

Custodial Torture and Legislative Reform in India: Rethinking the Need for a Standalone Anti-Torture Law

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1. Introduction

India still lacks a dedicated, standalone anti-torture law and has not ratified the UN Convention Against Torture (UNCAT).³ Though India revamped its larger criminal justice system through the Bharatiya Nyaya Sanhita (BNS)⁴, the Bharatiya Nagarik Suraksha Sanhita (BNSS)⁵, and the Bharatiya Sakshya Adhiniyam (BSA) 2023⁶, critics and legal experts point out that a standalone law on torture that defines and criminalises it is missing. However, citizens have legal recourse under constitutional provisions and existing penal codes. Beginning with the preamble, the Constitution assures every citizen the dignity of the individual and guarantees to secure justice, social, economic, and political, equality of status and opportunity. Torture has not been specifically defined in the Indian Constitution or specifically prohibited in penal laws⁷. However, the Supreme Court has specifically held that the right not to be tortured is enshrined in the right to life guaranteed in Article 20, 21 and 22 of the Indian Constitution⁸.

2. Meaning

Torture is not defined in the Bharatiya Nyaya Sanhita, 2023(BNS); there is no single section that defines the word "torture". Not only the Bharatiya Nyaya Sanhita, 2023, but also the Indian Penal Code, 1860, has no specific definition of "torture". Instead, BNS criminalizes torture differently, such as voluntarily causing hurt or grievous hurt, provisions regarding custodial violence, and domestic abuse.

Hurt and Grievous Hurt:

Section 114 BNS: According to this section, whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.⁹

Section 115 of the same provides a scenario for voluntarily causing hurt and punishment thereof¹⁰.

Section 116 of the Adhiniyam provides 8 kinds of hurt and designates them as grievous hurt and, under Section 117, provides punishment for voluntarily causing grievous hurt¹¹.

Though the definition 'Hurt' does not include mental torture, Indian courts have included psychic torture, environmental coercion, tiring interrogative prolixity, overbearing and intimidatory methods, among others, in the ambit of torture. 'Voluntary causing hurt and Grievous hurt to extort confession' (Section 120 BNS) are provided in the Code to enhance punishment. Under the Bharatiya Nyaya Sanhita, 2023, a judicial magistrate is required to inquire into every custodial death (Section 196).

In *Sumit Kumar V, State of Bihar*¹² The Patna High Court held that "torture involves not only physical suffering but also mental agony. It is a violation of human personality under Articles 21,22 and 32.

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⁴ Bharatiya Nyaya Sanhita (BNS), 2023.

⁵ The Bharatiya Nagarik Suraksha Sanhita, 2023.

⁶ Bharatiya Sakshya Adhiniyam, 2023.

⁷ The Indian Constitution of 1950.

⁸ D.K. Basu v. State of West Bengal, AIR 1997 SC 610.

⁹ BNS, 2023, s. 114.

¹⁰ Id.,s.115.

¹¹ Id.,s.116.

¹² 2020SCCPAT2700.

In *D.K. Basu V. State of West Bengal*¹³ The Supreme Court observed that: “Torture has not been defined in the Constitution or in other penal laws. ‘Torture’ of a human being by another human being is essentially an instrument to impose the will of the ‘strong’ over the ‘weak’ by suffering. The word torture today has become synonymous with the darker side of human civilisation”. The Court quoted the definition of torture by Adriana P. Bartow as under: “Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone, paralyzing as sleep and dark as the abyss. Torture is despair, fear, rage, and hate. It is a desire to kill and destroy, including yourself.”

In *Nandini Satpathy V. P.L. Dani*¹⁴ The Court held that not only physical threats or violence, but psychological torture, atmospheric pressure, environmental coercion, and tiring interrogation by police are violations of law.

In *Prosecutor v. Kunarac (International Criminal Tribunal for the former Yugoslavia, ICTY-2002)*¹⁵ The Kunarac judgment, drawing on international law, defined torture as the intentional infliction of severe physical or mental pain. This definition requires the intent to cause such suffering for purposes such as intimidation, coercion, punishment, or discrimination.

According to the *United Nations Convention Against Torture, 1984*¹⁶, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions.

