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Increasing Custodial Deaths and Police Torture: The Case for A Comprehensive Anti-Torture Statute in India

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Custodial violence, including torture, inhuman treatment, and custodial death, remains one of the gravest and most persistent human-rights concerns in India. Despite a constitutional framework that guarantees the right to life and liberty, entrenched judicial safeguards, a substantial body of case law, and repeated recommendations from committees and human-rights institutions, the prevalence of torture within police and prison custody has shown no meaningful decline. The structural causes of custodial violence are deeply embedded in investigative practices, lack of institutional accountability, ineffective oversight mechanisms, and an entrenched culture of impunity facilitated by statutory immunities and weak procedural requirements. The normative prohibition against torture in Indian law has remained largely implicit, derived through judicial interpretation of Article 21, rather than through an explicit statutory prohibition. This article examines the constitutional, statutory, and judicial landscape governing custodial violence, and interrogates the reasons for India's failure to enact an anti-torture statute despite being a signatory to the United Nations Convention against Torture. The paper argues that procedural guidelines, however meticulously articulated, cannot substitute for substantive criminalisation, independent investigative mechanisms, and structural safeguards for detainee protection. Drawing upon comparative perspectives, doctrinal scholarship, and international obligations, the article demonstrates that the absence of a dedicated law not only undermines justice for victims but also weakens the legitimacy of State authority. Finally, the article proposes core elements of a model Prevention of Torture Act, identifying institutional reforms, oversight structures, evidentiary rules, victim-centred remedies, and accountability mechanisms necessary to align India with international human-rights standards and constitutional morality.

Keywords: *custodial death, torture, police accountability, due process, constitutionalism.*

INTRODUCTION

Custodial violence has long been acknowledged as one of the most disturbing manifestations of State power in India. The criminal justice system, which is constitutionally obligated to protect individual liberty, simultaneously becomes the site at which that liberty is most severely violated. When the State assumes physical control over an individual through arrest, detention, or imprisonment, it also assumes an absolute duty to safeguard life and bodily integrity.[1] Torture and custodial deaths thus represent the most extreme failures of constitutional governance, where the State not only neglects its protective obligation but becomes the perpetrator of violence.

The persistence of custodial torture is not a new phenomenon. The National Police Commission observed as early as 1980 that torture formed a routine part of police investigations.[2] Four decades later, despite technological, procedural and institutional reform proposals, the NCRB continues to report regular custodial deaths, allegations of assault, and patterns consistent with systemic impunity.[3] Judicial interventions, however path-breaking, have been episodic and insufficient to dismantle entrenched practices. Landmark decisions such as D K Basu v State of West Bengal established crucial arrest and interrogation safeguards, but their implementation has been uneven, and accountability for violations remains weak.[4]

Moreover, the normative framework governing torture in India is fragmented and underdeveloped. The Constitution does not expressly prohibit torture; instead, courts have interpreted Article 21[5] to include protection against cruel, inhuman, or degrading treatment.[6] While insightful and progressive, such an interpretation cannot fully substitute for explicit statutory criminalisation, which is the norm in jurisdictions committed to preventing custodial abuse. Penal provisions addressing 'hurt', 'grievous hurt', or 'culpable homicide'

[1] *Francis Coralie Mullin v Administrator, Union Territory of Delhi & Ors* AIR 1981 SC 746
[2] *Second Report on Police Welfare* National Police Commission (1997)
[3] *Prison Statistics India (PSI) 2023* NCRB (2023)
[4] *Shri D K Basu, Ashok K Johri v State of West Bengal, State of U P* (1997) 1 SCC 416
[5] Constitution of India 1950, art 21
[6] *Sunil Batra Etc v Delhi Administration & Ors Etc* AIR 1978 SC 1675

under the IPC fail to capture the specific gravity of torture committed by State officials, nor do they address psychological torture, threats, intimidation, or coercive interrogation techniques.[7]

Another major issue is the systemic absence of independent investigative mechanisms. When police investigate allegations against their own colleagues, structural bias is inevitable.[8] The lack of mandatory judicial inquests, independent medical examinations, and forensic protocols further weakens transparency. These deficiencies create an environment in which torture can flourish unpunished, reinforcing a cycle of abuse.

