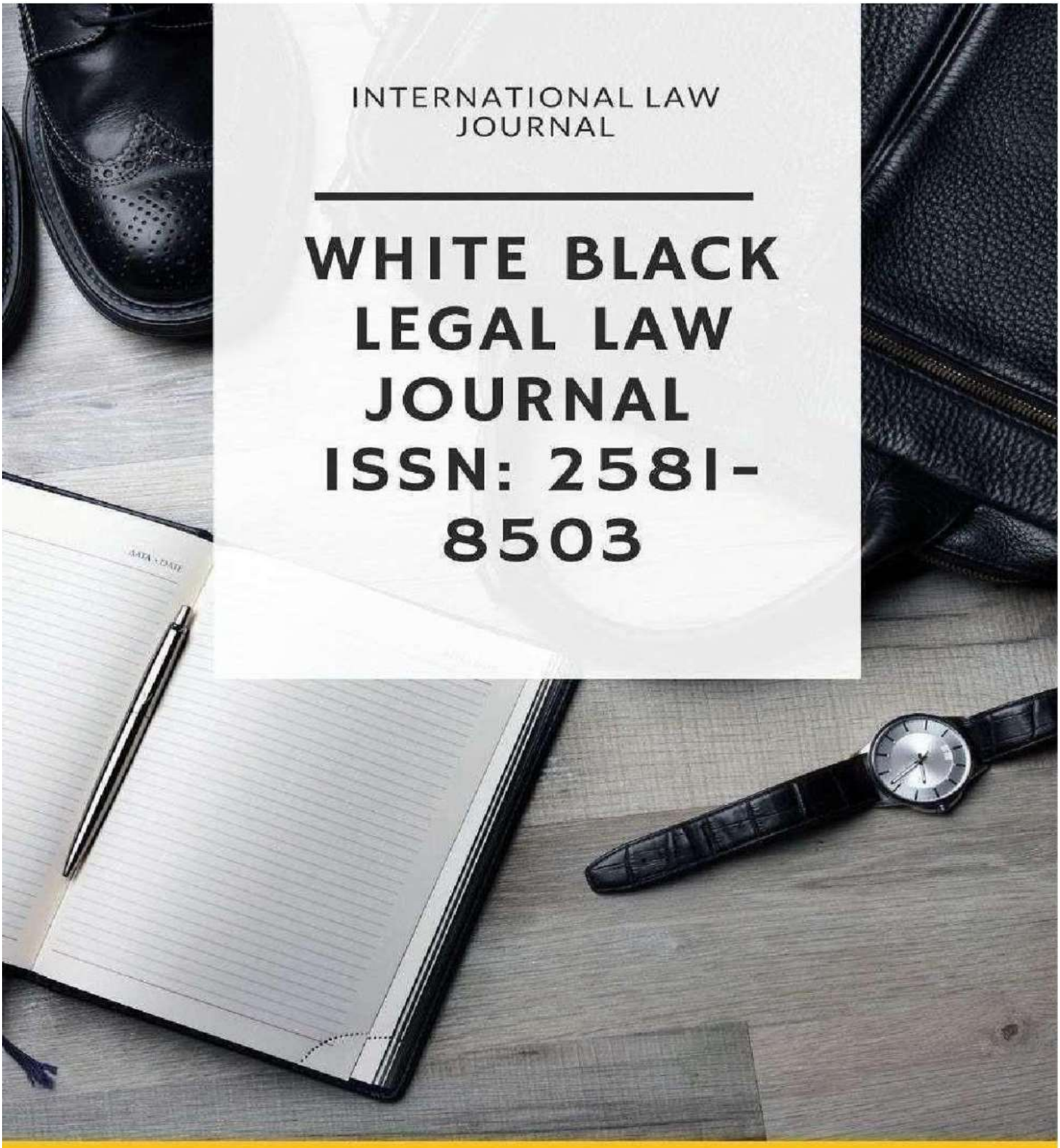


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WHITE BLACK LEGAL

Custodial Deaths In India: Legal Safeguards, Judicial Intervention And The Need For Police Reforms

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ABSTRACT

Deaths in police custody are among the clearest tests of whether constitutional guarantees reach the people they are meant to protect. This article examines the law on custodial death in India after the enactment of the new criminal codes of 2023. It sets the Indian position against the interna- tional standards of the Convention against Torture, the Covenant on Civil and Political Rights and the United Nations rules on detention, and against comparative practice in Europe and the United Kingdom. It then traces the Supreme Court's four decades of intervention, from Sunil Batra and Nilabati Behera to D.K. Basu and Paramvir Singh Saini, together with the police reform directions in Prakash Singh. Drawing on official data, parliamentary replies and recent cases, including the Sathankulam and Ajith Kumar cases from Tamil Nadu and the Supreme Court's suo motu proceed- ings of 2025 on non-functional CCTV cameras, it argues that the safeguards are largely in place on paper, and that the persistent failure lies in the absence of consequences for their breach: un- reliable data, weak investigation, delayed sanction, destroyed evidence and a practice of paying compensation in place of prosecuting. The article closes with suggestions for an anti-torture statute, independent investigation, time-limited sanction, accountable compensation, enforceable camera oversight and genuine implementation of the Prakash Singh directions.

Keywords: custodial death; police reform; torture; Article 21; D.K. Basu; UNCAT; India

1. INTRODUCTION

A person in police custody is, in a very literal sense, in the hands of the State. The arrested person cannot leave, cannot call for help except through the people who hold him, and cannot gather or preserve the evidence of what is done to him. Every other protection the law offers, whether it is a lawyer, a magistrate or a court, reaches him only through an institution that is, at that moment, controlled by the police. It is for this reason that constitutional systems treat the treatment of persons in custody as a test case. If the guarantee of life and liberty can be made to hold in a police station, there is reason to expect that it holds elsewhere. If it cannot, the guarantee is of less worth than it appears.

The Indian Constitution is not silent on the point. Article 21 forbids deprivation of life or personal liberty except by a procedure that is fair, just and reasonable; Article 22 gives the arrested person the right to know the grounds of arrest, to consult a lawyer and to be produced before a magistrate within twenty-four hours; and Article 20(3) protects against compulsion to be a witness against oneself.1 Over four decades the Supreme Court has built on these provisions a body of law which says, without qualification, that torture and death in custody are violations of the Constitution, and that the State must pay for them.2 Parliament has added procedural safeguards to the criminal procedure code, and in 2023 replaced the old criminal codes with new ones. Yet the official figures continue to record deaths in custody every year, and of the 1,888 deaths in police custody recorded by the National Crime Records Bureau

between 2001 and 2020, officers were convicted in only 26 instances.3 In September 2025 the Supreme Court registered a suo motu case on the failure of States to keep police station cameras working, five years after it had first ordered them to be installed.4

1Constitution of India, arts 20(3), 21 and 22(1)-(2); on the standard of fairness under art 21, Maneka Gandhi v Union of India (1978) 1 SCC 248. 2D.K. Basu v State of West Bengal (1997) 1 SCC 416; Nilabati Behera v State of Orissa (1993) 2 SCC 746. Both are discussed in section 3.2. 3‘1,888 custodial deaths in 20 years, 26 cops convicted: NCRB data’, Deccan Herald (16 November 2021) https://www. deccanherald.com/amp/story/india/1888-custodial-deaths-in-20-years-26-cops-convicted-ncrb-data-1051338.html. The figure of 26 refers to policemen convicted, not to cases. 4‘SC takes suo motu cognisance of custodial deaths, lack of functional CCTVs in police stations’, The Wire (5 September 2025) https://www.thewire.in/law/sc-takes-suo-motu-cognisance-of-custodial-deaths-lack-of-functional-cctvs-in-

The gap between what the law says and what happens is the subject of this article. Put as questions, three arise. What do the available data actually show about the scale of deaths in custody and about what follows them? What have the Constitution, the statutes and the courts provided by way of safeguards, and how far did the Supreme Court go in turning those safeguards into enforce- able obligations? And why, with so much law on the books, do the safeguards so rarely produce accountability, and what would it take to change that?

The argument developed in answer has three parts. The first is that the available data, incomplete and inconsistent as it is, show a pattern that is stable across years and across government sources: deaths are reported in the low hundreds each year, prosecutions are rare, and convictions rarer still. The second is that the Supreme Court has built a quite complete jurisprudence on custodial rights, moving from the recognition that a prisoner is still a person (Sunil Batra) to compensation as a public-law remedy (Nilabati Behera) to an operational checklist for arrests (D.K. Basu) to technology-based oversight (Paramvir Singh Saini), but that the Court has been compelled again and again to revisit its own orders, which says something about the limits of judicial supervision. The third is that these failures are traceable to the structure of policing itself, and that unless the structural recommendations of the Prakash Singh judgment and the Law Commission’s reports are taken seriously, further directions from the courts will produce further compliance affidavits and little else. The safeguards, in short, are not missing. What is missing is any mechanism that makes it costly, for an individual officer or for a State, to ignore them. A rule that carries no consequence for its breach is closer to advice than law.

