay or weaken criminal proceedings. Consequently, constitutional remedies recognised by the judiciary seldom translate into effective criminal accountability against perpetrators.

(c) Delay in Trials

Judicial delay further undermines accountability by eroding evidence, discouraging victims, and diminishing the deterrent effect of criminal prosecution.³⁵ Prolonged trials often result in witness hostility, fading memories, procedural complications, and delayed justice for victims' families. The constitutional promise of an effective remedy loses practical significance when accountability is postponed for years after the alleged violation. Justice delayed in custodial violence cases therefore becomes justice substantially diluted.

3.5 Failure of Medical Documentation

³³National Human Rights Commission, Guidelines on Custodial Death/Rape Cases; Second Administrative Reforms Commission, Fifth Report: Public Order (2007).

³⁴D.K. Basu v. State of West Bengal, (1997) 1 SCC 416; Nilabati Behera v. State of Orissa, (1993) 2 SCC 746.

³⁵Hussainara Khatoon v. State of Bihar, (1980) 1 SCC 81; INDIA CONST. art. 21.

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Medical examination represents one of the most critical safeguards against custodial torture; however, its implementation frequently suffers from procedural deficiencies and inadequate independence.³⁶ Medical reports often fail to comprehensively document physical injuries, psychological trauma, or the consistency between alleged torture and clinical findings. Inadequate forensic documentation weakens subsequent criminal proceedings and significantly reduces the evidentiary value of medical records. International human rights standards, particularly the **Istanbul Protocol**, emphasise that independent and scientifically documented medical examinations are indispensable for investigating allegations of torture.³⁷ The continued absence of uniform forensic standards in custodial investigations therefore constitutes a significant institutional weakness.

3.6 Judicial Oversight: Promise versus Practice

The Indian judiciary has developed one of the most progressive constitutional jurisprudences against custodial torture; nevertheless, judicial oversight has not always translated into consistent institutional compliance.³⁸ Landmark decisions such as *D.K. Basu*, *Joginder Kumar*, and *Nilabati Behera* established comprehensive safeguards governing arrest, detention, compensation, and police accountability. Yet recurring instances of custodial violence demonstrate that judicial directives alone cannot reform investigative institutions without effective administrative implementation and legislative support. Courts possess constitutional authority to declare rights and prescribe safeguards, but they cannot continuously supervise day-to-day policing across the country. This implementation deficit illustrates that constitutional jurisprudence has often advanced more rapidly than institutional reform, leaving a persistent gap between judicial principles and policing practices.³⁹

3.7 Political Influence and Investigative Pressure

³⁶Sheela Barse v. State of Maharashtra, (1983) 2 SCC 96; National Human Rights Commission, Guidelines on Magisterial Inquiry into Custodial Death.

³⁷Office of the United Nations High Commissioner for Human Rights, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) (2022 Rev.).

³⁸D.K. Basu v. State of West Bengal, (1997) 1 SCC 416; Joginder Kumar v. State of U.P., (1994) 4 SCC 260.

³⁹Prakash Singh v. Union of India, (2006) 8 SCC 1; Law Commission of India, 273rd Report (2017).

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It is common for the independence of a criminal investigation to be compromised by political and administrative pressure, which in turn creates institutional incentives for coercive methods of policing.⁴⁰ When an officer is on a high-profile case, he is often put under the microscope of the public, the media and politicians to produce results without delay. This breeds a kind of performance-driven approach where a quick arrest or confession is taken as proof of efficiency. The upshot is that the constitutional rights of the accused are all too often put aside in favour of the institution's desire to wrap up a case promptly.