Internationally, India's position appears increasingly anomalous. As a signatory to the UN Convention against Torture, India has repeatedly affirmed its commitment to eliminating custodial violence, yet Parliament has failed to enact legislation necessary for ratification.[9] The Prevention of Torture Bills of 2010 and 2017 represented important steps but were ultimately shelved, leaving the legal landscape unchanged.[10] While the Law Commission in 2017 strongly recommended criminalisation of torture and proposed draft legislation, no substantial action followed. India's global stance thus reflects a contradiction: an outward commitment to human-rights standards without corresponding domestic enforcement.

A scholarly examination of custodial violence must distinguish between episodic incidents and systemic torture. The latter arises not from isolated misconduct but from institutional design, including reliance on confession-based investigation, inadequate training in scientific policing, hierarchical pressures to 'solve' cases, and immunity-granting procedures such as Section 197 CrPC.[11] These structural deficits allow torture to be perceived as a practical shortcut rather than a constitutional violation.

Further, the lack of transparency in custodial spaces, such as police stations, lock-ups, transit custody, interrogation cells, and prisons, creates a culture of invisibility. In India, custodial spaces have been historically shielded from external scrutiny, giving rise to what scholars

[7] Indian Penal Code 1860, ss 330 and 331
[8] Terry Lamboo, 'Police misconduct: Accountability of internal investigations' (2010) 23(7) International Journal of Public Sector Management <https://www.researchgate.net/publication/235300005_Police_misconduct_Accountability_of_internal_investigations> accessed 25 December 2025
[9] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984
[10] Prevention of Torture Bills 2010
[11] Code of Criminal Procedure 1973 s 197

term a 'culture of opacity.' In this vacuum of oversight, detainees' vulnerability becomes absolute.

Critically, the victims of custodial violence disproportionately belong to marginalised communities: Dalits, Adivasis, religious minorities, migrant labourers, daily-wage earners, and the urban poor. These groups often lack access to legal representation, awareness of rights, or public visibility. The intersection of poverty, caste, and policing practices creates a heightened risk of abuse, making custodial torture not only a criminal-justice issue but a social-justice concern.

The introduction of technology, such as CCTV installation mandated by the Supreme Court, has been inconsistent across states, with significant gaps in compliance.[12] Even where CCTV exists, footage is often unavailable, inaccessible, or tampered with. Without strict statutory obligations governing data preservation and independent auditing, technological reforms remain symbolic rather than substantive.

Given these limitations, scholars, commissions, and human-rights bodies unanimously argue for a comprehensive Anti-Torture Law that:

- Defines torture in line with international standards;
- Imposes criminal liability directly upon State actors;
- Mandates an independent investigation;
- Incorporates evidentiary presumptions against police when a detainee is injured in custody;
- Ensures victim-centred remedies;
- Strengthens forensic and medical safeguards;
- Mandates transparency in custodial spaces; and
- Establishes independent oversight bodies with monitoring powers.

This article argues that such a law is not merely desirable but constitutionally necessary. A failure to criminalise torture undermines the legitimacy of the Indian State as a constitutional democracy and weakens the rule of law. The remainder of this article examines the doctrinal,

[12] *Paramvir Singh Saini v Baljit Singh* AIR 2021 SC 64

institutional, comparative, and international framework in detail, leading to a set of structured recommendations for statutory reform.