1.1 Scope, Terms and Method

A word on scope and terms. ‘Custodial death’ is used here to cover death in police custody, whether in a lock-up, during interrogation, in transit or shortly after release, and, where the context requires, death in judicial custody in a prison. The two raise different problems. Deaths in police custody are, in the great majority of cases, a question of violence by the investigating agency itself. Deaths in jails involve medical neglect, overcrowding, suicide and inter-prisoner violence, which call for a different set of reforms. The paper concentrates on the first while noting where the two sets of data cannot be cleanly separated. It also deals with the law as it stands after the new criminal codes came into force on 1 July 2024, and where the provision of the older codes is the one on which the leading cases were decided, both are given.5

The method is doctrinal. The paper relies on the text of the statutes and on reported judgments, supplemented by government data tabled in Parliament, reports of the National Human Rights Com- mission (NHRC) and the Law Commission of India, and published research by civil-society bodies. Where a figure comes from a newspaper report of a parliamentary reply and not from the reply itself, the footnote says so, because several of the numbers in circulation do not agree with one another and the reader is entitled to know how far each can be trusted.

The article proceeds as follows. Section 1.2 sets out what the data show about deaths in custody. Section 2 looks at the international standards and at India's position under them. Section 3, on ju- dicial precedents, covers the constitutional and statutory framework, the decisions of the Supreme Court, its directions on police reform, and the reasons why precedent has not so far produced ac- countability. Section 4 concludes and makes suggestions.

police-stations. 5The Bharatiya Nyaya Sanhita 2023 (BNS), the Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS) and the Bharatiya Sakshya Adhiniyam 2023 (BSA) replaced the Indian Penal Code 1860, the Code of Criminal Procedure 1973 (CrPC) and the Indian Evidence Act 1872 respectively. Section references to the new codes in this article should be checked against the official text before any reliance, as indicated in the note on verification at the end.

1.2 The Extent of the Problem

1.2.1 A problem of definition Any attempt to count deaths in custody begins by confronting the fact that India has no single, re- liable count. The National Crime Records Bureau (NCRB) records deaths in police custody and the cases registered, chargesheeted and decided in connection with them. The NHRC receives inti- mations of deaths in both police and judicial custody from the State governments, which are under a standing obligation to report within twenty-four hours.6 The Ministry of Home Affairs answers questions in Parliament by drawing on the NHRC's figures. Civil-society groups, notably the Na- tional Campaign Against Torture, compile their own tallies from news reports. These sources define 'custodial death' differently, count over different periods (calendar years in one case, financial years in another), and, most importantly, treat deaths in judicial custody and in police custody in different ways. The result is that the headline number depends heavily on who is speaking.

Table 1 sets out a selection of the figures that have been put into the public domain. They are not comparable with each other and should not be read as a time series; the point of placing them side by side is to show how wide the range is.

Table 1: Selected figures on deaths in custody from official and non- official sources

Source and period Figure reported Comment

NCRB, 2001 to 2020 1,888 deaths in police custody; 893 cases registered against police; 358 officers chargesheeted; 26 convicted

National totals reported from NCRB annual reports

NCRB, 2017 100 deaths in police custody; no conviction reported for that year

Press analysis of NCRB data

National Campaign Against Torture, 2019 125 in police custody; 1,606 in judicial custody Compiled from news reports and official data Lok Sabha reply, July 2022 (NHRC data) 4,484 deaths in custody over 2020-21 (1,940) and 2021-22 (2,544)

Appears to combine police and judicial custody

Lok Sabha reply, as reported March 2026 170 deaths reported between 1 January and 15 March 2026 Breakdown by type of custody not given in the report seen NHRC, as reported October 2024 2,109 judicial-custody death cases pending; 265 police-custody death cases pending

Pending case counts, not annual deaths

Sources: 'Custodial deaths in India', Wikipedia, citing NCRB data and Hindustan Times (26 July 2022) for Lok Sabha Unstarred Question No 1459 https://en.wikipedia.org/wiki/Custodial_deaths_in_India; '1,888 custodial deaths in 20 years, 26 cops convicted: NCRB data', Deccan Herald (16 November 2021) https://www.deccanherald.com/amp/sto ry/india/1888-custodial-deaths-in-20-years-26-cops-convicted-ncrb-data-1051338.html; '100 Indians died in police custody in 2017 yet nobody has been convicted', Scroll.in https://scroll.in/article/942632/100-indians-died-in-police- custody-in-2017-yet-nobody-has-been-convicted; '170 custodial deaths reported across country in first 74 days of 2026: Govt', LatestLY (24 March 2026) https://www.latestly.com/agency-news/india-news-170-custodial-deaths- reported-across-country-in-first-74-days-of-2026-govt-7365968.html; 'NHRC orders Rs 4.5 cr relief for 89 judicial

6The reporting requirement originates in NHRC's guidelines issued in the early 1990s and later reiterated. See National Human Rights Commission, Guidelines Regarding Reporting of Deaths in Custody / Police Encounters, as summarised on the Commission's website https://nhrc.nic.in. The Commission's jurisdiction is also limited by section 36(2) of the Protection of Human Rights Act 1993, which bars it from inquiring into a matter more than one year after the act complained of.

custody death victims in 2024-25', The Hans India (17 October 2024) https://thehansindia.com/news/national/nhrc- orders-rs-45-cr-relief-for-89-judicial-custody-death-victims-in-2024-25-915102. The 2019 figures are those of the National Campaign Against Torture's annual report as reported in The Hindu (27 June 2020). Some of these secondary sources contain internal inconsistencies, which is a further reason for treating the numbers with caution.

Two things stand out. The first is the sheer gap between the NCRB and the NHRC. The NCRB's count of deaths in police custody over twenty years is smaller than what the NHRC data suggest for a single year when judicial custody is included. The NCRB counts only those deaths that were registered in a particular way and happened in a particular kind of custody; the figure of 1,888 over twenty years works out to under a hundred a year, a number that has held with remarkable steadiness since the Home Ministry's own series began. Academic work has long suspected that the true figure is higher, and an earlier analysis of NCRB data by a newspaper concluded that a large share of police custody deaths never find their way into the official count at all.7 The second is that, whichever series is used, the proportion of deaths that end in a conviction is close to zero.

1.2.2 The attrition table The NCRB's twenty-year series can be read as a funnel. Of 1,888 deaths, 893 produced a case against some member of the police. That is about forty-seven per cent: in more than half the deaths, no case was registered against anyone in the force at all. Of those 893 cases, officers were chargesheeted in 358, roughly forty per cent. And of the officers chargesheeted, 26 were convicted.8

If the first number is taken as the denominator, then convictions amount to about one and a half per cent of reported deaths. The 2025 Status of Policing in India Report, published by Common Cause and the Lokniti programme of CSDS, is reported to put the national conviction rate in custodial death cases somewhere between zero and one per cent.9

1.2.3 What a number cannot tell us There is a danger in over-reading these figures. A fall in the reported number could mean fewer deaths, or it could mean that more of them are being recorded as something else, a hospital death after release, a 'suicide' in a lock-up bathroom, a collapse on the way to court. Figures tabled in Parliament in March 2026 show 170 deaths in the first seventy-four days of the year, with Bihar (19), Rajasthan (18) and Uttar Pradesh (15) at the top, and the figures for earlier financial years given in the same report run from 176 in 2021-22 to 140 in 2024-25.10 It is tempting to read the apparent decline as progress. The better inference is that nobody outside the system can tell.

