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Custodial Deaths in India: Criminal Liability and Accountability of Police Officials

Eric

(LL.M Student, University Institute of Legal Studies, Chandigarh University, Mohali, Punjab, India)

Dr. Ameeta Verma

(Associate Professor, University Institute of Legal Studies, Chandigarh University, Mohali, Punjab, India)

Abstract

Deaths in police and judicial custody remain one of the gravest failures of Indian criminal justice. The Constitution, the Supreme Court and the new criminal codes all treat such deaths as serious wrongs, yet prosecutions are rare and convictions rarer. This paper examines the criminal liability of police officials for custodial deaths under the Bharatiya Nyaya Sanhita, 2023 and the procedural safeguards of the Bharatiya Nagarik Suraksha Sanhita, 2023, and traces the judicial response from Nilabati Behera and D K Basu to the Supreme Court's 2025 suo motu proceedings on police-station CCTVs and its 2026 decision in Lahra Bai Tamre. It argues that the law on paper is adequate but that accountability fails at three points: independent inquiry, investigation by the same force, and the requirement of sanction. It recommends a statutory presumption of custodial responsibility, a dedicated anti-torture law and genuinely independent investigation.

Keywords: custodial death; custodial torture; Article 21; police accountability; section 196 BNSS; D K Basu guidelines.

I. INTRODUCTION

A person in custody depends entirely on the State for safety. When that person dies, the State must explain how. The Supreme Court has described custodial violence as an assault on human dignity and a negation of the rule of law, and has held that the right to life under Article 21 does not end at the police-station door.[1]

[1] D K Basu v State of West Bengal (1997) 1 SCC 416 [35].

A. Background of the Problem

Official figures show a persistent problem. According to data placed before the Lok Sabha in March 2026, India recorded 170 deaths in police custody in 2025–26 up to 15 March, and annual figures over the previous five years ranged between 140 and 176.[2] Deaths in judicial custody are far higher, crossing 2,000 in 2021–22.[3] Yet the same reply recorded disciplinary action in only 21 custodial-death cases over five years.[4]

B. Research Objectives and Research Questions

The paper seeks (i) to identify the criminal liability of police officials for custodial deaths; (ii) to trace the judicial approach up to November 2026; and (iii) to assess why accountability fails in practice. It asks whether the BNS and BNSS adequately address custodial deaths, why so few officers are prosecuted, and what reforms are required.[5]

II. CONSTITUTIONAL AND STATUTORY FRAMEWORK

A. Constitutional Guarantees

Article 21 protects life and personal liberty, including the right to be free from torture.[6] **Article 20(3)** forbids compelled self-incrimination, and **Article 22(1)–(2)** guarantees the right to consult a lawyer and to be produced before a magistrate within twenty-four hours. Violations can be remedied under **Articles 32 and 226**, through which the Supreme Court has awarded public-law compensation.[7]

B. The BNS, BNSS and BSA

The BNS contains no separate offence of torture. Police officials are prosecuted under general offences: murder, culpable homicide, and voluntarily causing hurt or grievous hurt to extort a confession, formerly sections 330 and 331 of the Penal Code and now section 120 of the BNS.[8] The BNSS retains the arrest safeguards, including the right to meet an advocate during interrogation.[9] Most importantly, section 196(2) requires an inquiry by a Judicial Magistrate in

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2 'Custodial Deaths at 170 This Year, Accountability Nearly Absent: Govt Data' The Wire (25 March 2026), reporting Lok Sabha Unstarred Question answered on 24 March 2026.

3 'Over 2,150 cases of deaths in judicial custody in 2021–22: Govt' Business Standard (22 March 2022), reporting NHRC figures given by the Ministry of Home Affairs in the Lok Sabha.

4 NHRC data, supra note 3.

5 The study is doctrinal; it relies on statutes, reported judgments, Law Commission reports and official data placed before Parliament, verified up to 15 November 2026.