While the Supreme Court has made it plain that in a constitutional democracy the police must be professionally independent and politically neutral, there is not enough of a buffer against executive influence. As a result, what drives investigative priorities is external considerations, not constitutional duty. If you measure an institution by its conviction numbers and how it is perceived by the public instead of by fairness and legality, then custodial torture is to be expected as a by-product of that systemic pressure, not just as the work of a bad apple.⁴¹

3.8 Lack of Independent Investigative Agencies for Custodial Crimes

The Indian criminal justice system suffers from a major structural flaw: there is no independent body with sole charge of looking into claims of custodial death or torture.⁴² Typically, if allegations are levelled at a policeman, they are probed by someone from his own department or an agency within the same administrative fold. That is bound to raise questions about impartiality and erode public confidence.

You will find in other jurisdictions a growing acceptance that such matters require an investigator with operational autonomy from the police force. It brings transparency and better evidence, and the public can have more faith in the process. By continuing to rely on internal

⁴⁰Prakash Singh v. Union of India, (2006) 8 SCC 1; Second Administrative Reforms Commission, Fifth Report: Public Order (2007).

⁴¹National Police Commission, Eighth Report (1981); Law Commission of India, 273rd Report on Implementation of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment through Legislation (2017).

⁴²National Human Rights Commission, Guidelines on Custodial Death/Rape Cases; United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted Dec. 10, 1984, 1465 U.N.T.S. 85.

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mechanisms, India is undermining accountability and feeding the notion that the institution is more concerned with protecting its own than with constitutional rights.⁴³

3.9 The "Institutional Design" Thesis

We need to look at the problem of custodial torture from a different angle. The issue is not so much whether we have the right constitutional safeguards in place, but whether our institutions are set up to make them stick.⁴⁴ There is no ambiguity in the Indian constitution; between Articles 14, 20(3), 21 and 22 and the courts' reading of them, torture is roundly rejected. But the fact is that you cannot change institutional behaviour with norms alone when the underlying incentives are the same.

Police still work in an environment with weak discipline, poor forensics and little oversight, where getting a confession is easy and being held to account is not. So the shortcoming is in the institutional architecture meant to carry out the constitution's will, not in the design of the constitution itself.⁴⁵

Critical Analysis

To see custodial torture as nothing more than an individual officer's abuse is to miss the point. It is a systemic outcome of an organisation with flawed incentives and poor accountability.⁴⁶ Our courts have done their part in landmark rulings to enshrine dignity and procedural fairness, but a judicial pronouncement does not make a right meaningful on its own. You need legislative backing, administrative integrity and an institution willing to take those values to heart.

The Constitution has been clear in its prohibition of torture; it is the bodies charged with putting those guarantees into practice that have let us down time and again.⁴⁷ To call this a constitutional failure is an oversimplification. We will not be rid of custodial torture as a regular feature of

⁴³Office of the United Nations High Commissioner for Human Rights, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) (2022 Rev.).

⁴⁴INDIA CONST. arts. 14, 20(3), 21 & 22; D.K. Basu v. State of West Bengal, (1997) 1 SCC 416.

⁴⁵Prakash Singh v. Union of India, (2006) 8 SCC 1; Law Commission of India, 273rd Report (2017).

⁴⁶Nilabati Behera v. State of Orissa, (1993) 2 SCC 746; Joginder Kumar v. State of U.P., (1994) 4 SCC 260.

⁴⁷D.K. Basu v. State of West Bengal, (1997) 1 SCC 416; Sunil Batra v. Delhi Administration (II), (1980) 3 SCC 488; Law Commission of India, 273rd Report (2017).

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criminal investigations until we have truly independent accountability and until the system rewards compliance with the law over the expediency of a confession. India is facing an institutional design crisis that calls for structural reform, not more interpretation of the constitution.

4. Comparative Perspective: Lessons from International Jurisdictions

4.1 United Nations Framework

What began as a global ban on custodial torture has come to be seen as a non-derogable tenet of international human rights law. It is now recognised that no amount of national security concern, public emergency or criminal inquiry can ever warrant the use of torture.⁴⁸ To this end the UN has put in place an all-encompassing normative framework. This obliges States not only to make torture a crime and see that perpetrators are prosecuted, but also to guarantee independent inquiries and proper redress for those who have suffered it. Where domestic systems may rely on constitutional provisions to outlaw torture by way of implication, international law is more direct: it places a positive duty on States to put institutional safeguards in place to head off any abuse in custody before it happens.