3. UN Convention Against Torture (CAT)

The United Nations Convention Against Torture is an international human rights treaty that was adopted by the UN General Assembly in 1984. All United Nations member states have promised to fulfil the Universal Declaration of Human Rights’ commitment that “no one shall be subjected to torture or cruel, inhuman, or degrading treatment or punishment” (Article 5).

To fulfil this shared promise, the *United Nations Convention Against Torture (UNCAT) of 1984* provided States with precise rules that specify the key features of effective torture prohibition and prevention.

The aims of this convention are as follows:

1. To prohibit torture and other cruel, humiliating, or degrading treatment and punishment around the world.
2. To prevent torture in any region under their jurisdiction, the Convention requires nations to take appropriate measures.
3. It also prohibits governments from transporting people to any country where there is cause to believe they will be tortured.
4. This Convention’s absolute ban on torture and other cruel, inhuman, or humiliating actions has been a principle of customary international law since the Convention entered into force.¹⁷

Article 5 of the Universal Declaration of Human Rights states that “No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.”¹⁸

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the UN General Assembly in December 1984. It defined custodial violence as any sort of violence that includes all such violence that is done by the state machinery. One of the goals for the convention’s adoption was to counter the increased incidence of torture by public authorities, both during the war and in peacetime, and to persuade member governments to take appropriate preventive measures.¹⁹

4. Constitutional/ Statutory Provisions

¹³ 1997(1) SCC 416.

¹⁴ 1978 AIR 1025.

¹⁵ https://www.icty.org/x/file/Legal%20Library/jud_supplement/supp34-e/kunarac.htm (last visited 25th April 2026).

¹⁶ <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading> (accessed on 20th April 2026).

¹⁷ <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading> (last visited 30th April 2026).

¹⁸ Universal Declaration of Human Rights (UDHR).

¹⁹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Constitutional Provisions:

1) **Article 20(3)** provides that a person accused of any offence shall not be compelled to become a witness against himself. The accused has a right to maintain silence and not to disclose his defence before the trial. Test results of polygraph and brain fingerprinting tests have been held to be testimonial compulsions and thus have been held to be barred by Article 20(3)²⁰.

2) **Article 21** provides that nobody can be deprived of their life and liberty without following the procedure prescribed by law. The Supreme Court has consistently held that custodial torture violates the right to life enshrined in Article 21 of the Constitution. It is a settled legal proposition that Article 21 may also supplement various requirements laid down in Article 20.²¹

3) **Article 22 (1) & (2)** provide for protection against arrest and detention in certain cases. It prohibits detention of any person in custody without being informed of the grounds for his arrest, nor shall he be denied the right to consult and to be defended by a legal practitioner of his choice. “Every person who is arrested and detained in custody shall be produced before the nearest judicial magistrate within a period of twenty-four hours of such arrest and no such person shall be detained in custody beyond the said period without the authority of a magistrate.”²²

Informing about the grounds of arrest is mandatory under **Article 22 (1)**. Right to consult and to be defended by a legal practitioner of his choice is also mandatory²³.

Statutory Provisions: -

I. Bharatiya Sakshya Adhiniyam

1. **Section 22:** provides that any confession obtained by inducement, threat, or promise from an accused or made to avoid any evil of a temporal nature would not be relevant in criminal proceedings. A confession made by an accused is rendered irrelevant in a criminal trial if, in the opinion of the court, it has been caused by inducement, threat, or promise with reference to the charge against the accused.²⁴
2. **Section 23** of the Act provides that a confessional statement of an accused to a police officer is not admissible in evidence and cannot be brought on record by the prosecution to obtain a conviction.²⁵
3. **Sections 24 (1) & (2)** provide that a confession by an accused while in police custody cannot be proved against him. In fact, a statement made in police custody remains unreliable unless it is made in the immediate presence of a Magistrate and shall be proved against him.²⁶
4. **Section 24(2) Proviso** provides as to how much of the information received from an accused may be proved. For the application of this provision, the statement of the accused is required to be split into its components, and the admissible part of it is to be separated. Only those portions which were the immediate cause of discovery would be admissible in evidence.²⁷
5. **Section 132** provides that a witness is not excused from answering the question on the ground that the answer will incriminate him. However, the proviso therefor reads as under:

“Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.”²⁸

In *R Dinesh Kumar V. State & Ors.*²⁹ The Supreme Court explained the scope of the proviso, observing that the proviso to section 132 of the Evidence Act is a necessary corollary to the principle enshrined under Article 20(3) of the Constitution of India, which confers a fundamental right that “no person accused of any offence shall be compelled to be a witness against himself”. Though such a fundamental right is available only to a person who is accused of an offence, the proviso to section 132 of the Evidence Act creates a statutory immunity in favour of a witness who, in the process of giving evidence in any suit or in any civil or criminal proceeding, makes a statement which criminales

²⁰ The Constitution of India, 1950, a.20(3).

²¹ Id.,a.21.

²² Id.,a.22.

²³ A.K. GOPALAN V STATE OF MADRAS,1950 AIR 27.

²⁴ BSA, 2023, S.22.

²⁵ Id.,s.23.

²⁶ Id.,s.24(1) & (2).

²⁷ Id.,s.24(2) proviso.

²⁸ Id.,s132.

²⁹ AIR 2015 SC 1816.

himself, which deserves the most liberal construction. Without such an immunity, a witness who is giving evidence before the court to enable the court to reach a just conclusion (and thus assisting the process of law) would be in a worse position than an accused in a criminal case. Therefore, no prosecution can be launched against the maker of a statement falling within the sweep of Section 132 of the Evidence Act based on the “answer” given by a person deposing as a “witness” before a court.

II. Bharatiya Nagarika Suraksha Sanhita

1. **Sections 43(4) and 46** protect the person to be arrested and the detenu under police custody, who are not accused of an offence punishable with death or imprisonment for life. The detenu cannot be subjected to more restraint than is necessary to prevent his escape.³⁰
2. **Sections 47 and 58** are in conformity and consonance with Article 22 of the Constitution. A person arrested is to be informed of the grounds of arrest and the right to bail. More so, he is to be produced before the Magistrate within the stipulated time.³¹
3. **Sections 49(2) and 103(3)** provide that if a woman is to be searched by a police officer in connection with a crime, the search shall be made by another woman with strict regard to decency. The woman accused must be interrogated at her residence.³²
4. **Section 53** of the Code extends safeguards against any infliction of custodial torture and violence by providing for the examination of an arrested person by a medical officer.³³
5. **Sections 151 and 218(1)** grant immunity to public servants from prosecution if the public servant is accused of any offence alleged to have been committed by him while discharging his official duties.³⁴
6. **Section 179(1) Proviso** provides “No male person under the age of 15 years or above the age of 60 years or woman or mentally or physically disabled person or a person with acute illness shall be required to attend at any place other than in which such male person or woman resides.”³⁵
7. **Sections 181, 182(1) and 353** disallow (i) forced confession and (ii) testimony, as inadmissible in the court of law, and protect the accused against such confession.³⁶
8. **Section 187** puts an obligation to bring the accused person before the court to safeguard their rights and interests.³⁷
9. **Section 196** provides for a compulsory magisterial inquiry on the death of the accused in police custody.³⁸
10. **Section 396** provides for the framing of the victim compensation scheme by every State Government in coordination with the Central Government.³⁹
11. **Section 397** provides for the treatment of victims of rape by all hospitals, public or private, whether run by the Central Government, State Government, local bodies, or by any other persons.⁴⁰
12. **Section 399** provides for compensation to persons groundlessly arrested.⁴¹

III. Bharatiya Nyaya Sanhita

1. **Sections 120, 121, and 127** have been purposely designed to deter police officers who are empowered to arrest a person and to interrogate him during the investigation of an offence from resorting to third-degree methods, which may amount to torture.⁴²
2. **Section 64(2)** provides for a graver penalty in case of custodial rape committed by police officers.⁴³
3. **Section 68** provides a penalty for sexual intercourse by a person in authority.⁴⁴

³⁰ BNSS, 2023, s.43 (4) & 46.

³¹ Id., s.47 & 58.

³² Id., s.49(2) & 103(3).

³³ Id., s.53.

³⁴ Id., s.151 & 218(1).

³⁵ Id., s.179(1) proviso.

³⁶ Id., s.181, 182(1) & 353.

