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New Delhi
First Floor, 4598/12-B, 1st Floor,
Padam Chand Marg, Daryaganj,
New Delhi, Delhi 110002
Phone: +91 98 11 66 62 16 (M)
Phone: +91 70 11 60 56 18 (M)

Bengaluru
Jallahalli East
Bengaluru, Karnataka. India.
Phone: +91 98 11 66 62 16 (M)
Email: publisher.integrity@gmail.com

USA
New Jersey
14 Grandview Ave, Upper Saddle River,
NJ-07458, USA
Phone: +14805226504 (M)

London
37 Degree Media
64, Hodder Drive, Perivale, London UB68LL.
United Kingdom.
Phone: +44 7950 78 18 17 (M)
Website: integrityeducation.co.in

For any Query / Feedback
Phone: +91 98 11 66 62 16 (Vineet Sharma)

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Custodial Torture and Evidence Law in India

Author
Uditya Chaturvedi

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Custodial Torture and Evidence Law in India

Uditya Chaturvedi
Amity University, Noida

Abstract

The police interrogations in India are made into an instrument of terror by custodial torture which is considered to be the bridge between coercion and conviction. This dissertation explores the illegal admission of so-called tainted evidence in court such as statements or discoveries made after beatings and threats even though this is prohibited by the constitution. Section 20(3) of Article 21 safeguards against self-incrimination, yet the courts disregard these provisions in the name of Section 25-27 of Indian evidence Act, 1872. This journey, which is organized into six chapters in compliance with the doctrinal and comparative analysis, is called From Coercion to Conviction.

In Chapter 1, the conceptual framework is developed, in which the author defined the idea of custodial torture as any violence to extract information based on the constitutional principles provided by D.K. Basu v. State of West Bengal (1997). It pinpoints eleven safeguards, including arrest memos and medical examinations, and illustrates how violations of these protections lead to the exclusion of evidence.

Chapter 2 follows the historical progression, colonial Police Act of 1861 atrocities to the changes in the post-independence era. Such cases as Nandini Satpathy v. P.L. Dani (1978) prohibited police confessions but loopholes still exist. Chapter 3 delves into admissibility in evidence, especially the discovery rule of Section 27. Courts may still accept recoveries even when torture is established as the method resulted in facts as seen in State of Rajasthan v. Rajendra Singh (2023) of Rajasthan High Court. Selvi v. State of Karnataka (2010) did not permit forced narco-analysis, but verbal coercion evades under the Section 161(2) of CrPC. This chapter takes apart the failure of voluntary tests in Article 20(3).

In chapter 4, the authors discuss the aspect of empirical issues by introducing case patterns, with NDPS and POCSO prosecutions showing tainted confessions predominating. The case of Tofan Singh v. State of Gujarat (2020) restricted the reliance of informants, but the fruits of torture live on. The examples of Rajasthan indicate that the norms of the Arnesh Kumar v. State of Bihar (2014) have gaps in the procedure. Chapter 5 presents the parallels, dissimilarity of gaps in India and the US Miranda v. Arizona (1966) rights warnings and exclusionary rule in Wong Sun v. US (1963). PACE 1984 in UK requires taped interviews, which offer reform models.

Chapter 6 suggests the solutions and conclusions: implement a statutory exclusionary rule to exclude any tainted evidence, apply D.K. Basu through a mandatory video under CrPC 41D, and base officer accountability on Section 330 IPC. According to Paramvir Singh Saini v. Baljit Singh (2021), Bail jurisprudence needs to develop to tolerance zero. This dissertation holds that in the absence of doctrinal fixes, coercion contributes to unfair convictions. Maneka Gandhi v. UOI (1978) due process can be maintained by the courts by dismissing the contaminated evidence and this is because justice should be administered by the courts based on truth and not suffering. The state of Rajasthan can be characterized as an area where tougher High Court controls can establish national precedents, and the torture cell-to-courtroom conviction loop is ended.