6 Francis Coralie Mullin v Administrator, Union Territory of Delhi (1981) 1 SCC 608.

7 Nilabati Behera v State of Orissa (1993) 2 SCC 746.

8 Bharatiya Nyaya Sanhita 2023, ss 3(5), 103, 105 and 120.

9 Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS), ss 35, 36, 38, 48, 58 and 187.

every case of death, disappearance or rape in custody, carrying forward section 176(1A) of the Code of 1973.[10] Confessions to the police remain inadmissible.[11]

Table 1: Legal provisions relevant to custodial deaths

Provision	Content	Significance
Arts 21, 20(3), 22	Life, dignity; no compelled testimony; arrest rights	Constitutional basis of protection
ss 103, 105, 120 BNS	Murder; culpable homicide; hurt to extort confession	Main offences charged against police
ss 35–38, 48, 58 BNSS	Arrest grounds, memo, advocate, intimation, 24-hour rule	Statutory form of D K Basu
s 196(2) BNSS	Mandatory judicial inquiry into custodial death	Independent fact-finding
s 218 BNSS	Prior sanction to prosecute public servants	Main procedural barrier
ss 22–23 BSA	Police confessions inadmissible	Removes incentive to torture

III. CRIMINAL LIABILITY OF POLICE OFFICIALS

A. Substantive Liability

Where custodial violence causes death, officers may be liable for murder or culpable homicide, and all who share a common intention are jointly liable. As early as Raghbir Singh, the Supreme Court condemned police officers who tortured a suspect to death and called for exemplary sentences.[12] In Munshi Singh Gautam, it observed that custodial crimes are difficult to prove because the evidence lies within the control of the very officers accused.[13]

B. The Problem of Proof

Custodial deaths occur behind closed doors, and the only witnesses are usually police officers. In Shyamsunder Trivedi, the Court criticised the acquittal of officers on technical grounds and urged Parliament to adopt the Law

Commission's proposed section 114B of the Evidence Act, which would allow a court to presume that injuries suffered in custody were caused by the officer in charge.[14] That presumption has never been enacted, and the BSA did not adopt it. Hostile police witnesses compound the difficulty.[15]

C. The Sanction Barrier

Section 218 of the BNSS, like section 197 of the old Code, requires government sanction before a court takes cognisance of an offence committed by a public servant while acting in the

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[10] BNSS, s 196(2); Code of Criminal Procedure 1973, s 176(1A), inserted by Act 25 of 2005.

[11] Bharatiya Sakshya Adhiniyam 2023, ss 22–23.

[12] Raghbir Singh v State of Haryana (1980) 3 SCC 70.

[13] Munshi Singh Gautam v State of Madhya Pradesh (2005) 9 SCC 631.

[14] State of Madhya Pradesh v Shyamsunder Trivedi (1995) 4 SCC 262; Law Commission of India, 113th Report on Injuries in Police Custody (1985).

[15] Shakila Abdul Gafar Khan v Vasant Raghunath Dhoble (2003) 7 SCC 749.

discharge of official duty.[16] Torture cannot be part of official duty, and the test is whether the act has a reasonable connection with that duty.[17] In practice, however, the sanction requirement delays prosecutions and gives the executive a veto over accountability.

Table 2: Landmark judgments on custodial violence

Case	Holding	Significance
Rudul Sah (1983)	Compensation under Art 32 for illegal detention[18]	Origin of public-law remedy
Nilabati Behera (1993)	Sovereign immunity no defence to custodial death	State strictly liable
Joginder Kumar (1994)	Arrest must be justified, not routine[19]	Limits on arrest power
D K Basu (1997)	Eleven requirements at arrest and detention	Codified in CrPC 2009 and BNSS
Shyamsunder Trivedi (1995)	Courts must not acquit on technicalities	Called for presumption
Paramvir Singh Saini (2020)	CCTV with audio in all police stations	Basis of 2025 suo motu case

IV. JUDICIAL APPROACH AND ACCOUNTABILITY MECHANISMS

A. From Compensation to Guidelines

The Supreme Court first responded through compensation. Rudul Sah allowed monetary relief under Article 32, and Nilabati Behera held that the State is strictly liable for custodial death and cannot plead sovereign immunity.[20] D K Basu then laid down requirements on arrest memos, intimation to relatives, medical examination and access to lawyers, which Parliament later wrote into the Code.[21]

B. Institutional Reform

In Prakash Singh, the Court directed States to create Police Complaints Authorities to examine serious misconduct, including custodial death.[22] In Paramvir Singh Saini, it ordered CCTV cameras with night vision and audio recording in every police station, including interrogation rooms.[23] Compliance with both directions has been incomplete.

C. Developments up to November 2026

On 4 September 2025, a bench of Justices Vikram Nath and Sandeep Mehta registered a suo motu case on the lack of functional CCTVs in police stations, after a report of 11 deaths in

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16 BNSS, s 218; Code of Criminal Procedure 1973, s 197.