What the numbers do suggest, without much doubt, is a pattern of non-accountability. In the one parliamentary reply for which I found a breakdown, 155 custodial deaths between January 2021 and February 2022 produced disciplinary action in 21 cases and prosecution in none.11 Even where an officer is eventually convicted, the delay can be extraordinary. In the Nagpur case of Joinus Yelamati, who died in 1993, the Supreme Court raised the sentences of the convicted policemen

7See the discussion in 'More than half of police custodial deaths are not reported', Newslaundry (17 June 2016) https: //www.newslaundry.com/2016/06/17/more-than-half-of-police-custodial-deaths-are-not-reported. The claim is a journalistic inference from a comparison of NCRB and NHRC data and has not been independently verified for this paper. 8Deccan Herald (cited above). The three ratios are the author's calculation from the reported totals. The reported figure of 26 is a count of policemen convicted, not of cases. 9Reported in 'Four decades, hundreds of custody deaths, no murder conviction: the curious case of Maharashtra', Newslaundry (23 July 2025) https://www.newslaundry.com/2025/07/23/4-decades-hundreds-of-custody-deaths-no-murder-conviction-the-curious-case-of-maharashtra. I have not had access to the report itself. 10LatestLY (cited above). These figures are given as they appear in the report. I was not able to confirm from it whether they refer to deaths in police custody alone or to all custodial deaths, nor to match them to the higher figures from earlier parliamentary replies. They should be treated as indicative. 11As reported in Newslaundry, 'Four decades' (cited above), citing a Lok Sabha reply based on NHRC data.

from three to seven years in 2018, some twenty-five years after the death.12

2. INTERNATIONAL PERSPECTIVE

2.1 The Treaty Framework

Custodial violence is one of the few subjects on which international law speaks with something close to one voice. The Convention against Torture, adopted by the General Assembly in 1984 and in force since 1987, defines torture as the intentional infliction of severe pain or suffering, physical or mental, by or with the consent or acquiescence of a public official, for purposes such as obtaining information or a confession, punishment, intimidation or discrimination.13 The prohibition is abso- lute: no exceptional circumstances, whether war, internal instability or a state of emergency, may be invoked to justify it (art 2). States must make torture an offence punishable by penalties that reflect its gravity (art 4), keep interrogation rules and custodial arrangements under systematic review (art 11), investigate promptly and impartially wherever there is reasonable ground to believe that torture has taken place (art 12), protect complainants and witnesses from reprisals (art 13), guarantee vic- tims redress including fair and adequate compensation (art 14), and exclude from any proceeding a statement shown to have been obtained by torture (art 15). A 2002 Optional Protocol adds a system of independent visits to places of detention.

The International Covenant on Civil and Political Rights, to which India acceded in 1979, covers the same ground through the prohibition of torture and cruel, inhuman or degrading treatment in article 7, the guarantees of liberty and prompt production before a judge in article 9, and the right of detained persons to humane treatment in article 10.14 India is bound by the Covenant, and the Supreme Court has used it, as it did in D.K. Basu, to confirm that the Indian guarantee of life and personal liberty is read consistently with international obligations. But India has not taken the step that would give the Convention against Torture the same force. It signed in October 1997 and has not ratified.

2.2 Standards of Detention and Investigation

Beside the treaties there is a body of soft law that is more detailed than any of them on the prac- tical questions that have troubled Indian courts. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in 1988, requires that every person arrested be informed of the reasons, be brought promptly before a judicial authority, have access to a lawyer and to family, and be medically examined on admission and at reasonable intervals; and that any death or disappearance in detention be inquired into by a judicial or other authority.15 The Nelson Mandela Rules of 2015, which restated the old Standard Minimum Rules for the Treatment of Prisoners, require that deaths in custody be reported to a judicial author- ity and investigated promptly, impartially and effectively, and that signs of torture or ill-treatment

12ibid. 13Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, art 1. A summary of the principal articles is given in ‘UNCAT and Custodial Torture’, Drishti IAS (21 March 2025) https://www.drishtiias.com/daily-updates/daily-news- analysis/uncat-and-custodial-torture. 14International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, arts 7, 9 and 10; UN Human Rights Committee, General Comment No 20: Article 7 (1992). India’s accession in April 1979 and the

declarations it attached to the Covenant (including on article 9) are recorded in the UN Treaty Collection https://treaties.un.org, which I have not consulted for this paper. 15UN General Assembly Resolution 43/173 (9 December 1988), Body of Principles, in particular principles 10-19, 24 and 34. The text is available at https://www.refworld.org/node/18881. I have summarised the principles from memory of the document and the numbering should be checked.

noted at medical examination be recorded and reported.16 Two professional protocols complete the picture: the Minnesota Protocol on the Investigation of Potentially Unlawful Death, last revised in 2016, which sets out how an independent and effective investigation of a death in custody should be run, and the Istanbul Protocol, the manual for the medical and legal documentation of torture, revised in 2022.

2.3 Comparative Practice

Two comparators show what the international standards look like when they are written into domes- tic law. The European Court of Human Rights has treated the treatment of persons in police custody as a central part of articles 2 and 3 of the European Convention. In Selmouni v France, decided in 1999, the Court held that the violence inflicted on a suspect during police custody amounted to torture, and observed that the Convention is a living instrument, so that acts once classified as in- human or degrading treatment might in future be classified differently as expectations of protection rise.17 The Court has also held, in cases such as Ribitsch v Austria, that where a person is taken into custody in good health and is found to be injured on release, it is for the State to provide a plausible explanation of how the injuries were caused, failing which a breach of article 3 will be found.18

That is the rule that the Law Commission of India proposed to add to the Evidence Act in 1985, and again in 2017, and that has still not been enacted.

The United Kingdom offers a different lesson, about institutions. It has a specific offence of torture committed by a public official, with a maximum penalty of life imprisonment, in section 134 of the Criminal Justice Act 1988, which was enacted to give effect to the Convention.19 Interviews of suspects at a police station must be recorded under the Police and Criminal Evidence Act 1984 and its codes of practice, which is the domestic precursor of the camera requirement that the Indian Supreme Court has imposed in Paramvir Singh Saini. And a death in or following police custody must be referred to an independent body, now the Independent Office for Police Conduct, which carries out its own investigation instead of leaving it to the force concerned.20 None of these ar- rangements has eliminated deaths in custody in Britain. They have, however, made it more difficult for the police to be the sole narrators of what occurred in a cell.

2.4 India’s Position and the Missing Statute

2.4.1 The gap in the law Section 3.1 below notes that India has no offence of torture. It is worth being more precise about what this means in practice. A police officer who beats a suspect to death can be tried for murder or culpable homicide, and a police officer who inflicts hurt to extort a confession can be tried under section 120 BNS. But where the victim survives, the sections apply only if the facts fit the narrow terms of the offence, the penalty is modest (seven years for hurt, ten for grievous hurt), and the usual procedural obstacles (sanction, a delayed complaint, a pliant medical record) apply with full

16UN General Assembly Resolution 70/175 (17 December 2015), United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), in particular rules 1, 34 and 71. The rule numbers are from my recollection of the Rules and should be verified. 17Selmouni v France (App no 25803/94), Grand Chamber judgment of 28 July 1999; see the Council of Europe summary, 'Prohibition of torture: landmark judgments' https://www.coe.int/en/web/human-rights-convention/torture1. The summary does not deal with the burden of proof. 18Ribitsch v Austria (1995) Series A no 336. The proposition is stated from my knowledge of the case line, which also includes Tomasi v France (1992), and should be checked against the reports. 19Criminal Justice Act 1988 (UK), s 134. The section is stated here from my own knowledge; the text on legisla- tion.gov.uk could not be retrieved for this paper and should be checked. 20Police and Criminal Evidence Act 1984 (UK), Code C and Code E; Police Reform Act 2002 (UK) and the referral duties of the Independent Office for Police Conduct. The description of these arrangements is from general knowledge and has not been checked against primary sources for this paper.

force. For mental torture, threats, sexual humiliation, prolonged sleep deprivation or other forms of ill-treatment that leave little physical trace, the law does not offer much.

The Convention against Torture, adopted in 1984, requires States parties to make torture a criminal offence punishable by appropriate penalties and to ensure that every complaint is promptly and impartially examined. It also requires that victims have an enforceable right to fair and adequate compensation. India signed it in October 1997 and has not ratified it.21 The government's reasons for not ratifying have shifted over the years. At times it has been said that the existing law is adequate. At times it has been said that ratification would depend on the enactment of a domestic law. In either case the effect is that the people of this country do not have the benefit of a treaty regime that most of the world has accepted, and India's position in extradition proceedings, in which foreign courts have sometimes refused to send a fugitive back for fear of treatment in custody, has been made more difficult.

