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**CUSTODIAL VIOLENCE IN INDIA: EVALUATING THE EFFICACY
OF THE D.K. BASU FRAMEWORK UNDER THE NEW CRIMINAL
JUSTICE ARCHITECTURE**

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ABSTRACT

Custodial violence persists as a critical challenge undermining the foundational principles of democratic governance and constitutional supremacy in India. This article examines the legal framework governing custodial rights, centering on the transformative judicial intervention in *D.K. Basu v. State of West Bengal (1997)*. Against the backdrop of India's recent legislative overhaul replacing colonial-era criminal statutes with the Bharatiya Nyaya Sanhita, 2023, Bharatiya Nagarik Suraksha Sanhita, 2023, and Bharatiya Sakshya Adhinyam, 2023 this research critically analyzes whether enhanced procedural safeguards meaningfully address systemic custodial abuse. Employing doctrinal methodology, the study synthesizes constitutional provisions, statutory frameworks, and seminal judicial pronouncements including *Nilabati Behera v. State of Orissa* and *Prakash Singh v. Union of India*. Findings reveal persistent gaps in implementation, institutional accountability deficits, and the absence of specialized anti-torture legislation despite international obligations. The article argues for comprehensive reforms including ratification of the UN Convention Against Torture, mandatory technological monitoring of custodial facilities, reversal of the evidentiary burden in custodial injury cases, and strengthened institutional independence of investigating agencies. These measures are essential to transform constitutional guarantees from mere textual commitments into lived realities for vulnerable detainees.

Keywords: Custodial torture, D.K. Basu guidelines, Article 21, Bharatiya Nagarik Suraksha Sanhita, procedural safeguards, human rights violations, police accountability, criminal justice reform

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INTRODUCTION: EXAMINING THE CONSTITUTIONAL TENSION

The measure of a democracy's maturity lies not in constitutional rhetoric but in the state's treatment of its most vulnerable citizens those in custody. India's constitutional framework, enshrined particularly in Article 21, guarantees the inviolable right to life and personal liberty. Yet paradoxically, instances of custodial violence represent state agents themselves becoming perpetrators of constitutional violations, transforming spaces of protective custody into sites of systematic abuse. This phenomenon presents a fundamental contradiction: the apparatus designed to uphold law becomes its most egregious violator.

The term custody denotes protective guardianship under lawful authority. Conversely, when coupled with violence, it signifies the infliction of physical harm, psychological trauma, or sexual abuse by public officials upon individuals deprived of liberty. India's Law Commission has characterized such acts as assaults against the rule of law itself and violations of internationally recognized human rights standards. Statistical evidence paints a disturbing picture: documented reports indicate hundreds of custodial deaths occurring across Indian police stations and judicial custody facilities over recent years, suggesting deep-rooted systemic failures rather than isolated incidents.

This research undertakes a comprehensive examination of India's legal response to custodial violence, with particular emphasis on the landmark D.K. Basu judgment and its relevance within the reformed criminal jurisprudence inaugurated in 2023. The study interrogates whether new legislative provisions meaningfully strengthen protections or merely repackage existing inadequacies in contemporary language.

THE D.K. BASU WATERSHED: JUDICIAL ACTIVISM AND INSTITUTIONAL GUIDELINES

The 1997 judgment in *D.K. Basu v. State of West Bengal* marks a defining moment in Indian human rights jurisprudence. The case originated unconventionally through a letter addressed to the Supreme Court by Dr. D.K. Basu, highlighting media reports documenting brutal police custodial practices. Exercising its expansive jurisdiction under Article 32, the Court converted this communication into a public interest litigation, recognizing custodial violence as a matter of constitutional significance requiring immediate judicial intervention.

The Eleven Commandments: Mandatory Procedural Requirements

The Court's judgment established eleven mandatory requirements, constituting what has become known as the D.K. Basu guidelines. These directives mandate that arresting officers wear clearly visible identification, prepare memoranda of arrest witnessed by family members or local residents, and ensure arrestees can immediately inform relatives of their detention and location. Further requirements include maintaining detailed station diary entries, conducting medical examinations documenting pre-existing injuries at the time of arrest and periodically thereafter every 48 hours, transmitting arrest documentation to the local Magistrate for oversight, permitting legal counsel access during interrogation, and establishing police control rooms at district and state levels displaying current arrest information within 12 hours of detention.

These guidelines represent the Court's attempt to create transparent, accountable custodial procedures that minimize opportunities for abuse. The judgment emphasized that compliance is not optional but constitutionally mandated, with violations rendering the detention unlawful and potentially exposing officers to criminal liability.