17 State of Orissa v Ganesh Chandra Jew (2004) 8 SCC 40.

18 Rudul Sah v State of Bihar (1983) 4 SCC 141.

19 Joginder Kumar v State of Uttar Pradesh (1994) 4 SCC 260.

20 Nilabati Behera, supra note 7.

21 D K Basu, supra note 1, [35].

22 Prakash Singh v Union of India (2006) 8 SCC 1 [31].

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

police custody in Rajasthan in eight months.[24] In May 2026, the Jharkhand High Court held that inquiries under section 196(2) must be conducted by Judicial Magistrates, finding that 262 of 427 recent inquiries had been held by Executive Magistrates.[25] In April 2026, a Madurai sessions court sentenced nine policemen to death for the 2020 Sathankulam custodial killings, after a CBI investigation.[26] In August 2026, in Lahra Bai Tamre, the Supreme Court directed the CBI to register a case into a custodial death that the State had failed to investigate, and raised interim compensation to ₹25 lakh.[27]

V. CRITICAL ANALYSIS AND HUMAN RIGHTS

A. The Accountability Gap

The gap between law and outcome is stark. Earlier NCRB data showed that only 26 police officers were convicted for custodial deaths between 2001 and 2013, a period in which 1,275 people died in police custody.[28] The Sathankulam conviction is therefore exceptional. Causes include investigation by the same force, delayed or executive-led inquiries, missing CCTV footage, hostile witnesses and the sanction requirement.[29]

B. Police Culture and Inequality

Survey research has found that a large share of police personnel regard the beating of suspects to extract confessions as acceptable.[30] Victims are disproportionately poor and socially marginalised, with little capacity to pursue litigation, which makes judicial monitoring and compensation all the more important.[31]

C. Human Rights and International Perspectives

Article 7 of the ICCPR prohibits torture absolutely.[32] India signed the UN Convention against Torture in October 1997 but has not ratified it. The Prevention of Torture Bill, 2010 lapsed, and the Law Commission's 2017 draft has not been enacted.[33]

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24 In re Lack of Functional CCTVs in Police Stations, SMW(C) No 7 of 2025 (SC, order dated 4 September 2025).

25 Md Mumtaz Ansari v State of Jharkhand 2026:JHHC:14765-DB (14 May 2026).

26 CBI v Sridhar, First Additional District and Sessions Court, Madurai (conviction 23 March 2026; sentence 6 April 2026).

27 Lahra Bai Tamre v State of Chhattisgarh 2026 INSC 840 (12 August 2026).

28 'India sees 98 deaths in police custody every year' Business Standard (17 June 2016), citing NCRB data.

29 Md Mumtaz Ansari, supra note 25.

30 Common Cause and Lokniti–CSDS, Status of Policing in India Report 2019: Police Adequacy and Working

Conditions (Common Cause 2019).

[31] Lahra Bai Tamre, supra note 27.

[32] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, arts 7 and 10.

[33] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984) 1465 UNTS 85; Law Commission of India, Report No 273: Implementation of the UN Convention against Torture (October 2017).

Table 3: Barriers to accountability and suggested reforms

Stage	Present barrier	Suggested reform
Inquiry	Executive Magistrates used instead of judicial	Strict compliance with s 196(2) BNSS
Investigation	Same police force investigates	Independent agency or CBI in every case
Evidence	No presumption; CCTV non-functional	Enact s 114B-type presumption; audited CCTV
Prosecution	Sanction under s 218 BNSS	No sanction for custodial torture
Remedy	Low, uneven compensation	Statutory compensation scheme

VI. GRAPHICAL AND COMPARATIVE ANALYSIS

Figure 1 maps the development of the law; Figure 2 shows deaths in judicial custody reported to the NHRC.[34]



Figure 1: Timeline of law and policy on custodial deaths, 1980–2026

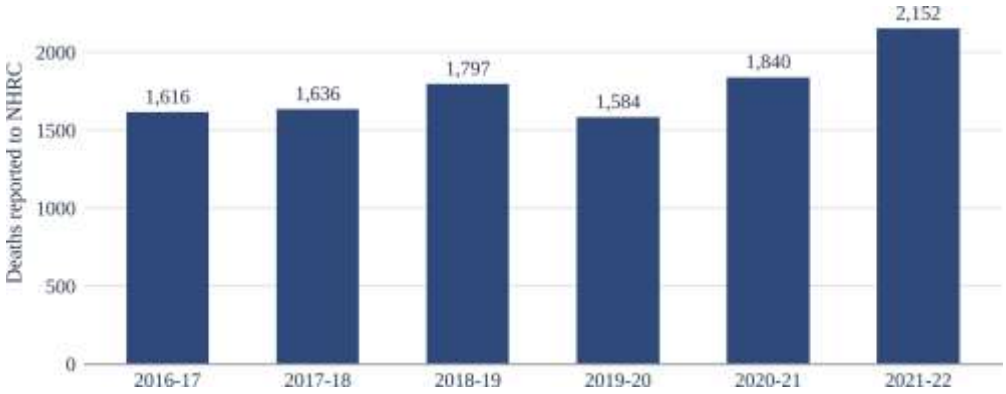


Figure 2: Deaths in judicial custody reported to the NHRC, 2016–17 to 2021–22[35]