2.4.2 What has been proposed The Prevention of Torture Bill 2010, passed by the Lok Sabha on 6 May 2010, was criticised from the start for a definition of torture that was narrower than the Convention's, for a limitation period of six months for the filing of a complaint, and for a requirement of government sanction before prosecution. It was sent to a Select Committee of the Rajya Sabha and lapsed in 2014.22

The Law Commission took up the question again and produced its 273rd Report in October 2017. Its recommendations were clear. The Commission recommended that India ratify the Convention, and attached a draft Prevention of Torture Bill 2017 for consideration. The draft covered torture and cruel, inhuman or degrading treatment by public servants, or by others with their consent or acquiescence, defined torture broadly enough to include physical, mental and psychological harm, whether intended or not, and provided for punishment which could extend to life imprisonment and a fine. It proposed the insertion of a new section 114B in the Evidence Act to the effect that where a person sustains injuries in police custody the injuries are presumed to have been caused by the police, so that the burden would be on the authority to explain them. It recommended that courts award compensation taking into account the nature and extent of the injury, the mental agony, and the socio- economic background of the victim, including treatment and rehabilitation, with a corresponding amendment of the Code's provision on victim

compensation. It called for a mechanism to protect victims, complainants and witnesses from threats and reprisals, and it said that the State should be liable for injuries caused by its agents, with sovereign immunity not standing in the way of constitutional rights.23

The presumption in the proposed section 114B deserves emphasis. Of all the proposals made, it is the one that most directly confronts the problem of proof, because it shifts to the police the burden of explaining what happened to a person who goes into a station in good health and comes out with

21Law Commission of India, 273rd Report: Implementation of 'United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' through Legislation (October 2017); and the summary in 'Law Commission's 273rd Report', SCC Online Blog (3 November 2017) https://www.scconline.com/blog/post/2017 /11/03/273rd-law-commission-report-implementation-un-convention-torture-cruel-inhuman-degrading-treatment-punishment-legislation/; PRS Legislative Research, 'Law Commission Report Summary: Torture Convention' https://prsindia.org/files/policy/policy_committee_reports/Law%20Commission%20Report%20Summary- %20Torture%20Convention.pdf. 22'Custodial deaths in India', Wikipedia (cited above). The criticisms of the 2010 Bill mentioned in the text (a nar- row definition of torture, a six-month limitation, the sanction requirement) are my recollection of the contemporary commentary and the Select Committee's report, which I have not been able to check for this paper. 23SCC Online Blog, 'Law Commission's 273rd Report' (cited above). The Commission's draft followed in many respects its earlier recommendations: the proposed s 114B of the Evidence Act is the same presumption that the Com- mission first recommended in its 113th Report, Injuries in Police Custody (1985), and the 152nd Report, Custodial Crimes (1994). I have relied on my own knowledge of these earlier reports and they have not been consulted directly.

injuries. The Law Commission recommended it in 1985. It has still not been enacted. There is a risk that the new Sakshya Adhiniyam, which was a chance to include it, has gone through without it, a point on which I am relying on the general understanding of commentators and not on a close reading of the new Act.

3. JUDICIAL PRECEDENTS

3.1 Constitutional and Statutory Framework

3.1.1 The constitutional core The Constitution does not use the words 'custodial death', but it supplies the three guarantees from which the courts have derived nearly everything else. Article 21 provides that no person shall be deprived of life or personal liberty except according to procedure established by law, and since Maneka Gandhi that procedure has had to be fair, just and reasonable.24 Article 22 gives the arrested person three immediate rights: to be told the grounds of arrest, to consult a lawyer of choice, and to be produced before a magistrate within twenty-four hours, excluding the time taken to travel from the place of arrest.25 Article 20(3) protects a person accused of an offence from being compelled to be a witness against himself, which is the constitutional root of the rule against forced confessions.26

The Supreme Court has been consistent in reading these provisions together. A person who is arrested does not shed the protection of the Constitution at the door of the police station, and the

power of arrest, even where it exists in law, must be exercised for a purpose and not routinely. The earliest strong statement of the latter point is in Joginder Kumar, where the Court observed that arrest is one thing and justification for it is another, and that the existence of the power does not mean it should be exercised in every case.27 Arnesh Kumar, two decades later, turned that principle into a working rule for offences punishable with up to seven years, requiring the police officer to record reasons for arrest and the magistrate to check them at the time of remand.28

3.1.2 The procedural code The Constitution's guarantees are given working shape by the criminal procedure code. Reading the old CrPC and the new BNSS side by side, the first thing that strikes one is how much of the protective architecture was added piecemeal, in response to specific scandals. The 2005 amend- ment introduced section 176(1A), which made a magisterial inquiry mandatory in the case of every death in police custody; the 2008 amendment, which came into force in 2009, added the provisions requiring an arresting officer to wear a clearly visible and accurate name tag, to prepare an arrest memo attested by a witness and countersigned by the arrested person, to inform a relative or friend, to allow the arrested person to meet an advocate during interrogation, and to appoint a police officer at district level who would hold the information about arrests and make it available.29

24Maneka Gandhi v Union of India (1978) 1 SCC 248. 25Constitution of India, art 22(1) and (2). The exceptions for preventive detention in art 22(3) to (7) are outside the scope of this paper. 26Constitution of India, art 20(3); see also Selvi v State of Karnataka (2010) 7 SCC 263, holding that involuntary narco-analysis, polygraph and brain-mapping tests violate art 20(3) and art 21. 27Joginder Kumar v State of Uttar Pradesh (1994) 4 SCC 260. 28Arnesh Kumar v State of Bihar (2014) 8 SCC 273. The Court's insistence in January 2026 that notice under section 35(3) BNSS is mandatory before arrest in such cases extends the same line: Satender Kumar Antil v Central Bureau of Investigation, decision of 15 January 2026, as reported at 2026 LiveLaw (SC) 114 https://www.livelaw.in/pdf_u pload/2026/03/03/2026-livelaw-sc-114-satender-kumar-antil-v-central-bureau-of-investigation-15-jan-2026- 659474.pdf. 29CrPC 1973, ss 41B (procedure of arrest and duty of arresting officer), 41C (control room at districts), 41D (right to meet advocate during interrogation), 50A (obligation of person making arrest to inform nominated person) and 176(1A), inserted by the Code of Criminal Procedure (Amendment) Acts of 2005 and 2008. Several of these provi- sions follow requirements stated by the Supreme Court in D.K. Basu (see section 3.2 below), which the Wikipedia

The BNSS retains most of this structure under different numbers. Section 196 BNSS corresponds to section 176 CrPC and continues to require an inquiry by the magistrate with jurisdiction into any death or disappearance in police custody or in any custody authorised by a magistrate or court, and into an allegation of rape of a woman in such custody. The body must be sent for medical exami- nation within twenty-four hours of death, unless that is not practicable, in which case the reasons must be recorded in writing; and relatives are to be informed and, where practicable, allowed to be present.30 The arrest provisions have been renumbered, with section 35 BNSS now the prin- cipal power of arrest without warrant and the notice-of-appearance provision in section 35(3) the successor to section 41A CrPC.

Two features of the BNSS deserve critical attention here, because they bear directly on the risk of custodial abuse. The first is a change in the rules on how long a person can be held in police custody. Under the CrPC, police custody could be authorised only within the first fifteen days of

remand. The BNSS, as widely understood, allows the fifteen-day period to be used in parts at any time during the first forty or sixty days of detention, depending on the gravity of the offence.31

Critics have argued that this opens the possibility of repeated returns to police custody and weakens the safeguard that the old fifteen-day limit was meant to supply. The second is that the BNSS leaves intact the requirement of prior government sanction before a public servant can be prosecuted for acts in the discharge of official duty, a point that is taken up in section 3.4.

3.1.3 The substantive criminal law The substantive provisions are older than the procedure and, in spirit, adequate. A death caused by police violence is covered by the general law of homicide: murder under section 103 BNS (formerly section 302 IPC) where there is intention or knowledge of the required kind, and culpable homicide not amounting to murder under section 105 (formerly section 304) in the cases of lesser culpability. A separate offence of causing hurt, or grievous hurt, to extort a confession or compel restoration of property, formerly sections 330 and 331 IPC, is now in section 120 BNS and carries up to seven years for hurt and ten years for grievous hurt.32 Falsifying records and destroying evidence, which in custodial death cases are often as important as the violence itself, are separately punishable, and so is wrongful confinement.