UN Convention Against Torture (UNCAT)

The main treaty on the matter is the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁴⁹ Under its Article 1 one finds a thorough definition of the practice; Articles 2, 4, 12, 13 and 14 in turn demand that State Parties criminalise it, act with impartiality in their investigations, and see that victims are compensated and rehabilitated. The Convention is adamant that there is no room for defences based on superior orders, war or political unrest. India is a signatory to the Convention, having put its

⁴⁸Universal Declaration of Human Rights, G.A. Res. 217 A (III), U.N. Doc. A/810 (1948), art. 5.

⁴⁹United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted Dec. 10, 1984, 1465 U.N.T.S. 85.

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name to it in 1997, but it has not ratified it. That means the instrument has yet to be given direct legislative force in the country's own legal system.⁵⁰

International Covenant on Civil and Political Rights (ICCPR)

Freedom from torture is treated as a fundamental right under the ICCPR, one from which there can be no derogation.⁵¹ With Article 7 leaving no doubt about the prohibition on cruel or degrading treatment, and Article 9 offering protection from arbitrary detention, the Covenant demands that criminal justice be conducted with procedural fairness and judicial oversight. For a State Party such as India, there is an international onus to bring its laws and institutions into line with these minimum standards.⁵²

Nelson Mandela Rules

Then there are the Nelson Mandela Rules – the UN's standard minimums for the treatment of prisoners.⁵³ They set out what is acceptable when dealing with persons deprived of their liberty, calling for respect for dignity, medical checks, an open book on injuries and accountability for any misconduct in custody. While they do not carry the weight of binding law, they are persuasive enough to be making their mark on the courts and human rights bodies in democratic nations.

India's Position under International Law

You will find the spirit of international human rights instruments in much of India's constitutional jurisprudence, but without a statute to comprehensively address anti-torture, there is a chasm between what is committed to on the world stage and what is done at home.⁵⁴ The Supreme Court has been quick to invoke international principles to give greater breadth to Articles 21 and 22, yet the legislature has been slow to follow suit. There is still no clear

⁵⁰Law Commission of India, 273rd Report on Implementation of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment through Legislation (2017).

⁵¹International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, 999 U.N.T.S. 171, arts. 7 & 9.

⁵²Vishaka v. State of Rajasthan, (1997) 6 SCC 241 (recognising the relevance of international conventions in interpreting fundamental rights where domestic law is not inconsistent).

⁵³United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), G.A. Res. 70/175, U.N. Doc. A/RES/70/175 (2015).

⁵⁴D.K. Basu v. State of West Bengal, (1997) 1 SCC 416; Law Commission of India, 273rd Report (2017).

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statutory definition of torture or the kind of victim-focused remedies one would expect. In the end, India's stand against custodial torture is more evident in how the judiciary interprets the constitution than in what has been put on the statute books.

4.2 United Kingdom

In the United Kingdom, a thorough legal and institutional apparatus has been put in place to forestall custodial torture. The emphasis is on accountability, independent oversight and procedural safeguards as the best way to do this.⁵⁵ The British approach is quite different from systems that wait for a violation to happen before the judiciary steps in; here, statutory regulation and unrelenting institutional supervision are used to head off abuse at every point of police custody.