³⁷ Id., s.187.

³⁸ Id., s.196.

³⁹ Id., s.396.

⁴⁰ Id., s.397.

⁴¹ Id., s.397.

⁴² BNS, 2023, s.120, 121, 127.

⁴³ Id., s.64(2).

⁴⁴ Id., s.68.

IV. Indian Police Act, 1860

- Sections 7 and 29 provide for dismissal and other penalties to police officers who are negligent in the discharge of their duties or unfit to perform the same.⁴⁵

V. Armed Forces Special Powers Act, 1983

- Section 6 of the Act creates the concept of sovereign immunity as it protects the security forces against alleged crimes.⁴⁶

5. How the Supreme Court Has Dealt with Custodial Torture Cases

In *Kharak Singh Vs. State of Uttar Pradesh*⁴⁷ “Life” was held to cover the right to the possession of each limb and organ of the body, and a prohibition was read in Article 21 against any form of physical mutilation or deliberate inflicting of pain or suffering. However, protection against illegal and arbitrary arrest is contained in Article 22 of the Constitution. The arrest must be supported by sufficient grounds under Article 22.

In *Niranjan Singh Vs. Prabhakar Rajaram*⁴⁸ The Court commented that “the police instead of being the protector of law have become the engineer of terror and panic, instilling fear in the people.”

In *Prem Shanker Vs. Delhi Administration*⁴⁹, The Supreme Court has held that the right not to be tortured is enshrined in the right to life guaranteed in Article 21 of the Constitution.

In *Francis Coralie Mullin Vs. The Administrator, Union Territory of Delhi*⁵⁰ It was held that life does not mean mere physical existence but rather denotes something much more than that. It means the right to live with human dignity and all that goes with it, viz., the necessities of life such as adequate nutrition, clothing, shelter and facilities for reading, writing and expressing oneself, etc.

In *Rudul Shah V, State of Bihar*⁵¹ The Supreme Court, taking an opposite stand, rejected the plea of sovereign immunity and awarded the compensation, as the petitioner had been illegally detained in jail for over fourteen years (14) after his acquittal.

Rudul Sah’s case is a landmark judgment in the jurisprudence of state liability. It is considered particularly important as it led to the emergence of compensatory jurisprudence for the violation of fundamental rights under the Constitution. It is noteworthy in this context that there is no express provision for awarding compensation in the text of the Indian Constitution, and that this judgment was based on the Court’s interpretation of the extent of its remedial powers. This was the first case since the inception of the Supreme Court that awarded monetary compensation to a person for the violation of his fundamental rights guaranteed under the Constitution. The grant of such monetary compensation was in addition, and not to the exclusion, to the right of the aggrieved person to bring an action for damages in civil law or in tort.⁵²

In *Sheela Barse Vs. State of Maharashtra*⁵³ The Supreme Court gave the following directions and suggestions to the State Government to prevent the recurrence of police/ custodial torture

1. The State Government should prepare pamphlets in local languages describing the rights of arrested persons, which should be placed in each police cell to enable all detainees in police custody to know their rights.
2. The police should inform the nearest Legal Aid Committee immediately of an arrest so that the committee might assist at once at Government expense.
3. The police should immediately inform the relatives of the arrested person. Fourthly, male detainees should be kept separate from female detainees, and a female officer should be present during the interrogation of female detainees. Fifthly, the District and Session Judge should make unannounced visits to police stations to check on the treatment of inmates. And finally, Magistrates before whom detainees appear must enquire whether they had complaints of police torture, and inform all detainees that they have a right to a medical examination under section 54 of the Cr. P. C.

⁴⁵ Indian Police Act, 1860, s.7&9.

⁴⁶ Armed Forces Special Powers Act, 1983, s.6.

⁴⁷ 1963 AIR 1295.

⁴⁸ AIR 1980 SC 785.

⁴⁹ AIR 1980 SC.

⁵⁰ A.I.R. 1981 S.C.746.

⁵¹ AIR 1983 SC1086.

⁵² <https://www.escri-net.org/caselaw/2015/rudul-sah-v-state-bihar-1983-4-scc-141/> (last visited 5th may 2026).

⁵³ 1983 AIR 378.