The Evidence Act's long-standing exclusion of confessions made to a police officer, and of confessions obtained through inducement, threat or promise, is carried into the Bharatiya Sakshya Ad- hiniyam 2023. The old sections 24 and 25 are the ones that policy literature continues to cite as the legal brake on interrogation violence: if a confession to a police officer is inadmissible in any event, the argument goes, the reason for coercion is removed.33

entry on custodial deaths in India also notes: 'Custodial deaths in India', Wikipedia https://en.wikipedia.org/wiki/Cu stodial_deaths_in_India. 30Bharatiya Nagarik Suraksha Sanhita 2023, s 196, as summarised in 'Inquiry by magistrate into cause of death: Section 196 BNSS', The Law Gist https://thelawgist.org/inquiry-by-magistrate-into-cause-of-death-section-196. The summary does not reproduce the provision verbatim, and the text of s 196 should be consulted directly. Note also that the magistrate's inquiry runs in addition to, and not instead of, the police investigation. 31BNSS 2023, s 187, replacing CrPC s 167. The change has been criticised in the legislative briefs and commentary; see the PRS Legislative Research brief on the three criminal law bills https://prsindia.org/billtrack/prs-products/prs- legislative-brief-1702469369. I have relied on commentary for the characterisation of the section and not on the statute's text. 32Bharatiya Nyaya Sanhita 2023, ss 103, 105 and 120; cf Indian Penal Code 1860, ss 302, 304, 330 and 331. See also 'Custodial deaths in India', Wikipedia (cited above), which notes the seven-year punishment for police torture under the old s 330. The correspondence of sections between the two codes is drawn from the BNS comparison tables and should be verified. 33'Custodial deaths in India', Wikipedia (cited above), listing Evidence Act ss 24 and 25 among the legal framework. The corresponding provisions of the BSA are, to my understanding, ss 22 and 23. That argument is more rhetorical than real, since the proviso that allows information leading to discovery of a fact to be proved (formerly s 27) gives

What is absent from the substantive law is as telling as what is present. India has no offence of torture. The Penal Code and now the Sanhita reach the consequences of torture (hurt, grievous hurt, death) but do not define or penalise torture as such, and the offence of hurt to extort a

confession is narrower than the international definition. India signed the UN Convention against Torture in October 1997 and has still not ratified it. A bill that would have made ratification possible passed the Lok Sabha in 2010 and lapsed in 2014 when the House was dissolved. This is the subject of section 2.4.34

3.2 The Supreme Court's Jurisprudence

3.2.1 Recognising the prisoner as a person The jurisprudence on custodial violence begins, as most of Indian constitutional rights jurisprudence does, in the late 1970s and early 1980s, when the Supreme Court discovered that Article 21 could be made to do a great deal of work. In Sunil Batra the Court held that a person lawfully imprisoned does not forfeit his fundamental rights except to the extent that the very fact of imprisonment requires, and that the Court would not be deterred from examining prison conditions by the argument that these were matters of administration.35 Sheela Barse turned the same lens on police lock-ups, and the Court's directions about the separate detention of women, the presence of women police officers and prompt legal aid for arrested persons were the first sustained attempt to regulate what happens in a police station.36

The next step was the remedy. A constitutional right with no remedy for its breach is, at best, a statement of aspiration, and in the early 1980s the Court was impatient with the argument that a victim of illegal detention had to go to a civil court and wait ten years for damages. In Rudul Sah, where a man had been kept in jail for fourteen years after his acquittal, the Court awarded compensation in a writ petition, the first time it had done so for a violation of Article 21.37 In Bhim Singh, which concerned the illegal arrest of a sitting legislator in Jammu and Kashmir, it did the same.38 The principle was consolidated in Nilabati Behera, decided in 1993 after Suman Behera, a young man picked up by the Orissa police, was found dead on a railway track the next morning. Justice Verma's judgment held that compensation under Articles 32 and 226 is a public-law remedy, distinct from tort, and that the defence of sovereign immunity has no place when what is alleged is a breach of a fundamental right by the State's own agents.39

It is worth pausing on what Nilabati Behera did and did not do. It gave families a remedy that does not depend on proving beyond reasonable doubt who struck the blow. That was a real gain. But it also created an alternative. Once compensation could be ordered by a constitutional court within a few years, and prosecution of the individual officers would take (as we have seen) a decade or more and probably end in acquittal, the State had an obvious reason to treat the payment of money as the end of the matter. The Court was aware of this danger and said, repeatedly, that public-law compensation is 'without prejudice' to criminal prosecution. The practice of governments, as the Maharashtra example in section 3.4 shows, has been different.

the police every incentive to continue to extract statements. 34'Custodial deaths in India', Wikipedia (cited above), on the Prevention of Torture Bill 2010, passed by the Lok Sabha on 6 May 2010, referred to a Select Committee of the Rajya Sabha, and lapsed on the dissolution of the 15th Lok Sabha on 18 May 2014. India signed UNCAT on 14 October 1997; the signature date is a matter of public record at the UN Treaty Collection https://treaties.un.org. 35Sunil Batra v Delhi Administration (1978) 4 SCC 494. 36Sheela Barse v State of Maharashtra (1983) 2 SCC 96. 37Rudul Sah v State of Bihar (1983) 4 SCC 141. 38Bhim Singh v State of Jammu and Kashmir (1985) 4 SCC 677. 39Nilabati Behera v State of Orissa (1993) 2 SCC 746. The

facts and the award of Rs 1,50,000 are noted in ‘Custodial deaths in India’, Wikipedia (cited above).

3.2.2 D.K. Basu and the eleven requirements The decision that is cited more often than any other in this area began, as many of the best Indian public-interest cases do, as a letter. In 1986 D.K. Basu, then the executive chairman of Legal Aid Services, West Bengal, wrote to the Chief Justice of India enclosing newspaper reports about deaths in police lock-ups and in prison, and asking that the letter be treated as a writ petition. A petition from Uttar Pradesh on the same subject was later joined to it. Judgment was given in December 1996 and reported in 1997.40

The judgment did three things. It held, in unqualified terms, that custodial torture and death violate Article 21 and that the guarantee against them does not lapse during interrogation or detention, whatever the gravity of the offence of which the person is suspected. It reaffirmed Nilabati Behera and said that compensation was available as a public-law remedy. And it laid down a series of requirements, eleven in number, to be followed in all cases of arrest or detention until such time as legal provisions were made. In outline, these were that police personnel carrying out an arrest or interrogation should bear accurate, visible and clear identification and name tags; that a memoran- dum of arrest be prepared at the time of arrest, attested by at least one witness (a family member or a respectable member of the locality) and countersigned by the arrestee; that a relative or friend be informed of the arrest and place of detention, with the Legal Aid Organisation and the nearest police station informed within eight to twelve hours where the arrestee’s relative lives outside the district; that an entry be made in a diary at the place of detention; that the arrestee, on request, be examined for injuries at the time of arrest, with a memo signed by both; that he be subjected to medical examination by a trained doctor every forty-eight hours during detention; that copies of all the documents be sent to the magistrate; that he be permitted to meet his lawyer during interroga- tion, though not throughout; and that there be a police control room at district and State level where information about arrests would be displayed.41

The Court also said that failure to comply would, besides making the officer liable to departmental action, render him liable for contempt of court, and that the High Courts could take cognisance of such contempt. The device was clever. It gave every High Court the power to enforce the require- ments directly against the individual officer without waiting for the legislature, and it announced that these were not suggestions. As we have seen, several of the requirements were later written into the Code of Criminal Procedure, which is the clearest evidence that the Court’s technique of issuing temporary directions in the expectation of legislation has sometimes worked.

3.2.3 What the later cases added A line of decisions after D.K. Basu sharpened specific points. The Court has said repeatedly that, in custodial death cases, the evidence is in the exclusive possession of the police and that it would be a travesty if courts insisted on direct proof from witnesses who are dependent on those very police for their liberty. The most-cited decision on the point is State of Madhya Pradesh v Shyamsunder Trivedi, where the Court condemned what it described as a conspiracy of silence in a case from Nimach in which a man died in the lock-up, and held that the trial court and High Court had been

40D.K. Basu v State of West Bengal (1997) 1 SCC 416. See the account in ‘D.K. Basu v State of West Bengal’, iPleaders

https://blog.ipleaders.in/dk-basu-vs-state-of-west-bengal-1997-case-analysis/ and 'D. K. Basu v. State of West Bengal', GKToday https://www.gktoday.in/d-k-basu-v-state-of-west-bengal. The Court's description of custodial violence as a blow at the rule of law is widely quoted from this judgment; I have not reproduced the exact words, which should be checked against the report before quotation. 41A summary of the eleven requirements appears in the sources cited above and in 'Custodial Torture norms laid down by SC' https://sites.google.com/site/hsinghjudgementscom/custodial-torture-norms-laid-down-by-sc. The summary in the text is mine and abbreviates them; the original numbered paragraphs should be consulted for the precise wording.

wrong to acquit.42 In Munshi Singh Gautam the Court extended the same reasoning, saying that police officers cannot be shielded from the consequences of their conduct by the failure of the prosecution to produce direct evidence of who did what.43 Selvi, mentioned above, made it clear that the protection of Article 20(3) cannot be sidestepped by the use of scientific techniques to extract information from an unwilling person.