CONSTITUTIONAL ARCHITECTURE GOVERNING CUSTODIAL VIOLENCE

The Indian constitutional framework provides a robust normative foundation for the protection of persons in custody, even though it does not contain an explicit prohibition of torture. The central guarantee is Article 21,[13] which states that 'No person shall be deprived of his life or personal liberty except according to procedure established by law.'[14] The Supreme Court has interpreted this clause not merely as a procedural safeguard but as the cornerstone of substantive due process. In Maneka Gandhi v Union of India, the Court famously held that the 'procedure' under Article 21 must be 'fair, just and reasonable,' thereby introducing a substantive rights dimension.[15]

Through a series of decisions, the judiciary has expanded Article 21 to include freedom from custodial violence. In Sunil Batra v Delhi Administration, the Court held that torture of prisoners constitutes a violation of Article 21, emphasising that prison walls do not separate incarcerated individuals from constitutional protections.[16] This interpretation reinforces the idea that the State's obligation is heightened, not diminished, once liberty is curtailed through detention. This doctrinal foundation has been repeatedly upheld in cases involving interrogation practices, prison conditions, and custodial deaths.

Article 20(3), which prohibits compelled self-incrimination, is also directly relevant to custodial torture. The use of coercive interrogation techniques to extract confessions violates both the letter and spirit of this guarantee.[17] Although confessions extracted under torture are inadmissible under the Evidence Act, the absence of statutory provisions defining or criminalising torture leads to evidentiary uncertainties and weakens the deterrence effect.

Further reinforcement is provided by Article 22, which mandates that a detainee must be informed of the reasons for arrest and produced before a magistrate within twenty-four hours.[18] The magistracy is intended to function as a crucial check on arbitrary detention, but

[13] Constitution of India 1950, art 21
[14] *Ibid*
[15] *Maneka Gandhi v Union of India* AIR 1978 SC 597
[16] *Sunil Batra Etc v Delhi Administration & Ors Etc* AIR 1978 SC 1675
[17] Constitution of India 1950, art 20(3)
[18] Constitution of India 1950, art 22

in practice, routine remand orders and a lack of scrutiny often dilute the safeguarding purpose of Article 22. Despite these constitutional guarantees, the absence of explicit statutory criminalisation of torture renders the framework incomplete. Interpretation alone, however progressive, cannot fill the legislative vacuum. The constitutional architecture offers rights, but without statutory mechanisms, the enforcement of those rights remains inconsistent.

STATUTORY GAPS IN THE CRIMINAL LAW FRAMEWORK

The primary hurdle in prosecuting custodial torture in India is the absence of a distinct statutory offence. Torture is not expressly defined under the Indian Penal Code (IPC), leaving prosecutors to rely on generic provisions such as causing 'hurt', 'grievous hurt', 'wrongful confinement', or, in extreme cases, culpable homicide.[19] These provisions fail to capture the specific gravity and asymmetry inherent in State-inflicted torture. The IPC does not reflect the qualitative difference between violence committed by private individuals and that inflicted by agents of the State who control the victim's mobility, environment, and bodily integrity.

Sections 330 and 331 IPC are the closest provisions addressing torture-like conduct, penalising hurt or grievous hurt inflicted to extract a confession.[20] However, these sections are rarely invoked, partly because the evidentiary burden on the prosecution is high, and partly because the police often control the chain of evidence. The statutory framework also does not recognise psychological torture threats, intimidation, sleep deprivation, humiliation, or coercive interrogation despite their severe impact on detainees.

Section 197 of the Code of Criminal Procedure (CrPC) poses another significant barrier by requiring prior sanction of the government before prosecuting public servants for acts done 'in the discharge of official duty.'[21] While originally intended to protect honest officials from frivolous prosecution, courts have interpreted this protection broadly, making accountability extremely difficult in custodial violence cases. The requirement of sanction creates a structural disincentive to prosecute police officers, thereby reinforcing impunity.