In *Saheli V, Commissioner of Police*⁵⁴, where a 9-year-old boy died after being beaten by the Indian police. The court directed a payment of Rs 75,000 to the mother of the deceased child and permitted the Delhi administration to take appropriate steps for the recovery of the amount paid as compensation or part thereof from the officers responsible for this dastardly act.

This was among the path-breaking judgments that allowed for compensation in the event of excesses by the lawless Indian police force.

In *Nilabati Behera V, State of Orissa*⁵⁵ A letter was sent by Smt. Nilabati Behera, to the Supreme Court, stated that her twenty-two-year-old son, Suman Behera, had died in police custody after being inflicted with several injuries. The honourable court took suo motu action and converted it into a writ petition under Article 32 of the Indian Constitution. The Apex Court held that the Petitioner awarded compensation of Rs. 1,50,000 and a sum of Rs. 10,000 to be paid to the Supreme Court Legal Aid Committee. The Supreme Court also ordered the State of Orissa to initiate criminal proceedings against those who killed Suman Behara.

In *Joginder Singh V State of U.P.*⁵⁶ It was ruled by the court that an arrest cannot be made on a mere allegation of offence against a person or in a routine manner without any genuine complaint and a proper investigation. Constitutional rights of a person mandate that he is not arrested on simple suspicion of complicity in an offence and cannot be arrested without a reasonable suspicion reached after some investigation to find out the genuineness of the complaint.

The court further laid down “that the detainee has an inherent right to have someone informed. These rights are inherent in Article 21 and 22 (1) and required to be recognised and scrupulously protected for effective enforcement of fundamental rights, the court issued the following guidelines: An arrested person being held in custody is entitled, if he so requests to have one friend relative or another person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where he is being detained.

It shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied with. The above requirements shall be followed in all cases of arrest till legal provisions are made in this regard. These requirements shall be in addition to the rights of the arrested persons found in the various Police Manuals. These requirements are not exhaustive. The Directors General of Police of all the States in India shall issue necessary instructions requiring due observance of these requirements. In addition, departmental instruction shall also be issued that a police officer making an arrest should also record in the case diary the reasons for making the arrest.”

In *Nandini Satpathy V P.L. Dani*⁵⁷ The Supreme Court, speaking through Krishna Iyer J., laid down a few propositions intended to act as concrete guidelines to provide protection to an accused person in police custody. It upheld the right against self-incrimination and the right to silence of the accused. It held that if there is any mode of pressure, subtle or crude, mental or physical, direct or indirect, but sufficiently substantial, applied by the police in obtaining information from the accused. It renders compelled testimony a violation of the right against self-incrimination. The Court also held that compulsion may be presumed in the case of custodial interrogation by the police “unless certain safeguards against duress are adhered to.” It further observed that the police ought to permit a lawyer to assist the accused if he can afford one. However, it did not hold that the State is under an obligation to provide a lawyer to the accused if he is not poor. It also acknowledges the right to silence against self-incrimination, but he does not have a right to complete silence. In other words, non-incriminatory questions can be asked, and the accused is “bound to answer where there is no clear tendency to incriminate.”

In *D.K. Basu V State of West Bengal*⁵⁸ The Supreme Court referred to the case of *Neelabati Bahera v. State of Orissa* (AIR 1993 SC 1960) and reiterated that prisoners and detainees should not be deprived of their Fundamental Rights under Article 21, and only the restriction permitted by law could be imposed on the enjoyment of their Fundamental Rights.

The Apex Court further laid down the following guidelines and said that arrest and detention will be subject to the guidelines. The violation of these guidelines would attract not only departmental action but also contempt of court proceedings in a High Court having the jurisdiction over the matter. The guidelines are as follows: ---

⁵⁴ 1990 AIR 513.

⁵⁵ 1993 SCR (2) 581.

⁵⁶ 1994 AIR 1349.

⁵⁷ 1978 AIR 1025.

⁵⁸ AIR 1997 SC 610.