The Court also took on the question of sanction, which is central to why prosecutions fail. Under section 197 CrPC (now section 218 BNSS), no court can take cognisance of an offence alleged to have been committed by a public servant in the discharge of his official duty without the previous sanction of the appropriate government. The Court's answer, in Matajog Dobey and a series of later cases, has been that the protection applies only where there is a reasonable connection between the act and the official duty.44 In Om Prakash v State of Jharkhand and Devinder Singh v State of Punjab, decided in the context of fake encounters, the Court held that killing a person in cold blood cannot be part of the discharge of official duty, so that sanction was not required.45 The doctrinal position, in other words, is more favourable to prosecutors than the practice. The practice is that the application is made, the government sits on it, and the case goes nowhere.

On the related question of encounters, PUCL v State of Maharashtra laid down a detailed procedure requiring registration of an FIR, an independent investigation by the CID or another police team, and a magisterial inquiry in every case of death in a police encounter.46 It is not directly about custodial death but it is part of the same family of decisions in which the Court asks for the police not to investigate themselves.

3.2.4 Technology as safeguard: Paramvir Singh Saini By the end of the 2010s, it had become clear that the problem was no longer a shortage of rules. A proposal that was floated again and again, by the Law Commission, by the NHRC and by the Court, was that what happens inside a police station should be recorded. In Paramvir Singh Saini v Baljit Singh, decided on 2 December 2020 by a bench of Justices Nariman, Joseph and Bose, the Court directed that CCTV cameras with night vision and audio and video recording be installed in every police station in every State and Union Territory, covering all entry and exit points, the lock-up, the corridors, the interrogation rooms and the other areas where a person in custody might be taken.47 The system was to have power back-up and to store footage for a period long enough to be recoverable in a complaint. Oversight was entrusted to committees at three levels: a Central Oversight Body under the Ministry of Home Affairs, and State-level and District-level Oversight Committees. A later order extended the requirement to central agencies that exercise the power of arrest and interrogation, such as the CBI, the NIA and the Enforcement Directorate.

42State of Madhya Pradesh v Shyamsunder Trivedi (1995) 4 SCC 262. My description of the case is from memory of the decision and is general; it should be verified against the report. 43Munshi Singh Gautam v State of Madhya Pradesh (2005) 9 SCC 631. 44Matajog Dobey v H.C. Bhari AIR 1956 SC 44. 45Om Prakash v State of Jharkhand (2012) 12 SCC 72; Devinder Singh v State of Punjab (2016) 12 SCC 87. My characterisation of both decisions is from memory and needs to be verified against the reports, as does the question whether, and how far, their reasoning has been applied to custodial death cases other than encounters. 46People's Union for Civil Liberties v State of Maharashtra (2014) 10 SCC 635. 47Paramvir Singh Saini v Baljit Singh, 2020 INSC 672 (decided 2 December 2020), reported also at (2021) 1 SCC 184. For the directions, see 'Paramvir Singh Saini v Baljit Singh: landmark directions on crime scene videography and CCTV implementation', CaseMine https://www.casemine.com/commentary/in/paramvir-singh-saini-v.-baljit- singh:-landmark-directions-on-crime-scene-videography-and-cctv-implementation/view; 'SC directs all States/UTs to install CCTV cameras in all police stations', SCC Online Blog (2 December 2020) https://www.scconline.com/bl og/post/2020/12/02/sc-directs-all-states-uts-to-install-cctv-cameras-in-all-police-station-read-how-cctv-cameras- will-help-curb-custodial-violence/. The specific list of locations and the storage period (reported as eighteen months) are as I recall them from the order and were not confirmed in the commentary consulted.

The record of compliance has been a disappointment. In September 2025, the Supreme Court took suo motu cognisance of a newspaper report, in Dainik Bhaskar, that eleven people had died in police custody in Rajasthan in the first eight months of the year, seven of them in the Udaipur division.48 At the hearing on 14 October 2025 the Court was told by the State's own affidavit that none of its police stations had cameras in the interrogation rooms, which Justice Mehta pointed out is where cameras matter most. The amicus curiae, Siddhartha Dave, informed the Court that the Union government, sixteen States and three Union Territories had not yet complied with the 2020 directions.49 The bench asked Rajasthan to propose an oversight mechanism, observed that cost could not be an obstacle in a human rights matter, and floated the idea of a central control room that would alert someone when a camera was switched off. When the case came up again on 25 November 2025, only eleven States had filed compliance affidavits, and the Court gave the others three weeks. It said, in words that are likely to be quoted for some time, that custodial violence and death is 'a blot on the system, and the country will not tolerate this.'50 Madhya Pradesh, which has linked every police station and outpost to a central workstation at the district control room, was singled out for praise.

The episode illustrates the central difficulty. Five years after the Court ordered cameras, and nearly three decades after it issued the eleven requirements, it is still asking States for affidavits. That does not mean the directions were a mistake. It means that a court, which can only act once a matter is brought before it, cannot by itself police the daily conduct of the many thousands of police stations in the country.

3.3 Judicial Directions on Police Reform

3.3.1 Prakash Singh and its seven directions Judgment was delivered on 22 September 2006. The Court, finding that the need for reform was urgent and that the Union and the States had had decades to act, issued directions to be followed until legislation was enacted.51 There were seven, in two groups. Three were about insulating the police from improper political

interference: a State Security Commission, with the Chief Minister or Home Minister as chair and the Director General of Police as its secretary, to lay down broad policies and ensure that the government does not exercise unwarranted influence; selection of the DGP from a panel of the three most senior officers recommended by the Union Public Service Commission, with a minimum tenure of two years; and a minimum two-year tenure for officers in operational posts such as the zonal Inspector General, the District Superintendent and the Station House Officer. A fourth established Police Establishment Boards to decide transfers, postings and promotions up to the rank of Deputy Superintendent. A fifth, directed to the Union, was a National Security Commission to select the heads of the central police organisations.

48'SC takes suo motu cognisance of custodial deaths, lack of functional CCTVs in police stations', The Wire (5 Septem- ber 2025) https://www.thewire.in/law/sc-takes-suo-motu-cognisance-of-custodial-deaths-lack-of-functional-cctvs- in-police-stations; the case is registered as In Re: Lack of Functional CCTVs in Police Stations, SMW(C) No 7/2025, heard by Justices Vikram Nath and Sandeep Mehta, and heard together with the Saini proceedings, as reported in LiveLaw (October 2025) https://www.livelaw.in/amp/top-stories/supreme-court-rajasthan-govt-asked-why-no- cctvs-in-police-station-interrogation-rooms-to-respond-on-11-deaths-in-custody-306920. 49ibid. 50'Custodial violence and death a blot on system, country will not tolerate this: SC', Daily Pioneer (26 November 2025) https://www.dailypioneer.com/2025/india/custodial-violence-and-death-a-blot-on-system-country-will-not- tolerate-this-sc.html. 51Prakash Singh v Union of India (2006) 8 SCC 1. The directions are summarised in Commonwealth Human Rights Initiative, 'Supreme Court Directives on Police Reform' https://www.humanrightsinitiative.org/publication/supreme- court-directive-on-police-reform-english and in the compliance assessment 'Police Accountability: Too Important to Neglect, Too Urgent to Delay' https://www.humanrightsinitiative.org/publication/police-accountability-too-important-to-neglect-too-urgent-to-delay-supreme-court-directives-on-police-reforms.html.

For the purposes of this article, the other two directions are the ones that matter most. One was the separation of the investigation of crime from law and order duties, beginning with towns of ten lakh population and above, so that investigating officers would not be pulled away to deal with processions and VIP visits, and would be less at the mercy of the local political establishment. The other was the creation of Police Complaints Authorities, at State level for complaints against officers of the rank of Superintendent and above, and at district level for those below, with the power to inquire into allegations of serious misconduct, which the Court defined to include death in police custody, grievous hurt, and rape in custody.52 The Court said that the recommendations of the Authority for action, both departmental and criminal, would be binding.

3.3.2 What has happened since The honest summary of the next two decades is that the States complied in form and, mostly, not in substance. The Commonwealth Human Rights Initiative (CHRI), which has monitored compliance since the judgment, found in a 2019 study that twenty-six States and all the Union Territories had set up a State Security Commission on paper, but that 'not a single commission complies with the standards laid down by the apex court.'53 The commissions are often chaired by the Chief Minister and filled with persons chosen by the government, with no independent members, and have little power. The Complaints Authorities, where they exist, are staffed in many States by retired officials, lack their own investigative staff and are able to make recommendations that the government is free to ignore, thereby failing to

meet the Court's direction that their recommendations should bind. A number of States have enacted new police legislation, which, according to critics and to the Court's own Monitoring Committee, whose final report of 2010 recorded an overall lack of compliance, have in several places diluted the Court's directions instead of implementing them.