[19] Indian Penal Code 1860, ss 319–338
[20] Indian Penal Code 1860, ss 330 and 331
[21] Code of Criminal Procedure 1973, s 197

Inquiries into custodial deaths are governed by Section 176(1A) CrPC, which mandates a judicial inquiry in cases of death, disappearance, or rape in police custody.[22] However, ground-level implementation remains inconsistent. Magistrates frequently lack the independence, training, or resources to conduct meaningful inquiries. Furthermore, many inquiries rely heavily on police-generated documentation, such as station diaries or medical reports created under the supervision of the accused institution.

The absence of statutory protocols for forensic documentation, including independent post-mortems, video-recorded autopsies, and mandatory injury documentation, further weakens the reliability of evidence. The Ministry of Home Affairs introduced guidelines for videography of post-mortems in 2020, but without legislative backing, compliance remains patchy. Ultimately, the statutory framework reflects a paradox: the Indian legal system formally prohibits unlawful detention and physical assault, yet lacks tailored mechanisms to address the specific and grave phenomenon of custodial torture.

JUDICIAL DEVELOPMENTS: GUIDELINES WITHOUT ENFORCEMENT

Judicial intervention in India has been extensive, evolving through decades of jurisprudence that have repeatedly criticised police brutality. The most influential development is D K Basu v State of West Bengal, where the Supreme Court laid down eleven mandatory guidelines governing arrest and detention, including the preparation of arrest memos, notification to relatives, medical examinations, and maintenance of custody registers.[23] These guidelines represented a transformative moment in custodial jurisprudence, recognising that legal safeguards must be operational to protect human dignity.

However, despite the doctrinal importance of D K Basu, implementation remains inconsistent. Empirical studies show that police stations across several states maintain outdated documentation, fail to conduct timely medical examinations, or deliberately omit procedural steps to conceal misconduct. The absence of statutory penalties for non-compliance further trivialises the guidelines. Courts can award compensation or direct departmental action, but without a criminal offence of torture, accountability remains diluted.

[22] Code of Criminal Procedure 1973, s 176(1A)
[23] *Shri D K Basu, Ashok K Johri v State of West Bengal, State of U P* (1997) 1 SCC 416

In Joginder Kumar v State of Uttar Pradesh, the Supreme Court addressed arbitrary arrest and held that 'no arrest can be made merely because it is lawful for the police officer to do so.'[24] The judgment emphasised the necessity of justification, transparency, and accountability. Yet, arbitrary arrests persist, often serving as gateways to custodial abuse.

In Paramvir Singh Saini v Baljit Singh, the Court directed the installation of CCTV cameras in interrogation rooms, lock-ups, and police stations, recognising transparency as a deterrent to torture.[25] Yet compliance remains uneven, with many facilities reporting dysfunctional or absent cameras.

The judiciary's remedial jurisprudence, such as compensation awards in cases like Nilabati Behera v State of Orissa, has helped develop a rights-centred approach to custodial violence.[26] Still, compensation addresses consequences rather than causes. Without structural reform, judicial remedies remain palliative, offering relief only after irreversible harm has occurred.

INDIA'S INTERNATIONAL OBLIGATIONS UNDER UNCAT

India signed the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) in 1997, signalling its commitment to the global normative prohibition of torture.[27] However, signing does not create binding obligations; ratification does. Because India has not ratified UNCAT, it is not formally bound by its reporting or compliance mechanisms. Nonetheless, by virtue of its signature, India is obliged under international law to refrain from acts that defeat the object and purpose of the treaty.[28]

UNCAT requires State Parties to:

- Criminalise torture explicitly.
- Establish jurisdiction over offenders.
- Ensure non-refoulement where risk of torture exists.