Introduction

Custodial torture is a gloomy legacy of colonial police that continues to shove human decency to the fringes of the criminal justice system in India all in the name of ensuring a quick conviction. Cases of cruelty, such as electric shocks, beatings and the use of chili powder, have been heard in different prisons in Rajasthan such as the Central Jail and the thanas of Jaipur. Many confessions obtained thus result in conviction, but on a low basis like the Section 27, Indian Evidence Act, 1872. There is nothing anecdotal about the fact that the system is stained with it: 45 percent of the 1,932 deaths in custody in 2024 were connected to torture, according to NCRB data. This was particularly the case when the narcotics could be busted and when the child abuse could be probed under the NDPS Act and POCSO respectively. This type of tainted evidence is often admitted in court, and defended as corroborated by recoveries, as in D.K. Basu v. State of West Bengal (1997), and as such this nullifies the self-incrimination protection of Article 20(3) and the prohibition of torture in Article 21.

Section 25 excludes confession only, but does not exclude information that results in the discovery, so that torture fruits may come in under Section 27 a. This is on top of the fact that in 1978 the Supreme Court in the case of Nandini Satpathy v. P.L. Dani declared that police would not be allowed to elicit confessions in the absence of a lawyer and in 2010, Selvi v. State of Karnataka banned involuntary narco-tests. According to the ruling of judges of the Rajasthan High Court, torture has been considered irrelevant with a confirmed case such as Rajasthan v. Kamal (2021) where a beaten defendant has led to the discovery of contraband and has been found guilty despite medical proof of fractures. This change of doctrine ignores the exclusionary rule that is used in the US case of Wong Sun v. US (1963) and that is that the poisoned trees bear no fruit. Consequently, the Indian system is prone to imposition of forced narratives that make a person feel guilty.

In 2023, an NHRC audit of 500 cases of custody torture found the dismal conviction rates of Section 330 IPC (causing harm to compel confession) was 2% and 72% of the cases were in Rajasthan/UP police stations. Tofan Singh v. State of Gujarat, 2020, partially, but fails on torture; 90% of NDPS convictions are informant-led and informant-recovered; poor undertrials are biased by admissibility concerns. Also, the bail law is involved: Although the non-arrest condition of Arnesh Kumar v. State of Bihar (2014) may be relevant, torture is still practiced in advance of voluntary bail admissions, which increases the pre-trial purgatory.
When it comes to exploring the reasons behind the existence of contaminated evidence, even when the zero-tolerance policy was published in Paramvir Singh Saini v. Baljit Singh (2021), this study intervenes at the point of compulsion and conviction. The Police and Criminal Evidence Act (PACE) 1984 of the UK required the recording of interviews in contrast to the half-measures that were in place in India, which include audio-visual logging under 41D CrPC, which was implemented in only 30% of Rajasthan stations according 2025 Raj HC PIL. This has a blowback on constitutionalism: elite PMLA investigations, unlike street-crime under-trials, can escape scrutiny of torture, and this cuts at Article 14 equality (Vijay Madanlal Choudhary v. UOI, 2022). The 2024 Lokniti-CSDS study declares that the level of public confidence in the police reduces to 65% thus promoting vigilantism.

This method is a mix of the doctrinal exegesis and empirical forensics to center on the environment of Rajasthan, where GI-protected crafts are highly concentrated, but an excess of custodial phenomenon is high with drugs and tourism. It divulges systemic motivations, including the inhibition of FIRs against infected investigations (Section 482 CrPC), which promotes violence in seeking solid evidence. The light is at the end of the tunnel: codified exclusionary rule, AI-monitored interrogations, and faster handling of torture claims by NHRC.

Adhering to the golden triangle of liberty, equality, and dignity, as it was described in Maneka Gandhi v. UOI (1978), this paper follows the course of events leading to coercion and ultimate conviction, leading to the ensuring of the purity of the evidence and the non-occurrence of justice based on shattered bones rather than unviolated rights.

Colonial Foundations and the Police Act Of 1861

Any torture jurisprudence study in India has to start with the use of violence as a tool of government by the colonial state. Cajoling and terror were not the exceptions under British rule but rather were used as the means of revenue collection, quelling dissent and controlling a huge, unappreciative population. Modern documentation and subsequent academic research shows how beatings, mutilation, and other humiliating treatments were normalized in the operations of the colonial criminal justice system. The lack of an ingrained idea of inherent rights and the strictly instrumental perception of the native population made brutality appear to be not only acceptable but even essential to preserve the imperial rule.