3.4 Why Precedent Has Not Produced Accountability

The preceding sections describe a system on paper that is reasonably complete. What follows ex- plains why, in practice, it so rarely delivers. The failure points are not mysterious and it may be useful to follow a single case through the stages at which things go wrong.

3.4.1 The first stage: the death is recorded as something else The first requirement of a prosecution is that someone treats the death as a possible crime. In a typical case the police version is that the person fell ill, or tried to escape, or hanged himself. The first informant and the first investigator are both members of the same police station. A first information report may not be registered at all unless the family or a court insists, and the death may be entered only as an 'unnatural death' under the general provision for inquest, which routes it into a magistrate's file but not into a criminal investigation. The NCRB figures quoted in section 1.2, according to which a case was registered against police in fewer than half of the reported deaths in twenty years, are the statistical trace of this stage.

The BNSS and the CrPC both attempt to solve this by requiring a magisterial inquiry. That is a sound idea. It takes the first look out of the hands of the police and puts it with a judicial officer. But the inquiry has weaknesses that have been recorded for years. It is conducted, in many places, by a magistrate who is dependent on the police for the production of witnesses and documents. The

52CHRI, 'Supreme Court Directives' (cited above). The inclusion of death in custody within the Complaints Authori- ties' remit is part of the Court's direction on serious misconduct, which I have taken from my understanding of the judgment; the CHRI summary I consulted listed the authorities and their jurisdiction by rank of officer. 53CHRI, 'Police Accountability: Too Important to Neglect' (cited above), reporting the finding of the 2019 study. The assessment I consulted did not give State-by-State findings on Complaints Authorities, the tenure of the DGP or the separation of investigation, for which CHRI's later compliance notes are the better source: https://www.humanright
sinitiative.org/download/1632218542Government%20Compliance%20with%20SC%20Directiv es%20On%20Polic e%20Reforms%20An%20Assessment.pdf.

family is often told late, or not at all. The inquiry report is frequently confined to the cause of death without going into responsibility, so that a finding that the deceased died of 'cardiac arrest' may be treated as the end of the matter. And, more fundamentally, the inquiry is an inquiry, not a trial: it does not itself lead to a charge.

3.4.2 The second stage: the post-mortem and the medical record When a person dies in custody, the medical evidence is often the most important evidence that exists. It is also the evidence most vulnerable to pressure. The Supreme Court in Shyamsunder Trivedi noted the readiness of doctors to give opinions that suited the police, and the 1990s police-academy study mentioned earlier listed complicit doctors and magistrates among the cover-up methods.54 A post-mortem conducted in a local hospital by a doctor who works with the same police on routine medico-

legal cases is open to the suspicion of bias, however honest the individual doctor. The NHRC's guidelines asking that post-mortems in custodial deaths be videographed and, where there is doubt, conducted by a panel of doctors, respond to this, but compliance varies.

3.4.3 The third stage: evidence disappears Physical evidence in a police station is in the sole control of the police. In the Sathankulam case, a Judicial Magistrate's report to the Madras High Court said that the CCTV footage from the police station had been deleted, even though the system had enough storage to retain it.55 A court can infer wrongdoing from the fact that evidence was destroyed, but that is not the same thing as proving who struck whom. It is not an accident that the Supreme Court's response, in Saini, was to require that the footage be preserved for a fixed period and held by a system that the police station cannot switch off. It is also not an accident that the suo motu case of 2025 is focussed on whether the cameras actually work.

3.4.4 The fourth stage: sanction and the choice of investigating agency Even where an offence is registered and investigated, the case must clear the barrier of sanction under section 197 CrPC and section 218 BNSS. I have already said that the Supreme Court's po- sition, as best I understand it, favours the prosecution in cases of killing, but that does not stop an application for sanction from being sent to the government and left pending. The BNSS is reported to have put a time limit on the government's decision, with deemed sanction where it fails to act within one hundred and twenty days, a change that, if correctly described, deserves to be watched closely in custodial death cases.56 The Khwaja Yunus case in Maharashtra gives a sense of how sanction works in practice. The CID named fourteen policemen in the death of a young engineer in 2003; the State sanctioned prosecution of only four; the four were suspended in 2004 and reinstated in 2020; the case was admitted for trial in 2009 and proceedings began in 2017; the trial then stalled for nearly four years after the special prosecutor was removed and has seen only one witness depose in the two years after a replacement was appointed in 2022.57 Not one of those delays is dramatic in itself. Together they are a punishment of the family, which has been waiting more than twenty years.

Equally important is the question of who investigates. When the local police investigate a death

54Newslaundry, 'Four decades' (cited above), on the SVP National Police Academy study's findings on methods of cover-up, which included failure to register complaints, falsified post-mortems, witness intimidation and inquiries assigned to officers of the same unit. 55Newslaundry, 'Sathankulam horror' (cited above). The Madurai Bench of the Madras High Court took suo motu cognisance of the matter and monitored the investigation before it was transferred to the CBI. 56BNSS 2023, s 218, as I understand it from commentary on the new Code; I have not reproduced the text and the provision should be checked. The 120-day period for a decision on sanction is a feature that has been noted in the commentary. 57Newslaundry, 'Four decades' (cited above).

in their own station, the conflict of interest is obvious, and the practice in serious cases has been to transfer the investigation to the CID or the CBI. This helps, but it does not solve the problem, because the CBI is a police force too and because the transfer is usually ordered by a High Court only after the family has fought for it. In Sathankulam, the CBI filed a chargesheet in September 2020, within about three months of the deaths, and a supplementary chargesheet in August 2022. In the Ajith Kumar case in 2025, the High Court transferred the investigation to the CBI and

fixed a deadline of 20 August 2025 for its final report.58 In both cases, the speed was the result of a High Court's attention and not of the system's ordinary operation.

3.4.5 The fifth stage: witnesses The witnesses to a custodial death are usually the persons who were with the deceased in the police station: other detainees, junior police staff, sometimes a doctor, a relative who saw the injuries. They are frequently dependent on the police and vulnerable to pressure. In the Nagpur case of Joinus Yelamati, a family member has spoken publicly of threats against testifying and of an offer of Rs 25 to 30 lakh to drop the case.59 The Sathankulam trial is instructive in the opposite direction. It is recorded that a woman police constable, S. Revathy, testified and that her evidence corroborated the account that the assault had continued through the night.60 A conviction became possible, in part, because someone within the station was willing to speak. The Indian witness protection scheme approved by the Supreme Court in 2018 in Mahender Chawla v Union of India is in principle available for such a witness, but I am not aware of data on how often it is used in custodial death trials.61

3.4.6 The sixth stage: money instead of trial The last point is the one that I think matters most. By the time the case has crossed the previous five stages, the State has a very simple option, which is to pay. Compensation can be given quickly and costs the individual officer nothing. It also relieves public pressure. The practice is not new, but it has become more formalised. In April 2025, the Maharashtra government announced fixed amounts of compensation for custodial deaths, Rs 5 lakh for 'unnatural' deaths and Rs 1 lakh for suicides, a policy that, as one commentator observed, says nothing about accountability or the prosecution of officials.62 In the Ajith Kumar case, the State had already paid Rs 7.5 lakh as interim compensation, with land for his mother and a government job for his brother, and the High Court nevertheless found that this was not enough and directed an additional Rs 25 lakh.63

I do not suggest that compensation is wrong. The families are poor, the loss is irreparable, and the amounts the courts award are, by international standards, modest. The concern is with what compensation replaces. A system in which the State is willing to pay the family and the officer remains at his post teaches the police that the price of a death in custody is paid by the exchequer.

3.4.7 An exception: Sathankulam On 23 March 2026, the First Additional Sessions Court at Madurai found all nine accused police personnel guilty of murder in the Sathankulam case; a tenth accused, a special sub-inspector, had died of COVID-19 during the proceedings. The court is reported to have sentenced all nine to

58LiveLaw, 'Sivaganga custodial death' (cited above). The Madras High Court (Justices S.M. Subramaniam and A.D. Maria Clete) had also ordered a preliminary judicial inquiry by a District Judge, S. John Sundarlal Suresh, whose report concluded that Ajith Kumar had died as a result of custodial torture, and described the incident as a 'police organised crime'. 59Newslaundry, 'Four decades' (cited above). 60Newslaundry, 'Sathankulam horror' (cited above). 61Mahender Chawla v Union of India (2019) 14 SCC 615. The citation and the scheme are from my own knowledge; the scheme's use in custodial death cases is not documented in the sources consulted for this paper. 62Newslaundry, 'Four decades' (cited above). 63LiveLaw, 'Sivaganga custodial death' (cited above).

death.64 That is one of the harshest outcomes ever recorded against police officers in a custodial death case in this country, and it deserves both acknowledgment and some caution.