[24] *Joginder Kumar v State of Uttar Pradesh* 1994 SCC (4) 260
[25] *Paramvir Singh Saini v Baljit Singh* AIR 2021 SC 64
[26] *Smt Nilabati Behera alias Lalit Behera v State of Orissa & Ors* (1993) 2 SCC 746
[27] United Nations Convention against Torture 1984
[28] Vienna Convention on the Law of Treaties 1969, art 18

- Guarantee prompt and impartial investigations.
- Provide redress and compensation to victims.
- Prevent torture in any territory under State jurisdiction.
- Train law-enforcement and custodial officials; and
- Ensure statements obtained under torture are inadmissible.[29]

India's domestic legal framework does not satisfy these requirements. Although constitutional jurisprudence recognises protection from torture as part of Article 21, judicial interpretation cannot substitute for statutory criminalisation. Nor can existing IPC provisions satisfy the requirement of specificity demanded by UNCAT. The absence of independent investigatory mechanisms likewise violates UNCAT's structural expectations. The Government of India has often argued that domestic laws sufficiently protect against torture.[30] Scholars have criticised this position as doctrinally unsound: generic assault provisions cannot meet the definitional, preventive, and remedial obligations envisioned under UNCAT.

THE OPTIONAL PROTOCOL TO UNCAT (OPCAT) AND INDIA'S POSITION

The Optional Protocol to UNCAT (OPCAT) introduces a more ambitious preventive regime by establishing a National Preventive Mechanism (NPM), an independent body authorised to conduct regular inspections of detention centres.[31] These inspections operate on a cooperative, non-punitive model, focusing on transparency, risk reduction, and systemic reforms rather than sanctions. Many constitutional democracies, such as the United Kingdom, New Zealand, and several European nations, have implemented NPMs with demonstrably positive outcomes in reducing custodial ill-treatment.

India, however, has neither ratified OPCAT nor established an independent NPM-equivalent with unrestricted inspection powers. Although the National Human Rights Commission (NHRC) is empowered to inspect prisons, its authority is limited:

- It has no binding enforcement power.
- It relies on State officials for information.

[29] United Nations Convention against Torture 1984, arts 2–15
[30] Parliamentary debates on Prevention of Torture Bill 2010
[31] The Optional Protocol to the Convention Against Torture 2002

- Its inspection infrastructure is limited.
- It does not routinely inspect police lock-ups.

Thus, even if NHRC were designated as an NPM, it currently lacks the structural independence and resource autonomy required by OPCAT.[32]

COMPARATIVE JURISDICTIONS: LESSONS FOR INDIA

United Kingdom: Criminalisation and NPM: The UK criminalised torture through Section 134 of the Criminal Justice Act 1988, defining torture broadly and enabling universal jurisdiction for prosecuting offenders.[33] The UK also implemented OPCAT by establishing multiple inspectorates that function collectively as the NPM. These inspectorates enjoy autonomy, inspection powers, and statutory protection. The combination of statutory criminalisation and independent inspection has been central to preventing custodial mistreatment.

South Africa: Constitutionalisation and Investigative Independence: Post-apartheid South Africa incorporated an explicit prohibition of torture into its Constitution (Section 12).[34] It subsequently enacted the Prevention and Combating of Torture of Persons Act 2013, criminalising torture and requiring independent investigations. The Judicial Inspectorate for Correctional Services functions as an independent oversight body with meaningful powers.[35]

Sri Lanka: Torture Act and Special Units: Sri Lanka enacted the Convention against Torture Act 1994, creating a specific offence of torture and enabling special units to monitor allegations.[36] Despite implementation challenges, the existence of a statutory offence has facilitated prosecutions and strengthened the normative disapproval of torture.

European Union Jurisdictions: Many European nations maintain independent preventive bodies with statutory inspection mandates, regular reporting, access to detention archives, and strict legal obligations for custodial authorities to comply with recommendations. These

[32] Protection of Human Rights Act 1993
[33] Criminal Justice Act 1988, s 134
[34] Constitution of South Africa 1996, s 12
[35] South Africa, Prevention and Combating of Torture Act 2013
[36] Sri Lanka Convention against Torture Act 1994

jurisdictions emphasise the preventive rather than punitive aspects of anti-torture mechanisms.