- 1) The police officer who arrests and handles the interrogation of the arrestee must wear accurate, visible, and clear identification and name tags with their designations.
- 2) The police officer carrying out the arrest must prepare a memo of arrest at the time of arrest.
- 3) A person who has been arrested and is being held in custody in a police station or interrogation centre, or other lock-up shall be entitled to have one friend or relative or other person known to him or having an interest in his welfare be informed.
- 4) The time, place of arrest, and venue of custody of an arrestee must be notified by the police.
- 5) The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
- 6) An entry must be made in the case diary at the place of detention regarding the arrest, which shall also disclose the name of his next friend who has been informed of the arrest and the names and details of the police officials in whose custody the arrestee is.
- 7) On request, the arrestee should also be examined at the time of his arrest, and any major and minor injuries, if any are present on his/her body, must be recorded at that time.
- 8) The arrestee should be subjected to a medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by the Director. Copies of all the documents, including the memo of arrest referred to above, should be sent to the Magistrate for his record.
- 9) The arrestee may be allowed to meet his attorney during interrogation, although not throughout the interrogation.
- 10) A police control room should be provided at all district and state headquarters.⁵⁹

This case is regarded as the most landmark case of criminal jurisprudence. The guidelines laid down in the case have been incorporated in the Criminal Procedure Code, 1973, by the Code of Criminal Procedure (Amendment) Act, 2008 (w.e.f. 1/11/2010).

Before the DK Basu case, there had been instances of custodial violence and deaths; in some cases, compensation was also awarded; however, there was no provision or rule to impose liability regarding the same. The present case was the need of the hour, wherein the Supreme Court laid down guidelines regarding custodial deaths and violence to put to rest this issue for once and for all. This was the pioneer case to impose liability upon the police.

6. Examination Of Issues Relating to Torture by Various Commissions

A. National Commission to Review the Working of The Constitution

The National Commission to Review the Working of the Constitution (2002) set up by the Law Ministry, specifically recommended for ‘prohibition of torture and cruel, inhuman or degrading treatment or punishment’ as one of the additions to the fundamental rights chapter as Article 21(2) based on the dicta laid down in various Supreme Court judgments in recognition of torture in our constitutional jurisprudence.

B. Reports Of the Law Commission of India

(I) 113th Report (1985): Injuries in Police Custody

In the 113th Report, the Law Commission recommended the amendment to the Indian Evidence Act, 1872, by inserting section 114B, providing that in case of custodial injuries, if there is evidence, the court may presume that the injury was caused by the police having the custody of that person during that period. The onus to prove the contrary is on the police authorities. The law requires the adoption of a realistic approach rather than a narrow technical approach in cases of custodial crimes.⁶⁰

(II) 152nd Report (1994)

The 152nd Law Commission of India Report is solely on Custodial Crimes (police torture, violence, and deaths). It is a comprehensive framework for amending substantive and procedural laws to prevent abuse of police power and provide justice to victims.⁶¹

(III) 177th Report of The Law Commission (2001) “Law Relating to Arrest.”

⁵⁹ D.K. Basu vs. State of West Bengal (1997), AIR 1997 SC 610.

⁶⁰ <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022080849.pdf>(last visited 7th may 2026).

⁶¹ <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022080893-2.pdf>(last visited 8th may 2026).

The Law Commission of India, in its 177th Report, suggested that amendments should be brought in the Cr. PC by inserting section 55A, which may read as under: “Health and Safety of the Arrested Persons: It shall be the duty of the person having the custody of an accused to take reasonable care of the health and safety of the accused.”⁶²

IV) 185th Report of The Law Commission (2003): Review of The Indian Evidence Act, 1872

In the 185th Report, the Commission pointed out that a reference was in fact made by the Supreme Court to the 113th Report of the Law Commission in *State of MP v. Shyam Sunder Trivedi*⁶⁶. It was pointed out that in cases of custodial death or police torture, it is difficult to expect direct ocular evidence of the complicity of the police. Bound as they are by the ties of brotherhood, often police personnel would not come forward to give evidence, and more often than not, police officers could, as happened in that case, feign total ignorance about the matter. Courts should not, in such cases, show an exaggerated adherence to the principle of proof beyond a reasonable doubt. There will hardly be any evidence available to the prosecution to implicate the police. The Court called deaths in police custody the “worst kind of crimes in civilized society, governed by the rule of law. Men in ‘khaki’ are not above the law.” Sections 330 and 331 of the Penal Code make it punishable for persons who cause hurt for the purpose of extorting a confession by making the offence punishable with a sentence of up to 10 years of imprisonment, but convictions, in such cases, are fewer because of the difficulties in proving evidence. The Court observed: “Disturbed by this situation, the Law Commission in its 113th Report recommended amendments to the Indian Evidence Act to provide that in the prosecution of a police officer for an alleged offence of having caused bodily injuries to a person while in police custody, if there is evidence that the injury was caused during the period when the person was in the police custody, the Court may presume that the injury was caused by the police officer having the custody of that person during that period unless the police officer proves to the contrary. The onus to prove the contrary must be discharged by the police official concerned.”⁶³