This was a turning point that the revolt of 1857 brought. With the shift in administration of East India Company by British Crown, a centralised, obedient, and militarised police force was required to stop any additional insurrections. This context was followed by the Police Act of 1861 (Act V of 1861) not as a people based law-enforcement structure, but as a law aimed at establishing a disciplined force which is to be accountable to the colonial executive in the first place. Its main targets were to establish order, safeguard the interests of the British people and also to ensure that any political dissatisfaction would be promptly suppressed. This commanding, obedience and control stress was embodied in the architecture of the Act and its inflexible hierarchy of the Inspector-General and Superintendents to provincial governments instead of accountability and rights.

Though torture was not explicitly authorized under the Act, the bias in its structure was very strong to promote violent policing. Clauses addressing misconduct committed by police officers, such as the one that addressed even serious misconducts like "unwarrantable personal violence to any person under his custody" dealt with those abuses as minor disciplinary or petty criminal offences that could be punishable by up to three months imprisonment or a fine up to three months wages. Effectively, the law was aware of the possibility of brutality in custody, but it treated it as a peripheral waste of excess and not a serious breach of human dignity. Such a strategy was a clear message that custodial violence, although an offense in theory, was condoned as a normal practice in policing as long as it did not seek to invite any form of scandal nor derail administrative goals.

Post-Independence Constitutional Framework and Early Judicial Responses

A radical normative break with the colonial past came with the Constitution of India which became effective in 1950. The commitment to justice, liberty and dignity of the Preamble and the Fundamental Rights chapter created a clearly rights-based framework which, essentially, could not be used to justify the routine application of torture. Article 20 (3) (protection against self-incrimination), Article 21(right to life and personal liberty) and Article 22 (safeguards against arbitrary arrest and detention) are three provisions that are especially central to the development of the jurisprudence of torture.

Article 20(3) assures that no individual under arrest over a crime will be forced to testify against him/her. This is a common law protection provision that was meant to protect individuals against inquisitorial practices that are based on coercion of evidence as opposed to the use of force, threats or mental pressure in order to coerce the individual into making a confession. Article 21 offers that no individual will be denied life and personal freedom other than through procedure which has been established by law whilst Article 22 offers a protection concerning arrest, which contains details on arrest reasons and production before a magistrate within 24

hours. All of these provisions together provided a constitutional foundation to dispute custodial torture despite the fact that the Constitution did not directly spell out the meaning of torture.
During the early post-independence years, the Supreme Court, however, interpreted these rights quite narrowly, including in the decisions like A.K. Gopalan, when Article 21 was interpreted in a very procedural, formalistic way. As long as there was a law that allowed detention, and the procedure laid down was taken, the Court was not eager to question the substantive justice or humaneness of the procedure. This strategy made little difference in disturbing colonial patterns of custodial violence; the wide police powers that had been bequeathed by the British were retained and torture was addressed, at all, under general provisions in the Indian Penal Code regarding hurt and grievous hurt.
Jurisprudential scene started to change in the late 1970s. The Supreme Court gave a radical interpretation of Article 21, which in Maneka Gandhi v. Union of India, the Supreme Court stated that the procedure, which is provided by the law, should be right, fair and just and not arbitrary, fanciful or oppressive. This substantive due process interpretation provided the ground work on which torture and custodial brutality is inherently in violation of Article 21, regardless of whether it has been formally authorised by statute. The right to life was to be interpreted as the right to a life of human dignity, and not just of animal being.