Table 4: International comparative perspective

Country	Key mechanism	Point of comparison
India	s 196(2) BNSS judicial inquiry; NHRC reporting within 24 hours	No torture offence; UNCAT not ratified

[34] Figure 1 prepared by the author from the authorities cited in this paper.

[35] NHRC figures as stated by the Ministry of Home Affairs in the Lok Sabha: Business Standard, supra note 3. The 2021–22 figure is as reported in March 2022.

Country	Key mechanism	Point of comparison
United Kingdom	PACE 1984 custody records; Independent Office for Police Conduct[36]	Independent investigation; jury inquest
South Africa	Prevention and Combating of Torture of Persons Act 2013[37]	Specific torture offence; independent directorate
United States	Civil action under 42 USC § 1983[38]	Damages, limited by qualified immunity

VII. FINDINGS AND SUGGESTIONS

A. Major Research Findings

(i) Custodial deaths persist at a steady rate, and deaths in judicial custody have risen.[39]

(ii) The criminal law is adequate on paper, but the absence of a torture offence and of a presumption of custodial responsibility weakens prosecutions.[40]

(iii) Mandatory judicial inquiries and CCTV directions are widely ignored.[41]

(iv) Courts have moved from awarding compensation to ordering independent investigation.[42]

B. Legal Recommendations and Judicial Reforms

1. Parliament should ratify UNCAT and enact a Prevention of Torture Act on the lines of the Law Commission's 2017 draft.[43]
2. The BSA should include a rebuttable presumption that injuries or death in custody were caused by the officers in charge.
3. Every custodial death should be investigated by an agency independent of the local police, with sanction under section 218 of the BNSS dispensed with.
4. High Courts should monitor compliance with section 196(2) and the CCTV directions, and courts should award uniform, adequate compensation.[44]

VIII. CONCLUSION

India does not lack law on custodial deaths; it lacks enforcement. The Constitution, D K Basu and the BNSS create clear duties, but the system still relies on the police to investigate the police. The decisions of 2025–2026 show that independent investigation and judicial

[36] Police and Criminal Evidence Act 1984; Policing and Crime Act 2017; Coroners and Justice Act 2009, s 7.

[37] Prevention and Combating of Torture of Persons Act 13 of 2013; Independent Police Investigative Directorate Act 1 of 2011.

[38] 42 USC § 1983; Harlow v Fitzgerald 457 US 800 (1982).

[39] The Wire, supra note 2.

[40] Shyamsunder Trivedi, supra note 14.

[41] In re CCTVs, supra note 24.

[42] Lahra Bai Tamre, supra note 27.

[43] Law Commission Report No 273, supra note 33.

[44] BNSS s 196, supra note 10.

monitoring can produce accountability. Until that becomes the rule rather than the exception, custodial deaths will continue to be explained away rather than punished. Custodial deaths in India expose a painful contradiction: the very institution meant to protect citizens under the law is sometimes the one that violates it. The Constitution leaves no room for doubt. Article 21 guarantees life and personal liberty, and in D.K. Basu v. State of West Bengal (1997) the Supreme Court laid down binding safeguards on arrest and detention, recognising that custodial violence strikes at the dignity of the individual and the rule of law itself. Yet nearly three decades later, the gap between these safeguards and everyday police practice remains wide.

The legal framework for holding officials accountable exists on paper. Police officers can be prosecuted for murder, culpable homicide, causing hurt to extort confession, and related offences under the criminal law, and the Court has repeatedly affirmed that compensation under public law is available to victims' families, as in Nilabati Behera v. State of Orissa (1993). But accountability in practice is thin. The requirement of prior sanction for prosecuting public servants, the reluctance of police to investigate their own colleagues, the absence of independent witnesses inside a lockup, and the difficulty of proving injuries caused in closed custody all work together to shield the guilty. Convictions remain strikingly rare compared to the number of deaths reported by bodies such as the National Human Rights Commission.

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[45] Decisions of 2025–2026 are cited by neutral citation or date as reported up to 15 November 2026.