(V) 268th Report (2017): Amendments to Code of Criminal Procedure 1973: Provisions Relating to Bail

In its 268th Report, the Commission recommended the insertion of section 41(1A) and the amendment to 41B, Cr. PC requires the police officer to inform the person arrested of their rights, for bail, and liberalising the process of bail.⁶⁴

(VI) 273rd Law Commission Report

The Commission has suggested a definition of ‘torture’ wide enough to include inflicting injury, either intentionally or involuntarily, or even an attempt to cause such an injury, which will include physical, mental, or psychological injury. Based on the analysis of various aspects of torture, the Commission has prepared a draft Bill titled “The Prevention of Torture Bill, 2017”, which is annexed to this Report. Based on the conclusions drawn from the foregoing chapters, the Commission makes the following recommendations:

(i) Ratification of Convention against Torture To tide over the difficulties faced by the Country in getting criminals extradited, in the absence of an anti-torture law; and to secure an individual’s right to life and liberty, the Commission recommends consideration of the Convention Against Torture for ratification and in the event, the Central Government decides to ratify the Convention, then the Bill placed at Annexure may be considered.

(ii) Amendment to Existing Statutes: The Commission has analysed the existing legal provisions in Chapter IV. The Commission has concluded that the Criminal Procedure Code, 1973, and the Indian Evidence Act, 1872, require amendments to accommodate provisions regarding compensation and burden of proof, respectively.

a. Criminal Procedure Code, 1973

The Commission recommends an amendment to section 357B to incorporate payment of compensation, in addition to payment of fine, as provided under section 326A or section 376D of the Indian Penal Code, 1860.

b. Indian Evidence Act, 1872

The Commission endorses the recommendation made by the Law Commission of India vide its Report No.113, and, as reiterated in Report No.152, that the Indian Evidence Act, 1872 requires insertion of section 114B. This will ensure that in case a person in police custody sustains injuries, it is presumed that those injuries have been inflicted by the police, and the burden of proof shall lie on the authority concerned to explain such an injury.

(iii) Punishment for acts of torture to curb the menace of torture and to have a deterrent

⁶² <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081097-1.pdf>(last visited 10th may 2026).

⁶³ <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081047.pdf>(last visited 12th may 2026).

⁶⁴ <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081637-1.pdf>(last visited 7th may 2026).

effect on acts of torture, the Commission recommends stringent punishment for the perpetrators of such acts. The draft Bill annexed to this Report provides for punishment extending up to life imprisonment and also fine.

(iv) Compensation to Victims: The Courts will decide upon justiciable compensation after taking into account various facets of an individual case, such as nature, purpose, extent, and manner of injury, including mental agony caused to the victim. The Courts will bear in mind the socio-economic background of the victim and will ensure that the compensation so decided will suffice for the victim to bear the expenses of medical treatment and rehabilitation.

(v) Protection of Victims, Complainants and Witnesses: The Commission recommends that an effective mechanism must be put in place to protect the victims of torture, the complainants, and the witnesses against possible threats, violence, or ill treatment.