At the heart of these custodial protections is the Police and Criminal Evidence Act of 1984 (PACE).⁵⁶ With its detailed provisions and Codes of Practice, PACE is the cornerstone of the UK system, governing everything from arrest and detention to search, interrogation and the rights of those in custody. A detainee can expect to be told why he or she is being held, to have access to a solicitor and medical care if needed, to put a relative or friend in the picture, and to have the lawfulness of the detention put to the test from time to time. By keeping a close procedural eye on the powers of the police, these measures go a long way towards removing any chance of coercive interrogation.⁵⁷

Then there is the matter of accountability, which the UK bolsters with independent oversight to look into claims of police misconduct apart from the police themselves.⁵⁸ This kind of institutional separation does much to allay public concern and avoid conflicts of interest, lending greater credibility to any probe into custodial abuse. For India, the take-home message from the British case is clear: you cannot depend on judicial remedies alone to uphold constitutional rights; they need to be enforced by the institution via transparent procedures, mandatory records and civilian oversight.

⁵⁵Police and Criminal Evidence Act 1984 (U.K.); European Convention on Human Rights, art. 3.

⁵⁶Police and Criminal Evidence Act 1984 (U.K.), Parts IV & V; Codes of Practice C & H.

⁵⁷Police and Criminal Evidence Act 1984 (U.K.), Code C; Human Rights Act 1998 (U.K.).

⁵⁸Police Reform Act 2002 (U.K.); Independent Office for Police Conduct, Statutory Guidance.

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4.3 South Africa

You will find one of the most robust constitutional defences against torture in South Africa, where human dignity and personal security are written into the very fabric of the post-apartheid constitution.⁵⁹ Section 12 makes it plain that no one is to be subjected to torture or any form of cruel or degrading punishment. This is an explicit constitutional right, not something that has to be read into Article 21 by way of judicial interpretation as is done in India.

To give teeth to that guarantee, the 2013 Prevention and Combating of Torture of Persons Act was passed.⁶⁰ It follows the UN Convention Against Torture in criminalising the act and sets out penalties for those who do it. Public officials are made liable if they partake in or enable torture and superior orders are not an acceptable defence. With such a precise definition and the full weight of criminal sanction behind it, South Africa has built a level of institutional accountability that goes well beyond what the constitution says on its own.⁶¹

The courts have been equally insistent that the State has a duty to stop custodial abuse and deal with allegations in an even-handed way. And with bodies like the Independent Police Investigative Directorate (IPID) looking into serious cases of misconduct outside the normal chain of command, there is less room for bias.⁶² What the South African example shows is that when you back up your constitutional promises with dedicated legislation and put clear obligations on law enforcement, you get far more effective results.

4.4 Comparative Analysis

When you put the frameworks of India, the United Kingdom, South Africa and the United Nations side by side for a comparative evaluation, what stands out is not any difference in the

⁵⁹Constitution of the Republic of South Africa, 1996, § 12.

⁶⁰Prevention and Combating of Torture of Persons Act, 2013 (South Africa), §§ 3–5.

⁶¹United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted Dec. 10, 1984, 1465 U.N.T.S. 85; Prevention and Combating of Torture of Persons Act, 2013 (South Africa).

⁶²Independent Police Investigative Directorate Act, 2011 (South Africa); Constitution of the Republic of South Africa, 1996, § 206.

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constitutional standing of human dignity but rather the institutional means put in place to give that recognition teeth.⁶³

Take India for instance. Its constitution is replete with safeguards for equality, personal liberty, procedural fairness and protection from self-incrimination under Articles 14, 20(3), 21 and 22. Yet in the absence of a specific anti-torture law that would define torture as a separate criminal act or set up specialised investigative bodies, these protections are left to be made good on by judicial interpretation.

The approach in the United Kingdom is quite different. It has put in place a preventive model that curbs police behaviour with the kind of detailed statutory safeguards found in the Police and Criminal Evidence Act of 1984, and backs this up with independent institutions to look into any claims of misconduct.⁶⁴ By having constant procedural oversight, the UK system leaves little room for custodial abuse, something India's post-violation judicial remedies cannot do.

South Africa has done much the same in turning its constitutional promises into hard legislative fact. With the Prevention and Combating of Torture of Persons Act (2013), it has made torture an express crime using internationally recognised definitions and has put in place mechanisms for independent accountability.⁶⁵ Where India has to derive its anti-torture stance from the courts' reading of Article 21, South African law offers a degree of statutory certainty when it comes to liability and victim protection.