It deserves acknowledgment because it shows that a conviction is possible. The factors that made it so are visible in the record: a High Court that took suo motu notice at the beginning, a magistrate who recorded what he saw and reported it, an investigation taken over by the CBI, forensic evidence in the form of blood stains and DNA that matched the victims, a witness from within the force and a family that did not give up. It deserves caution because the same record shows how much had to go right for a result that most families will never get. It took nearly five years and nine months from arrest to verdict. The case was widely reported, which attracted the attention of the courts, and it arose in the context of a pandemic lockdown, in which the victims were two small traders whose treatment became a symbol. One cannot build a system on the assumption that every custodial death will be so fortunate. A result of this kind may also draw different reactions from those who oppose the death penalty in principle, a position on which this article takes no view, but which reminds us that the question of accountability for custodial violence is not the same as the question of punishment.

4. CONCLUSION AND SUGGESTIONS

4.1 Conclusion

The courts did what they could. In four decades, the Supreme Court has said, in a long line of decisions, that custodial violence is incompatible with the Constitution; it has created a public-law remedy of compensation, laid down eleven requirements for arrest and detention, extended the principle of sanction to the point of not protecting the killing of a person, directed that cameras be placed in police stations and, in 2025, took notice on its own motion when it was told that they were not working. It is difficult to think of a further direction that a court can usefully give. The question now is whether the other branches will act.

The argument of this paper has been that the failure lies mostly there. The data, however imperfect, point to a system in which most deaths do not lead to any case against the police and in which, even where they do, the case takes years, much of it spent waiting for sanction, for a prosecutor, or for a witness who has been frightened into silence. The new criminal codes have been a chance to change this and have, for the most part, preserved the structure that was there. The case of Sathankulam, in which nine police personnel were convicted of murder after five and a half years, shows that justice is possible. It also shows what it takes: a High Court that will not look away, a magistrate who writes what he sees, an agency from outside the force, a witness from within it and a family that persists. A legal system that offers justice only to the exceptional case has not yet delivered the rule of law.

What is needed is not more rules but a change in incentives, so that it becomes riskier, for an officer and for an institution, to hide a custodial death than to disclose it. An anti-torture statute with a presumption of responsibility, independent investigation as the default, time-limited sanction, com- pensation tied to recovery from the guilty, cameras that cannot be switched off and statistics that cannot be disputed, are the elements of such a change. None of them is original. Most have been recommended for forty years. The measure of the next forty will be whether the legislature and the executive treat them as the Constitution requires.

64Newslaundry, ‘Sathankulam horror’ (cited above); ‘Sathankulam custodial deaths: Madurai court awards death penalty to 9 police officers’, Bar & Bench (6 April 2026) https://www.barandbench.com/news/litigation/sathankulam- custodial-deaths-madurai-court-

awards-death-penalty-to-9-police-officers. The sections of conviction were not given in the reports seen. Any sentence of death passed by a Sessions Court must be confirmed by the High Court before it can be executed (CrPC s 366, now BNSS s 407).

4.2 Suggestions

It would be easy to end with a long list of recommendations. Most of what could be said has been said, by the Law Commission, by the NHRC, by the Supreme Court itself, and the real task is to decide which of these have the best prospect of making a difference and to say who must do what. The following are in descending order of what I regard as importance.

The first priority is an anti-torture law. India should ratify the Convention and enact a statute that defines torture in terms consistent with its Article 1, treats it as an offence in its own right, makes superior officers answerable for acts of subordinates which they knew of or ought to have known of, and removes the requirement of sanction for prosecution. The Law Commission's draft of 2017 is a better starting point than the Bill of 2010 and could be improved. Parliament should also insert the presumption proposed in section 114B in the law of evidence, in terms that make it applicable where a person is injured, or dies, in police custody. Both measures have been before the legislature for a generation.

The second is a change in the mechanism of investigation. In every case of death in police custody, the first information report should be registered by, and the investigation should be conducted by, an agency that does not report to the force of which the accused officers are members. The PUCL directions for encounter deaths already require an investigation by the CID or an independent team; the same principle should be made a statutory rule for custodial deaths, with the magisterial inquiry run in parallel and a requirement that the magistrate's report, and not only the police report, be placed before the court at the stage of cognisance. This could be done in the Rules to the BNSS without a new Act.

The third is to make sanction a time-limited formality. The Court's case law has already made it clear that sanction is not needed where the act is not part of official duty. Where it is applied for, there should be a statutory time limit and the consequence of delay should be that sanction is deemed to be granted. It would be useful to know whether the deemed-sanction rule in the BNSS, if correctly reported, has had that effect in any custodial death case, and the Ministry of Home Affairs should be asked to publish the data.

The fourth is to take compensation out of the hands of the Executive's discretion and tie it to accountability. The State should pay prompt and adequate interim compensation in every case of custodial death, on a scale fixed by statute or by a binding scheme, but should then be required to re- cover an appropriate part from the officers found responsible, and no compensation scheme should be adopted without a corresponding provision for investigation and prosecution. The Maharashtra policy of April 2025 shows what happens when this is not done.

The fifth is to make the cameras and the data real. The Court's Saini directions already provide the framework, and the suggestion made by Justice Mehta, that footage from every police station feed into a central control room that alerts the district authorities when a camera goes dark, should be adopted. Footage should be preserved for a minimum period and automatically held for longer when a complaint is registered. A failure to maintain the cameras, or an unexplained gap in the footage in a case of death or injury, should lead to a presumption against the officer in

charge of the station. And the data should be public: the NCRB and the NHRC should publish, on a common definition and for each State, the number of deaths in police custody, the number of magisterial inquiries completed, the number of first information reports registered, the number of chargesheets filed and the number of convictions, with the time taken at each stage. The conclusion of this paper regarding the numbers in section 1.2 is that nobody can reliably say how large the problem is, which is itself an obstacle to solving it.

The sixth is to implement Prakash Singh, starting with the directions that bear most directly on cus-

todial violence. Police Complaints Authorities with independent members, their own investigators and powers to recommend prosecution, and a duty on the government to give reasons in writing when it does not accept a recommendation, would do more for accountability than a further layer of internal inquiry. The Supreme Court should consider appointing a monitoring authority with a mandate to report on compliance, with reference to specific orders, at regular intervals. The Court's own role in this deserves to be added to the list. A judicial order that is not complied with and that is not followed by consequences weakens every other order, and the number of occasions on which a State has filed an affidavit of compliance that was later found to be inaccurate would make a useful study in itself.

Finally, there is the question of the culture of policing, which law can influence but cannot change on its own. Training in non-coercive interviewing, investment in forensic capacity, and a career structure that rewards officers for solving cases through evidence and not through confession, are the long-term answers. They are also the answers least likely to be given in an environment in which promotion and posting depend on political goodwill, which brings the argument back to Prakash Singh.

NOTE ON VERIFICATION

This article was prepared from published sources available online, principally news reports of court decisions and parliamentary replies, summaries by non-governmental organisations, and commen- tary on the new criminal codes. A number of points rest on those secondary sources and not on the primary texts, and the author's citations to law reports and section numbers are given from working knowledge and have not been checked against the official reports. Before publication the following should be verified against primary sources: (i) the international-law references in section 2 (article and rule numbers, the UK provisions and the Ribitsch line of cases) and all section numbers of the BNS, BNSS and BSA and their correspondence with the IPC, CrPC and Evidence Act; (ii) the SCC citations of all decisions, in particular Paramvir Singh Saini, Shyamsunder Trivedi, Munshi Singh Gautam, Om Prakash, Devinder Singh, Mahender Chawla and PUCL, and the characterisation of each; (iii) the exact wording of the eleven D.K. Basu requirements and of the Saini directions, in- cluding the locations to be covered and the period of storage; (iv) the figures in Table 1, several of which come from newspapers reporting parliamentary replies, and their definitions of custodial death; (v) the status of the Sathankulam sentence and any appeal or confirmation proceedings, and the sections under which the accused were convicted; (vi) the status of the suo motu proceedings (SMW(C) No 7/2025) after the hearing of 25 November 2025 and the date of the next listing; and (vii) the claims about earlier Law Commission reports, the National Police Commission and the Model Police Act, which are

from the author's general knowledge. Statements of law are as at 21 November 2026. This note is intended for the author and should be removed once the checks are complete.