Constitutional Foundation and Jurisprudential Significance

The D.K. Basu framework derives its authority from Article 21's transformative interpretation. Moving beyond a narrow reading of life as mere physical existence, the Court adopted an expansive understanding encompassing human dignity, bodily integrity, and freedom from torture. This interpretation aligns with international human rights norms while acknowledging India's constitutional obligations. The judgment established that custodial violence violates not only statutory provisions but fundamental constitutional guarantees, creating public law remedies independent of private tort claims.

THE 2023 CRIMINAL LAW REFORMS: CONTINUITY AND CHANGE

India's replacement of colonial-era criminal statutes with indigenous legislation in 2023 represents a symbolic assertion of legal sovereignty. The Bharatiya Nagarik Suraksha Sanhita (BNSS), replacing the Code of Criminal Procedure 1973, emerged as the primary vehicle for procedural reforms affecting custodial practices.

Codification of D.K. Basu Guidelines

The BNSS substantially incorporates D.K. Basu requirements into statutory provisions. Section 36 mandates preparation of arrest memoranda, while Section 38 requires informing relatives and displaying arrest details at designated locations. These provisions transform judicially-created safeguards into legislative obligations, theoretically enhancing enforceability. However, mere statutory incorporation without robust implementation mechanisms risks creating what scholars term paper protections formally impressive but practically ineffective.

Technological Integration and Forensic Mandates

Section 176 of the BNSS introduces significant procedural innovation by mandating forensic expert examination of crime scenes for offenses punishable by seven years or more imprisonment. This requirement potentially reduces investigative reliance on custodial interrogations by strengthening scientific evidence collection. Additionally, provisions encouraging technological documentation of proceedings represent modernization efforts aimed at creating verifiable records of custodial interactions.

Extended Custody Provisions: A Cause for Concern

Section 187 of the BNSS permits authorization of 15-day police custody in installments during the initial 40 or 60 days of detention, depending on offense gravity. This provision has generated significant controversy among human rights advocates who argue that extended custodial periods increase torture risks. While proponents justify this flexibility as necessary for complex investigations, critics contend it creates opportunities for prolonged coercive interrogation under successive custody orders, potentially circumventing the safeguards that continuous custody oversight might provide.

Substantive Penal Provisions Under BNS

The Bharatiya Nyaya Sanhita maintains previous penal provisions criminalizing custodial torture. Section 221 penalizes voluntarily causing hurt to extort confessions, while Section 222 addresses grievous hurt for similar purposes. These sections, carried forward from IPC Sections 330 and 331, establish criminal liability for specific forms of custodial abuse.

However, the continued absence of comprehensive anti-torture legislation encompassing psychological coercion and degrading treatment represents a significant normative gap.

SYSTEMIC CHALLENGES AND IMPLEMENTATION DEFICITS

Despite robust legal frameworks, custodial violence persists due to structural, institutional, and cultural factors that resist formal legal reform.

The Evidentiary Paradox

Section 23 of the Bharatiya Sakshya Adhinyam maintains the evidentiary rule rendering confessions to police officers inadmissible, designed to discourage coercive interrogation. However, the statutory exception permitting discovery of facts based on custodial statements creates perverse incentives. Officers aware that obtained information can lead to discoverable evidence may resort to coercion to elicit such statements, knowing the confession itself remains inadmissible while its fruits can be used. This paradox undermines the protective intent of confessional inadmissibility rules.

Institutional Impunity and Accountability Deficits

Custodial violence thrives in environments characterized by institutional impunity. Several factors contribute to this phenomenon. First, police institutional culture often exhibits defensive solidarity, with officers protecting colleagues from scrutiny regardless of misconduct severity. Second, political interference in investigations creates systemic bias favoring law enforcement. Third, prosecutorial reluctance to vigorously pursue cases against police creates practical immunity. Fourth, delayed investigations and protracted trials enable evidence tampering and witness intimidation.

The Prakash Singh judgment attempted to address these concerns by mandating establishment of independent Police Complaints Authorities at state and district levels to investigate misconduct allegations. However, implementation remains inconsistent across jurisdictions, with many states establishing nominally independent bodies lacking genuine autonomy, adequate resources, or enforcement powers.

Burden of Proof and Evidentiary Difficulties

Current legal frameworks place the evidentiary burden on victims or their families to prove custodial abuse a nearly insurmountable challenge given power asymmetries and evidence control. The Law Commission's 113th Report recommended introducing a statutory presumption shifting the burden to police officers to explain injuries sustained during custody. This proposal, which would codify as Section 114B in evidence legislation, remains unimplemented decades after its recommendation. Such presumptions operate in various legal systems globally, recognizing the unique vulnerabilities of custodial situations where the state controls both the person and the investigative process.