(vi) Sovereign Immunity: Going by the law of torts, which states 'liability follows negligence', the Commission believes that the State should own the responsibility for the injuries caused by its agents to citizens, and the principle of sovereign immunity cannot override the rights assured by the Constitution. When dealing with the plea of sovereign immunity, the Courts must bear in mind that it is the citizens who are entitled to fundamental rights, not the agents of the State.⁶⁵

C. Fourth Report of the National Police Commission (1980)

The National Police Commission, in its Fourth Report (1980), took note of the fact that custodial torture had been prevalent and admitted that torture of a person in police custody was the most dehumanising. The police did not have a good image in the estimation of the public. Police practice torture to achieve quick results by shortcut methods. Causing hurt is a punishable offence under sections 330-331 of the Indian Penal Code, 1860, but the atrocities were committed within the walls of the police stations, and thus, no evidence could be available, and as a result thereof, the conviction in torture by police cases has been a rare phenomenon. It was difficult to find out who the offender was.⁶⁶ Thus, it may be seen that over the period of time, various Commissions, in their reports, have consistently recommended having adequate provisions in our statutes to protect the rights of individuals to life and liberty as enshrined in our Constitution. The Commission is fortified in its conclusions and recommendations from the above analysis.

7. Government's Stand

The Central Government initially took the stand that under the Indian Penal Code, 1860, torture is a punishable offence. Later on, it was decided to go for standalone legislation.

I. The Prevention of Torture Bill, 2010

This bill was introduced in the Lok Sabha to give effect to the provisions of the Convention. The Bill was passed by the Lok Sabha on May 6, 2010. Rajya Sabha referred the Bill to a Select Committee, which had proposed amendments to the Bill to make it more compliant with the Torture Convention. However, the Bill lapsed with the dissolution of the 15th Lok Sabha. India does not agree to repeal the Armed Forces (Special Powers) Act, 1958 (AFSPA).⁶⁷

II. The Prevention of Torture Bill, 2017

Again in 2017, the bill was introduced as a private member bill in the Rajya Sabha, and then again in 2018, in the same form (private member bill) in the Lok Sabha. The latter has lapsed due to the dissolution of the 16th Lok Sabha.⁶⁸

III. *In a Civil Writ Petition⁶⁹ filed by Dr. Ashwani Kumar*, the petitioner submitted before the Supreme Court that "India faces problems in extradition of criminals from foreign countries because of this (having no law against torture). It's in our own national interest to have such a law". The petitioner sought directions to the government to have a legal framework and proper guidelines in terms of the CAT to prevent torture, cruelty, inhuman, or degrading treatment of jail inmates.

⁶⁵ <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081620.pdf>(last visited 10th may 2026).

⁶⁶ <https://police.py.gov.in/Police%20Commission%20reports/4th%20Police%20Commission%20report.pdf>.(last visited 11th may 2026).

⁶⁷ https://prsindia.org/files/bills_acts/bills_parliament/2010/prevention_of_torture_bill_2010.pdf(last visited 15th may 2026).

⁶⁸ <https://sansad.in/getFile/BillsTexts/RSBillTexts/Asintroduced/torture-E-151217.pdf?source=legislation>(last visited 15th may 2026).

⁶⁹ W.P. (Civil) No. 738 of 2016; In September 2016, the Supreme Court had issued notice to the Central Government on the PIL.

8. Data

The National Crime Records Bureau (NCRB) does not document cases of custodial torture. The NHRC does deal with cases of torture in custody, but the annual figures related to such cases are not reported in its reports.

Year	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
Torture in police custody	678	366	303	431	493	293 (till 31.10.16)	NA
Death in police custody	128	143	140	130	153	145	144
Death in judicial custody	NA	NA	NA	1,588	1,668	1,616	1,530

(The following table has been collated from two of the answers in the Parliament about the facts regarding the use of torture reported by the NHRC)

Torture is not just confined to police custody, but is also perpetrated in otherwise assumed to be “safer” custodial institutions like judicial custody (prisons), juvenile homes, de-addiction centres, etc.

9. Suggestion

There can be no doubt that we require an anti-torture law, but:

1. We first need to implement the law as we have it.
2. Then, the investigations and the prosecutions are not fair; these must be rectified first.
3. The police need to be trained better.
4. The temptation to use third-degree methods must be replaced with scientific skills.

10. Conclusion

Tolerance of police atrocities amounts to acceptance of systematic subversion and erosion of the rule of law. Torture is not permissible, whether it occurs during investigation, interrogation, or otherwise. It cannot be gainsaid that the freedom of an individual must yield to the security of the State. If the custodians of law themselves indulge in committing crimes, then no member of society is safe and secure.

Thus, the need of the hour is to strike at the root cause and implement recommendations to bring in necessary reforms.

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