STRUCTURAL CAUSES OF INDIA'S NON-COMPLIANCE

India's failure to ratify UNCAT and enact anti-torture legislation is rooted not only in legislative inertia but in deeper structural, political, and institutional causes.

Political Reluctance and Perception of Policing: Torture is often defended implicitly within police culture as a tool for crime control. Policymakers frequently view stringent anti-torture laws as constraints on policing. The misconception that stricter accountability will impede law enforcement produces political reluctance to legislate.

Bureaucratic and Institutional Resistance: Sections such as 197 CrPC provide bureaucratic protection, cultivating a sense of immunity. Bureaucratic institutions have resisted reform that would weaken internal hierarchies or expose officers to external scrutiny.[37]

Weak Forensic and Investigative Capacity: India's scientific policing infrastructure, including forensic labs, chain-of-custody protocols, and custodial documentation, is underdeveloped. In such an environment, police rely on confession-based investigation, reinforcing the perceived 'need' for coercive interrogation.

Judicial Delay and Inadequate Remedial Mechanisms: Even when custodial violence cases reach the judiciary, delays in trial, lack of independent witnesses, and manipulation of records weaken the integrity of prosecutions. Without a swift judicial remedy, the deterrence effect of the law is significantly diminished.

Cultural and Social Factors: Custodial torture disproportionately affects marginalised communities, whose complaints often lack political traction. Social prejudice, caste hierarchies, and economic vulnerability contribute to the invisibility of victims, reducing public pressure for reforms.

[37] Code of Criminal Procedure 1973, s 197

THE FAILURE OF EXISTING OVERSIGHT BODIES

National Human Rights Commission (NHRC): While the NHRC has played an important role in documenting and criticising custodial violence, it suffers from:

- Lack of binding powers;
- Delayed or non-implemented recommendations;
- Dependence on State reports;
- Limited investigative autonomy; and
- Insufficient coverage of police lock-ups.

State Human Rights Commissions (SHRCs): SHRCs are uneven in quality, often understaffed, and sometimes influenced by political considerations. Many states have no functional SHRC at all.

Judicial Magistrates: Although CrPC mandates judicial inquiries in custodial death cases, magistrates often depend on police-generated evidence and lack technical training in forensic analysis.[38]

Overall, oversight in India is reactive, not preventive, unlike the proactive inspection models under OPCAT.

DOCTRINAL JUSTIFICATION FOR A SPECIFIC ANTI-TORTURE LAW

The absence of a dedicated statutory provision criminalising torture represents one of the most significant doctrinal gaps in Indian criminal jurisprudence. Although the constitutional framework, particularly Articles 20(3), 21 and 22, implicitly condemns custodial violence, rights without enforceable statutory mechanisms lack practical efficacy.[39] A core principle of criminal jurisprudence is that offences must be defined with specificity; generic assault provisions under the IPC do not satisfy this requirement. The doctrine of *nullum crimen sine lege* requires that persons be punished only for conduct expressly prohibited by law.

Given that torture involves systemic abuse of State power, the absence of explicit criminalisation leads to conceptual dilution: it is treated as an aggravated form of 'hurt,'

[38] Code of Criminal Procedure 1973, s 176(1A)
[39] Constitution of India 1950, art 21

rather than a violation of the social contract and an affront to constitutional morality. In contrast, jurisdictions such as the United Kingdom, South Africa, and Sri Lanka have enacted statutes that foreground torture as a distinct and grave offence.

Further, doctrinal clarity is necessary to address forms of torture beyond physical assault. Psychological torture, sleep deprivation, intimidation, isolation, threats, and humiliation often leave no visible injuries but can cause lasting trauma. Internationally, psychological torture is well-recognised within the definitional scope under UNCAT Article 1.[40] Indian law, however, remains materially silent on this dimension.

Thus, the doctrinal justification for a dedicated anti-torture statute rests on the need for:

- Precise legal definitions;
- Graded punishments reflecting gravity and intent;
- Recognition of psychological harm; and
- Overcoming evidentiary and structural biases inherent in custodial settings.