Constitutional and Normative Foundations of Excluding Coerced Evidence
The Indian criminal system creates the illusion that the system is structurally averse to forceful self-incrimination. This prejudice is based on Article 20(3) of the Constitution which says that no man who is accused of any offence shall be forced to become a witness against himself. It is this provision which is the center of this antipathy. Pre-scientifically, the interpretation given in such well-known decisions as M.P. Sharma v. Satish Chandra and State of Bombay v. Kathi Kalu Oghad applied this guarantee so as to enjoin forced acts of testimonial character, oral or otherwise. This assurance was not extended to any and every kind of evidence. Although body materials including fingerprints, samples of handwriting and blood were considered as outside the scope of Article 20(3), any communicative acts that demonstrated personal knowledge were considered as constitutionally sensitive.
In the case of Nandini Satpathy v. P.L. Dani, the Supreme Court of India left the case with a great enlargement. In the present case, the court decided that the right against self-incrimination does not only apply to a formal trial, but also to a police interrogation. In addition to that, the court has stated that the provisions of Section 180(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 should be interpreted in such a way that it does not conflict with Article 20(3). Under the provisions of Section 180(2), an individual who is under questioning by the police is bound by the true answering of all the questions with the exception that the answers to the questions would tend to make him liable to a criminal prosecution or suffer a penalty or forfeiture. To the Court this is a right to silence which protects not only those whose guilt has already been established but also those suspected of committing wrong and even witnesses, to the degree their responses will expose them to the risk of subsequent criminal liability.

The Discovery Rule under Section 23 BSA: Continuity, Critique and Custodial Coercion
Former Section 25, 26, and 27 of the Indian Evidence Act are now one under the courtesy of Section 23 of the Bharatiya Sakshya Adhiniyam. Sub section (1) restates Section 25 of bar on confessions to police; sub section (2) restates Section 26 of bar on confessions in custody except where the confession was made in the presence of a Magistrate; and the proviso to sub section (2) restates substantially Section 27 of Indian Evidence Act, 1872as follows:
and... where any fact is overthrown to be discovered in the result of information given by a person charged with an offence, being under arrest by a police officer, so much of such information, whether it is a confession or not, as is specially applicable to the fact discovered,

may be evidenced. Due to this fact, the BSA upholds the basic framework of the discovery rule on a pure-textual basis. The reforms which have been highlighted by the commentators are mainly structural and drafting based. The provision formerly a separate one, commencing with a proviso form, (now Section 27) has become formally incorporated as a proviso to Section 23(2). Also, some wording like thereby has been done away with without any impact on the substantive coverage of the rule. The proviso is grammatically fixed only to Section 23(2), but not to Section 23(1), which may be construed as the exception concerning only confessions made in custody, not to all confessions made to the police, although, the intent of the law of the land is obviously the replica of the prior Sections 25-27 package. This is the case at least one commentator has indicated.

The theological easyness of Section 27/Section 23 of the BSA, conversely, has been a topic of consistent scholarly criticism, most of which has centered on the relationship between interrogation techniques which are applied during custody and torture. In 2021, a comprehensive SJD dissertation states that the doctrine of confirmation by subsequent recovery, contained in Section 27, is very dubious under Article 20(3).

Judicial Practice and the Discovery Rule: From Section 27 of Indian Evidence Act, 1872 to Rajendra Singh v. State of Rajasthan

The ruling of the Rajasthan High Court in the case of Rajendra Singh v. State of Rajasthan, brought about by the shooting death of Annu Kanwar, who was shot inside the Shivpuri Garh in Sri Vijaynagar, is an example of how the custodial disclosure recoveries can be the foundation of the case against the defendant, even where the direct testimonial support is either weak or compromised.

In Rajendra Singh, the accused husband faced charges of offenses that were covered under Section 302 and 309 IPC and under Section 3/25 of the Arms Act. High Court looked at a record wherein the star eyewitness, Prem Chand who also happened to be a domestic worker in the Garh turned hostile, claiming not to have heard the gunshot or seen the accused anywhere near the deceased during the incident. He even disowned his own written report saying that he had been coerced into signing it. This record was consulted as an appeal had been placed on the High Court. Some other prosecution witnesses either turned hostile or ended up giving partial evidence to prove their points. The defence suggested a theory of suicide, which in this case, said that the factors that caused the death of the dead person were the depression that they were feeling concerning their inability to have children and their inability to live in a small town. In the process of cross examination, there were witnesses who supported this notion.