Then there is the UN framework. Whether it is the UNCAT, the ICCPR or the Nelson Mandela Rules, the intent is to be preventive, not reactive. These instruments make it clear that States must criminalise torture, see to it that investigations are prompt and impartial and offer proper rehabilitation to victims.⁶⁶ The underlying assumption is that you cannot stop custodial violence with constitutional declarations alone; you need the backing of legislation and accountability.

⁶³Law Commission of India, 273rd Report on Implementation of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment through Legislation (2017).

⁶⁴Police and Criminal Evidence Act 1984 (U.K.); Police Reform Act 2002 (U.K.).

⁶⁵Constitution of the Republic of South Africa, 1996, § 12; Prevention and Combating of Torture of Persons Act, 2013 (South Africa).

⁶⁶United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted Dec. 10, 1984, 1465 U.N.T.S. 85; International Covenant on Civil and Political Rights, adopted Dec. 16,

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Key Comparative Findings

What the evidence shows is that while constitutional guarantees are essential, they will not in themselves put an end to custodial torture without the support of special laws and agencies to hold people to account.⁶⁷ The UK and South Africa have seen fit to make their constitutional principles matters of statute. India has not, and instead has leaned on judicial activism. That may have enriched the country's human rights jurisprudence, but it has not fixed the structural shortcomings of the criminal justice system.

In the end, the lesson from international practice is that preventing torture is less about recognising your constitutional rights and more about having the right institutions to enforce them.⁶⁸ India's position on the matter is well enough known, but until it enacts proper anti-torture legislation and ensures greater institutional accountability, those constitutional guarantees will remain normative aspirations for the most part.

5. Should India Enact a Dedicated Anti-Torture Law?

5.1 Existing Legal Framework

In India, custodial violence is met with an array of constitutional guarantees, criminal statutes and procedural checks, not to mention judicial precedents. And yet the present system has its blind spots: it does not view torture as a separate, autonomous crime, which in turn leaves wide legislative and institutional gaps when it comes to accountability.⁶⁹

The passage of the Bharatiya Nyaya Sanhita (BNS), the Bharatiya Nagarik Suraksha Sanhita (BNSS) and the Bharatiya Sakshya Adhinyam (BSA) in 2023 has brought some modernisation to the criminal justice apparatus. But for all that, none of these new laws offer a full-throated definition of custodial torture or put in place a statutory regime to see its investigation and prosecution through.

1966, 999 U.N.T.S. 171; United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), G.A. Res. 70/175 (2015).

⁶⁷Vishaka v. State of Rajasthan, (1997) 6 SCC 241; D.K. Basu v. State of West Bengal, (1997) 1 SCC 416.

⁶⁸Prakash Singh v. Union of India, (2006) 8 SCC 1; Law Commission of India, 273rd Report (2017).

⁶⁹Law Commission of India, 273rd Report on Implementation of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment through Legislation (2017).

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Under the BNS you will find criminalisation of voluntarily causing hurt, wrongful confinement or culpable homicide, and such provisions can be made to apply to cases of custodial violence.⁷⁰ In a sense they are on point, but what they do is punish the after-effects of the violence. They do not treat torture for what it is – a distinct abuse of power by the State. To prosecute it as a general offence is to miss the particular human rights and constitutional issues at play.

Then there is the BNSS, which underpins the protections of Articles 21 and 22 with its procedural rules on everything from arrest and detention to being produced before a Magistrate.⁷¹ But one cannot expect procedure alone to put an end to torture if the institutions charged with following the rules are in the habit of flouting them and face little consequence. How well the law works in practice is only as good as the implementation by those very bodies.