INSTITUTIONAL NECESSITY: FAILURE OF EXISTING MECHANISMS

Structural Bias and Need for Independent Investigation: The principle that 'no person shall be a judge in his own cause' forms the cornerstone of natural justice. Yet allegations of custodial torture in India are routinely investigated by the same police establishment, enabling systemic bias and manipulation. The Supreme Court has acknowledged this problem but has stopped short of mandating an independent investigative body through judicial fiat. Statutory intervention is therefore indispensable.

A dedicated anti-torture law must:

- require independent investigation by a body outside police control (similar to the UK's Independent Office for Police Conduct);
- prohibit police involvement in collecting evidence relating to custodial injury;
- mandate judicial oversight over investigation timelines;
- introduce presumptions against police when detainees sustain injuries in custody.

[40] United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, art 1

Forensic and Medical Deficiencies: Custodial violence cases often collapse due to a lack of reliable medical documentation. Post-mortems may be conducted within police premises or without independent oversight, undermining impartiality. International best practices, such as the Istanbul Protocol, mandate detailed forensic standards for documenting torture, including photographs, measurements, psychological assessments, and consistent record-keeping. A statute must embed these requirements into domestic law to ensure evidentiary integrity.

Absence of Preventive Infrastructure: Preventive measures such as routine inspections, CCTV monitoring, segregation of interrogation and detention spaces are inconsistently implemented. Without statutory mandates prescribing minimum standards for custodial environments, discretionary administrative measures remain ineffective. Further, technological safeguards (such as CCTV) require statutory obligations for:

- Non-tampering;
- Long-term data retention;
- Independent access for magistrates and oversight bodies;
- Penalties for disabling or erasing recordings.

THEORETICAL FOUNDATIONS: CONSTITUTIONALISM, RULE OF LAW, AND STATE LEGITIMACY

The State as the Primary Bearer of Duty: Custodial settings represent the starkest concentration of State power. The legitimacy of this power depends on the State's ability to exercise it within constitutional boundaries. Torture undermines legitimacy, not merely because it violates rights, but because it represents an abuse of the monopoly of violence that society entrusts to the State.

Rule of Law and the Anti-Torture Imperative: The rule of law requires that the coercive power of the State be exercised within publicly known, precise, and enforced legal norms.[41] Torture occurs in environments of opacity and unaccountability conditions antithetical to

[41] Shraileen Kaur, 'Rule of law' (*iPleaders*, 05 July 2022) <https://blog.ipleaders.in/rule-of-law-2/> accessed 20 December 2025

rule-of-law principles. Enacting a clear anti-torture statute is essential for restoring the balance between individual liberty and State power.

Torture as an Anti-Constitutional Practice: Torture is fundamentally incompatible with constitutionalism because it treats individuals as means rather than ends, denying their intrinsic dignity. The Indian Constitution, through its Preamble and fundamental rights, places dignity at the centre of the constitutional order. Allowing torture, implicitly or through legislative omission, contradicts the Constitution's transformative aspirations.

ELEMENTS OF A MODEL ANTI-TORTURE STATUTE

Drawing on best practices and doctrinal scholarship, a comprehensive anti-torture statute should contain the following elements:

Clear and Comprehensive Definition of Torture: The statute must adopt a definition aligned with UNCAT Article 1, explicitly covering:

- Physical and psychological torture;
- Acts committed by public officials or with their consent;
- Coercive interrogation;
- Harassment, intimidation, or humiliation;
- Acts targeting vulnerable groups.[42]

Graded Offences and Proportionate Punishments: Punishments should reflect gravity, intent, recurrence, and the role of the perpetrator. Aggravated forms should apply where torture results in:

- Permanent injury;
- Disability;
- Sexual assault;
- Custodial death;
- Harm to minors or vulnerable individuals.