International Law Deficit: The UNCAT Gap

India signed the United Nations Convention Against Torture in 1997 but has never ratified it, despite the Law Commission's 273rd Report strongly recommending ratification and enactment of comprehensive domestic anti-torture legislation. Ratification would create international accountability mechanisms through periodic reporting to the UN Committee Against Torture, potentially enhancing domestic implementation. The continued failure to ratify signals governmental reluctance to subject domestic custodial practices to international scrutiny, weakening India's moral authority in international human rights forums.

JUDICIAL RESPONSES AND COMPENSATORY JURISPRUDENCE

Indian superior courts have developed compensatory remedies recognizing state liability for custodial rights violations. *Nilabati Behera v. State of Orissa* established that monetary compensation for custodial death constitutes a public law remedy under Article 21, available independently of private law tort claims. This principle, subsequently expanded in numerous decisions, acknowledges that constitutional violations demand remedial responses beyond criminal prosecution of individual officers.

It pioneered compensatory awards for illegal detention, establishing that monetary relief can vindicate constitutional rights even where actual physical harm may be limited. These developments reflect judicial recognition that effective rights protection requires multiple enforcement mechanisms criminal, disciplinary, and compensatory operating simultaneously rather than as alternatives.

However, compensatory jurisprudence faces practical limitations. Award amounts often appear inadequate relative to harm suffered. More fundamentally, ex post compensation cannot substitute for ex ante prevention. While compensation acknowledges violation and provides some redress, it cannot undo psychological trauma or restore lost dignity. The primacy of preventive measures through robust procedural safeguards and institutional reforms remains paramount.

CONCLUSION

Custodial violence represents a profound failure of constitutional governance, where state agents betray their mandate by victimizing those under their protection. The D.K. Basu framework established essential procedural safeguards that remain relevant decades after their articulation. The 2023 criminal law reforms incorporate these protections while introducing technological and forensic innovations. However, formal legal adequacy cannot substitute for effective implementation.

Persistent custodial violence reflects deep structural problems: institutional cultures privileging authority over accountability, political interference in investigations, evidentiary rules favoring state actors, and absence of independent oversight mechanisms with meaningful enforcement powers. Addressing these challenges requires comprehensive reforms extending beyond procedural tinkering to fundamental institutional transformation.

The transition from colonial Dand (punishment) to indigenous Nyaya (justice) demands more than linguistic and cosmetic changes. It requires genuine cultural shift prioritizing human dignity, procedural fairness, and meaningful accountability. Only through such transformation can constitutional guarantees transcend textual aspirations to become living realities for India's most vulnerable citizens.

RECOMMENDATIONS FOR REFORM

Based on the foregoing analysis, this article proposes the following reform measures:

- A. Ratify UN Convention Against Torture:** India should immediately ratify UNCAT and enact comprehensive domestic legislation defining torture, establishing criminal penalties, and creating civil remedies. Such legislation should encompass physical torture, psychological coercion, and degrading treatment, aligning with international standards.

- B. Implement Evidentiary Presumption:** Enact the Law Commission's recommended Section 114B establishing a statutory presumption that injuries sustained in custody occurred through police action unless proven otherwise. This reversal acknowledges inherent power imbalances and evidentiary control disparities characterizing custodial situations.
- C. Mandatory Technological Monitoring:** Require continuous audio-visual recording of all interrogations and custodial areas, with recordings preserved by independent authorities. Tampering with or failing to maintain such recordings should create adverse presumptions against custodial authorities in any subsequent legal proceedings.
- D. Strengthen Institutional Independence:** Fully implement Prakash Singh directives ensuring investigating agency autonomy from political interference. Establish genuinely independent Police Complaints Authorities with sufficient powers, resources, and statutory backing to investigate misconduct effectively and ensure accountability.
- E. Comprehensive Training Programs:** Institute mandatory human rights training for all law enforcement personnel, emphasizing constitutional obligations, psychological impacts of custodial violence, and stress management techniques. Regular refresher courses and psychological evaluations should become standard practice.
- F. Expedited Investigations and Trials:** Create specialized fast-track mechanisms for custodial violence cases, ensuring swift investigation and prosecution. Prolonged delays enable evidence tampering and witness intimidation while denying justice to victims.
- G. Enhanced Compensation Mechanisms:** Establish standardized, adequate compensation frameworks for custodial rights violations, funded through institutional budgets rather than individual officer liability, ensuring victims receive meaningful redress while maintaining accountability pressures on institutions.

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