As for the Bharatiya Sakshya Adhiniyam, it upholds the old rule that a court will have no use for a confession wrung out by coercion or inducement.⁷² This may keep forced confessions off the table at trial, but it is not a mechanism to investigate claims of abuse nor does it make torture a crime in its own right. The framework is concerned with whether evidence is admissible, not with stopping the unlawful means of getting it.

Put simply, the flaw in India's legal setup is not a want of safeguards but the lack of a specialised anti-torture law that would bring together criminal liability, victim protection and independent inquiry in one place.⁷³ The courts have been inventive in stretching individual rights, but jurisprudence is no permanent fix for what should be legislative certainty.

5.2 Prevention of Torture Bill: Legislative History

Parliament was aware of these shortcomings and in 2010 put forward the Prevention of Torture Bill to put India in line with its duties under the UN Convention Against Torture.⁷⁴ The Lok

⁷⁰Bharatiya Nyaya Sanhita, 2023 (relevant provisions relating to hurt, grievous hurt, wrongful confinement, culpable homicide and offences by public servants).

⁷¹Bharatiya Nagarik Suraksha Sanhita, 2023 (provisions relating to arrest, detention, medical examination and production before Magistrate); INDIA CONST. arts. 21 & 22.

⁷²Bharatiya Sakshya Adhiniyam, 2023 (provisions governing the inadmissibility of involuntary confessions); INDIA CONST. art. 20(3).

⁷³D.K. Basu v. State of West Bengal, (1997) 1 SCC 416; Nilabati Behera v. State of Orissa, (1993) 2 SCC 746.

⁷⁴Prevention of Torture Bill, 2010; Rajya Sabha Select Committee on the Prevention of Torture Bill, 2010, Report (2010).

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Sabha gave it its nod, but the Rajya Sabha Select Committee had other ideas, pointing to major problems with the way the Bill defined torture, handled command responsibility and compensation for victims. In the end the matter lapsed. So for all the talk in the legislature and the concern shown by the judiciary, India is still without a statute to properly deal with custodial torture.

5.3 Law Commission Recommendations

In its 273rd Report the Law Commission of India made its position plain: we need dedicated legislation.⁷⁵ It called for a law that would hold public officials to account and provide for victim compensation and effective investigation, using definitions the rest of the world accepts. The Commission felt that what we have in the way of penal provisions and constitutional guarantees is not enough to meet our international obligations. Its recommendation was for a law that could head off custodial violence by making institutions answer for it, instead of having to wait for a judicial remedy once the damage is done.

5.4 Arguments Supporting a Dedicated Anti-Torture Law

One can no longer view the passing of a full-fledged Anti-Torture Act as simply a matter of legislative taste; it has become a constitutional imperative.⁷⁶ To be sure, the courts have done much to widen the scope of fundamental rights protection, but constitutional jurisprudence is not a substitute for a statutory framework that spells out what constitutes torture, assigns institutional duties and puts in place means of enforcement. There are ambiguities in the current system that only dedicated legislation can put to rest – by offering a precise definition of torture as an abuse of public authority, setting it apart from run-of-the-mill offences like hurt or wrongful confinement.⁷⁷

⁷⁵Law Commission of India, 273rd Report on Implementation of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment through Legislation (2017).

⁷⁶Law Commission of India, 273rd Report on Implementation of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment through Legislation (2017).

⁷⁷United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted Dec. 10, 1984, 1465 U.N.T.S. 85, art. 1.

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Then there is the matter of who investigates claims of custodial torture. It is hard to maintain public faith in the criminal justice process when an inquiry is carried out within the very same police hierarchy. An Anti-Torture Act ought to require an autonomous body, free from institutional pressure, to handle such allegations.⁷⁸

Victims deserve more than just a remedy after the fact. Torture leaves its mark in ways that go beyond the physical, with long-term social, economic and psychological repercussions. A proper Act would set up a framework for compensation and rehabilitation as a matter of right, instead of making victims rely on constitutional litigation under Articles 32 or 226.⁷⁹ It should also bring in the doctrine of command responsibility to hold supervisory officers to account if they condone or turn a blind eye to such abuses, thereby instilling better administrative discipline.