[42] United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, art 1

Independent Investigative Authority: The statute must mandate:

- A special investigative agency independent of police control;
- Compulsory FIR registration upon allegations of torture;
- Strict timelines for investigation;
- Judicial monitoring.

Evidentiary Presumptions: Where injuries occur in custody, a reverse burden should apply, requiring custodial officers to demonstrate lawful treatment. This aligns with international standards and reflects custodial asymmetries.

Forensic and Medical Safeguards: Mandatory provisions should include:

- Independent medical examinations at arrest, at intervals, and upon request;
- Video-graphed post-mortems;
- Detailed injury documentation;
- Obligations on hospitals to report suspicious custodial injuries.

Victim Protection and Remedies: A robust framework for:

- Compensation;
- Psychological support;
- Rehabilitation;
- Witness protection;
- Legal aid.

Oversight and Preventive Mechanisms: Establishment of an Independent Custodial Oversight Commission equipped with:

- Unannounced inspection powers;
- Access to records;
- Mandate to audit CCTV footage;
- Authority to issue binding recommendations.

Command Responsibility: The law should incorporate the doctrine of command responsibility, holding senior officials accountable where they knew or ought to have known of torture and failed to prevent it.

CONCLUSION

Custodial torture and deaths represent a profound moral, constitutional, and institutional crisis for the Indian republic. Despite a rich jurisprudential tradition under Articles 20, 21, and 22, and despite decades of judicial guidelines aimed at arrest, detention, and investigation, the persistence of custodial violence reveals that norms without structure cannot safeguard human dignity. Torture thrives in opaque environments, where the absence of independent investigation, weak forensic practices, bureaucratic immunity, and institutional resistance combine to permit abuse without accountability.

India's criminal law framework—relying on the Indian Penal Code's general provisions has not kept pace with the evolving international legal order or with contemporary constitutional expectations. Custodial torture is not an ordinary offence; it represents the misuse of State authority, the abuse of coercive power, and the violation of fundamental constitutional values. To continue treating it as a form of generic 'hurt' is to misunderstand the gravity of the crime and to weaken the State's commitment to the rule of law.

The failure to ratify the UN Convention against Torture and to enact a domestic anti-torture statute undermines India's credibility as a constitutional democracy and as a responsible member of the international community.[43] The procedural safeguards laid down in D K Basu, Joginder Kumar, and subsequent decisions, though historic, have not prevented continuing custodial deaths.[44] Compliance is inconsistent, enforcement is weak, and implementation depends on the willingness of local police forces and magistrates who may lack resources, training, or independence.

A comprehensive anti-torture statute must therefore serve three simultaneous functions:

- Definition and criminalisation, articulating a precise definition of torture aligned with international standards and recognising psychological as well as physical abuse;

[43] Law Commission, *Report No 273: Implementation of UNCAT* (Law Com No 274, 2017)
[44] *Shri D K Basu, Ashok K Johri v State of West Bengal, State of U P* (1997) 1 SCC 416; *Joginder Kumar v State of Uttar Pradesh* (1994) SCC (4) 260

- Prevention, through independent oversight mechanisms, command responsibility, mandatory forensic protocols, and structural transparency; and
- Remedy, including compensation, rehabilitation, witness protection, and a victim-centred justice model.

This article has argued that a statutory model rooted in constitutional morality and informed by comparative experiences is necessary to transform custodial governance from a culture of impunity into a culture of accountability. Without legislative intervention, India will continue to rely on fragmented safeguards, inconsistent implementation, and discretionary remedies that fail to protect the most vulnerable.

A well-designed Prevention of Torture Act should therefore be seen not as an impediment to policing but as a tool to strengthen lawful investigation, promote institutional legitimacy, and align the criminal justice system with the foundational values of dignity, fairness, and democratic accountability. By adopting such a statute, India would not only fulfil its international obligations but also honour its constitutional promise that the State shall not inflict cruelty upon those whom it binds within its custody.