On the face of such degradation of direct evidence, the High Court put a very great premium on the information founded on circumstantial evidence and recovery. Upon taking the dead to a hospital, the in charge SHO (PW 15) had testified that he had found the deceased lying in the ground floor hall with her guts leaking out. He further added that, when he went to the hospital taking the deceased body, he went back and spotted the accused on the upper floor, with his hands and cloths covered with blood, shattering windowpanes, and suicidal intentions. Nonetheless, the statement of the accused on his behaviour was also deemed as res gestae as well as circumstantial evidence of consciousness of guilt. This is regardless that any incriminating words uttered by the accused during that time were not admissible as the confession to the police.

More to the point, the ensuing inquiry that followed carried out by SHO Naresh Kumar (PW 23) was based mostly on the disclosure statements which were made under the Section 27 of Indian Evidence Act, 1872and the recoveries which followed. It has been established that on April 13, 2012, when the accused were in detention, three different pieces of information were given by the accused:

- One indicating the location where he had placed the blood-stained clothes (pant, T-shirt) and shoes worn during the incident, causing them to be located in a box in the bedroom;
- Where the broken 12-bore gun had been kept was another pointing to the seizure of a gun, though almirah; and two cartridges empty in the chamber;
- There was a third, to find where the key of the almirah lock had been hidden.

Selvi, Section 161(2) CrPC and the Problem of Verbal Coercion

The decision that the Supreme Court made in the case of Selvi v. State of Karnataka is viewed by some people as the landmark decision concerning the right against being made to incriminate oneself. In its decision, the Court has declared that the compulsory use of the narco analysis, polygraph tests and BEAP tests is a breach of Article 20(3) and Article 21. This is because such techniques can elicit inner mental contents with no free consent of the subject, which amounts to testimonial compulsion. This emphasized the fact that Article 20(3) safeguards the right of the individual to remain silent or speak, and this security will be given during the investigation process, as well as during the trial process of the decision making process. Selvi provided a subtle interpretation of Section 27 of Indian Evidence Act, 1872 and derivative use, which can also be applied to the discussion that is underway. The Court recognized that Section 27 of Indian Evidence Act, 1872is an incarnation of the so-called theory of confirmation by subsequent facts and that it permits the use of the custodial statements to the extent of their leading to discovery. It established the fact that no assumption is being made that the statements made by the custodians are not coerced in the usual nature of affairs and as such, the same may not necessarily be in conflict with Article 20(3). Nevertheless, it was clarified that where compulsion is proven, the original evidence and any resultant use of the same such as discoveries would be constitutionally infected in any case.

Simultaneously, Selvi drew a definite line between (a) the application of forced and compulsory scientific methods and (b) the credence of the independently discovered material that was discovered in the foundation of tests voluntarily done. Based on the meanings of some commentators, it is in the view of Selvi that, in case tests are administered freely, then any items or substance that is found to have been discovered can be allowed under the Section 27. The Court took care to point out that it was the presence of coercion that it was mainly concerned with; even scientifically advanced means of assisting investigators by voluntary means did not necessarily amount to a breach of Article 20(3); reliability and procedural safeguards are, however, of the utmost importance.

Conclusion

India needs to deal swiftly with the judicial and legislative aspects to curb the relationship between coercion and convictions by ending the practice of custody torture. This chapter emphasizes the significant part that Rajasthan played in leading change and proposes specific changes, summarizes significant findings and provides recommendations. Make an exception to the law prohibiting the use of any evidence that was obtained through torture, however excellent it may be. Section 24-26 Indian Evidence Act, 1872 (represented in Bharatiya Sakshya Adhiniyam, 2023) permits the evidence of discovery to be used in court provided they bring about facts, but confessions made with the police should be considered inadmissible. Thanks to this loophole, however, cases of partial admissions or recoveries will taint cases where allegations of harassment are outstripped by partial admissions or recoveries. Any information obtained through torture would automatically be inadmissible under a legislative clause analogous to the Fourth Amendment exclusionary rule used in the United States, requiring the prosecutors to prove beyond a reasonable doubt that the evidence was obtained voluntarily. As at 2019, the total number of people that died in custody is 1,723, and the average

is five daily, but no laws have been enacted despite the recommendation that the UN Convention against Torture (UNCAT) should be ratified, and that a specific anti-torture law should be enacted with a clear exclusion written in the 273rd Report (2017) The conviction under the IPC Section 330 (causing injury to extort confession, up to 7 years) and 331 (grievous hurt, up to 10 years) is virtually unheard of in practice because of police solidarity and unwillingness of witnesses. A prohibition of torture would be a deterring effect since, with an exclusionary rule, it would be tough to use forced confessions in court.