On top of this, we need statutory protections for witnesses, medical staff and complainants so they are not intimidated during trial.⁸⁰ The law should make a point of mandating audio-visual recording of interrogations, CCTV in all custody facilities and digital registers to ensure there is no question about the evidence. And to stop the kind of procedural delays that erode confidence in accountability, any allegation must be investigated and tried within a set time frame. In short, these provisions would see us move away from a reactive approach to one of prevention and transparency.

5.5 Counter Arguments

There are those who would say a separate piece of legislation is superfluous given the constitutional safeguards and judicial precedents already in place.⁸¹ The argument runs that between the Bharatiya Nyaya Sanhita and the procedural cover of the Bharatiya Nagarik Suraksha Sanhita, along with remedies under Articles 32 and 226, the courts have ample power to deal with custodial violence. Some critics even warn that an exclusive anti-torture statute could open the door to frivolous complaints against honest officers and hamper their work.

⁷⁸Prakash Singh v. Union of India, (2006) 8 SCC 1; Police Reform Act 2002 (U.K.) (independent oversight model).

⁷⁹Nilabati Behera v. State of Orissa, (1993) 2 SCC 746; INDIA CONST. arts. 32 & 226.

⁸⁰Witness Protection Scheme, 2018, approved in Mahender Chawla v. Union of India, (2019) 14 SCC 615.

⁸¹Bharatiya Nyaya Sanhita, 2023; Bharatiya Nagarik Suraksha Sanhita, 2023; D.K. Basu v. State of West Bengal, (1997) 1 SCC 416.

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These are concerns worth hearing, yet they do not square with the reality that custodial torture has persisted for decades notwithstanding our constitutional case law. The very fact that we keep seeing such violence is proof that the problem is not with the absence of provisions but with how effectively they are applied.

5.6 Author's Critical Position

It is my submission that India needs a comprehensive Anti-Torture Act because no amount of progressive jurisprudence can stand in for legislative certainty and accountability.⁸² The Constitution is quite unambiguous in its prohibition of torture via Articles 14, 20(3), 21 and 22, and the Supreme Court has made its position clear in numerous rulings. But where you do not have independent oversight or a statutory obligation, those rights are left open to vulnerability.

Enacting such a law is not about inventing new rights but about delivering on the promises the Constitution has already made. It would put domestic law in line with international standards and give the public greater trust in our institutions. So the issue before India is not whether custodial torture is unconstitutional; the real question is whether the State has the will to back its constitutional morality with effective governance.⁸³

6. Recommendations for Institutional Reform

You need only look at the continued prevalence of custodial torture to see that constitutional guarantees are no match for systemic abuse without some form of deep institutional reform. For this reason, India has to put in place a model of preventive accountability – one that is built on transparency and professional policing with independent oversight, not just the judicial remedies that come after the fact.⁸⁴ The reforms we would recommend are as follows:

6.1 Enact a Comprehensive Anti-Torture Legislation

⁸²Law Commission of India, 273rd Report (2017); *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

⁸³*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248; *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

⁸⁴Law Commission of India, 273rd Report on Implementation of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment through Legislation (2017).

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Parliament ought to pass its own legislation to this end. An Anti-Torture Act should be drawn up along the lines of the United Nations Convention Against Torture,⁸⁵ making public officials criminally liable and providing for victim compensation and rehabilitation, among other procedural safeguards.