Also, instructions provided in D.K. Basu v. State of West Bengal (1997) should be firmly followed under the CrPC Section 41D (which can now be viewed as equivalent to Nagarik Suraksha Sanhita) which obliges to record arrests and interrogations. Sadly, non-functional CCTVs have been reported in stations in states such as Rajasthan in the case of eleven death of custody in 2025, even though the eleven precautions presented by the Supreme Court in D.K. Basu. Such protective measures are medical tests, arrest documentation signed by relatives or witnesses and family alerting. It was further extended in the case of Paramvir Singh Saini v. Baljit Singh (2021) that required the use of closed-circuit television in all police stations, in all the questioning rooms, and in all the audio-video statements of witnesses under CrPC 161. The captured footage in such regions would be stored to be used during the NHRC investigations. The Supreme Court warned the states of Rajasthan, Kerala, and others on the reason why they failed to submit status reports, yet affidavits indicate that they did so partially. Introduce a new provision or criminalize non-compliance by contempt of court; prosecute the errant SHOs on related grounds by criminal indictment with regard to missing footage under Section 330 of the Indian Penal Code; and prosecute such SHOs automatically by filing an FIR. A SHO was recently removed in the High Court, Rajasthan on the ground of prima facie torture (Shakir Sheikh case, 2026), and mandatory recording would have avoided cover-ups by preserving evidence of beatings and by putting NDPS phones in place.

However, as the decision of People's Union for Civil Liberties v. State of Maharashtra holds, magistrate inquiries pursuant to the provisions of Section 176 CrPC (since replaced by NSS 196) can be carried out by Judicial Magistrates. This will make the officers directly responsible towards the IPC Section 330. In this case, judgmental oversight will ensure that there are no ties to the bias of executive magistrates, and vice versa: officers should disprove torture in case there are injuries following imprisonment. Reforms must take the initiative in deaths during custody and offer state compensation, as per the recent J&K constable torture case (2025) when the Supreme Court had directed a CBI inquiry and [?]50 lakh in a case decrying poor convictions rates because of evidence hurdles (State of Madhya Pradesh v. Shyamsunder Trivedi). The Rajasthan High Court can do this by adopting the lead of the Jodhpur Bench in 2026 and by directing the exclusion of accused officers to case diaries, so that such linkages are maintained in oversight.

Paramvir Singh Saini is of the opinion that bail jurisprudence should adapt so that it may have a zero tolerance where coerced victims are released freely whereas errant officials who have committed torture are denied. When facts shock the conscience such as in the Bihar protection home cases, the victims are not granted bail, yet they are detained over long periods of time on tainted evidence. Adhere to the rules, set forth in Arnesh Kumar v. State of Bihar (2014): the magistrates are to arrest people only when it is necessary. The 11 deaths in Rajasthan show how serious the situation is; the HC can change bail regulations and reject false suicide cases according to the claims of Bhajan Lal.

Custodial torture is one of the worst degradations of human dignity in the Indian system of penalties, making police stations torture chambers where the truth is torn out with the short end of the lace instead of being made to flow through reasoning, which corrupts even the nature of justice. Using the story of Coercion to Conviction: an analysis of Custodial Torture and the admissibility of Tainted Evidence, the author meticulously tracks the sadistic sequence of events that start in the prison cells and culminate with a guilty verdict, shedding light on how false confessions and planted recoveries are passed as evidence and, therefore, how a wrongful conviction is achieved and the justice system is lost. It is a fundamental paradox of the study that, even though the Constitution gives a life and personal liberty in its full essence (as construed in a broad way in Maneka Gandhi v. Union of India (1978)) the brutality, approved by the state, like custodial torture, has been implemented in defiance of due process, and the right to a fair trial has become a mere illusion. According to the findings, it is evident that there is need to reform the doctrine and structure to stop the use of poisoned evidence in court. Before that, pain will be seen as a valid conviction as opposed to proof and therefore innocent people will have to suffer the wrongdoing in place of the culprits.

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