6.2 Independent Custodial Death Investigation Authority

To put an end to institutional bias and restore the public's faith in criminal investigations, any claim of custodial death or torture must be probed by a statutory body answerable to no one in the police chain of command.⁸⁶

6.3 Mandatory CCTV and Digital Recording of Interrogations

There should be no room for coercive tactics. We propose that all police stations have compulsory CCTV and digital custody registers, and that interrogations be audio-visual recorded as a matter of course to preserve evidence and ensure openness.⁸⁷

6.4 Police Training Based on Human Rights Standards

The way the police are trained needs to change. By focusing on forensic techniques, scientific methods and international human rights norms, you can make professional competence the order of the day instead of the old confession-oriented style of policing.⁸⁸

6.5 Strengthening Judicial Monitoring

When it comes to remand proceedings, Judicial Magistrates should be more hands-on in their scrutiny of detainees for any sign of physical or psychological harm, making sure the constitutional and statutory rules are followed to the letter.⁸⁹

⁸⁵United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted Dec. 10, 1984, 1465 U.N.T.S. 85.

⁸⁶Prakash Singh v. Union of India, (2006) 8 SCC 1; National Human Rights Commission, Guidelines on Custodial Death/Rape Cases.

⁸⁷Paramvir Singh Saini v. Baljit Singh, (2021) 1 SCC 184.

⁸⁸Second Administrative Reforms Commission, Fifth Report: Public Order (2007); National Police Commission, Eighth Report (1981).

⁸⁹D.K. Basu v. State of West Bengal, (1997) 1 SCC 416; INDIA CONST. arts. 21 & 22.

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6.6 Forensic Documentation of Torture

Medical exams of those in custody must be done in accordance with recognised standards like the Istanbul Protocol so that any injuries, whether of mind or body, are properly documented for an independent investigation.⁹⁰

6.7 Witness and Whistle-blower Protection

Those who come forward with reports of custodial torture, be they victims, medics or whistle-blowers, deserve full statutory protection from the kind of intimidation and harassment they might face from the system during a trial.⁹¹

6.8 Institutional Accountability Framework

And finally, accountability cannot stop at the individual; it must reach the public authorities and supervisory officers who turn a blind eye to or cover up such torture.⁹² India's criminal justice system should be subject to permanent legislative oversight, public reporting and regular audits. It is only with these structural changes that what are now merely normative ideals in the constitution can be made an enforceable reality.

7. Conclusion

We have set out in this study to address two basic questions: the reasons custodial torture endures in the face of constitutional guarantees, and if India is in need of its own Anti-Torture law. Our analysis shows that one cannot point to any shortcoming in the constitutional framework for the ongoing problem of custodial torture. On the contrary, a strong architecture for the protection of dignity and procedural fairness is in place, underpinned by Articles 14, 20(3), 21 and 22 and given further weight by the courts in such cases as D.K. Basu, Nilabati Behera and Joginder Kumar. Yet for all these safeguards, there has been no corresponding consistency in institutional compliance.

⁹⁰Office of the United Nations High Commissioner for Human Rights, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) (2022 Rev.).

⁹¹Mahender Chawla v. Union of India, (2019) 14 SCC 615; Witness Protection Scheme, 2018

⁹²Law Commission of India, 273rd Report (2017); Nilabati Behera v. State of Orissa, (1993) 2 SCC 746.

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A look at the United Nations, the U.K. and South Africa makes it plain that simply having constitutional recognition does not stop custodial violence. Those jurisdictions that have put in place specialised anti-torture statutes and independent bodies to hold institutions to account have done a far better job of making human rights principles into something legally enforceable. By depending on judicial intervention and constitutional remedies without the necessary legislative or institutional overhaul, India has left an implementation gap where abuse can continue.

This paper's central argument stands: the torture we see in Indian custody is not a sign of constitutional failure so much as it is of an institutional design that lets impunity slide and puts confession-driven policing ahead of proper investigation, eroding public faith in the rule of law. While our jurisprudence has laid down the norms for human dignity, it is no permanent substitute for legislative certainty.

The conclusion is clear. India should pass a full-fledged Anti-Torture Act and back it with structural police reform, scientific methods of investigation and oversight that is truly robust. These are not new rights being created but existing ones made to work. It is only by putting constitutional values into the daily practice of policing that the liberty and justice promised by the Constitution will be more than an aspiration for those in the State's custody.