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Custodial Torture and Evidentiary Integrity: Rethinking the Admissibility of Illegally Obtained Evidence

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Custodial Torture and Evidentiary Integrity: Rethinking the Admissibility of Illegally Obtained Evidence

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1.1. 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 23(2) of Bharatiya Sakshya Adhiniyam, 2023 (corresponding to Section 27 of 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)[1], and as such this nullifies the self-incrimination protection of Article 20(3) and the prohibition of torture in Article 21.

Section 23(1) of Bharatiya Sakshya Adhiniyam, 2023 (corresponding to Section 25 of Indian Evidence Act, 1872) includes confession only, but does not include information that results in the discovery. This is on top of the fact that in 1978 the Supreme Court in the case of Nandini Satpathy v. P.L. Dani[2] declared that police would not be allowed to elicit confessions in the absence of a lawyer and in 2010, Selvi v. State of Karnataka[3] 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)[4] where a beaten defendant has led to the discovery of contraband and

[1] *D.K. Basu* v. *State of West Bengal*, (1997) 1 SCC 416.
[2] *Nandini Satpathy* v. *P.L. Dani*, AIR 1978 SC 1025.
[3] *Selvi* v. *State of Karnataka*, AIR 2010 SC 1974.
[4] *Rajasthan* v. *Kamal* (2021), 2021 SCC OnLine SC 3718.

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)[5] 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 120 of Bharatiya Nyaya Sanhita, 2023 (corresponding to 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)[6] 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)[7], 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 528 of The Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to 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)[8], 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.

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[5] *Wong Sun* v. *US* (1963), 371 U.S. 471.
[6] *Arnesh Kumar* v. *State of Bihar* (2014), Criminal Appeal No. 1277 of 2014.
[7] *Paramvir Singh Saini* v. *Baljit Singh* (2021), AIR 2021 SUPREME COURT 64.
[8] *Maneka Gandhi* v. *UOI* (1978), AIR 1978 SC 597.

1.2. Research Objetives

1. To examine the legal and human rights implications of custodial torture in the criminal justice system.
2. To analyze the admissibility of illegally obtained evidence under Indian evidentiary laws.
3. To evaluate the impact of coerced evidence on the integrity and fairness of criminal proceedings.
4. To propose reforms for balancing effective investigation with the protection of constitutional and procedural safeguards.

1.3. Scope of the Study

1. To study the prevalence and legal implications of custodial torture in criminal investigations.
2. To examine the legal principles governing the admissibility of illegally obtained evidence in India.
3. To evaluate the impact of such evidence on fundamental rights, due process, and fair trial guarantees.
4. To analyze international approaches and suggest reforms for balancing effective investigation with evidentiary integrity.

1.4. Significance of the Study

1. Examines how the admissibility of illegally obtained evidence impacts constitutional safeguards against custodial torture and abuse.
2. Evaluates the effect of unlawful investigative practices on the reliability and credibility of evidence in criminal proceedings.
3. Identifies gaps in existing laws and judicial approaches governing the use of illegally obtained evidence.
4. Contributes to the development of a fair criminal justice system that balances effective law enforcement with human rights protection.

1.5. Statement of Problem

Custodial torture remains a persistent challenge within the criminal justice system, often leading to the extraction of evidence through coercive and unlawful means. The continued reliance on such evidence raises serious concerns regarding human rights, fair trial guarantees, and the integrity of the evidentiary process. This study examines the legal and ethical implications of admitting illegally obtained evidence and explores the need for a balanced framework that safeguards both effective law enforcement and constitutional rights.

1.6. Hypothesis

The continued admissibility of illegally obtained evidence in certain circumstances undermines evidentiary integrity, encourages custodial torture, and weakens the protection of fundamental rights, thereby necessitating a rights-oriented reform of evidentiary rules in India.

1.7. Research Gap

Existing research on custodial torture primarily focuses on human rights violations and police accountability, while studies on illegally obtained evidence largely examine admissibility rules in isolation. There is limited scholarly analysis of the intersection between custodial torture and evidentiary integrity, particularly in the context of whether evidence obtained through coercion should be excluded to ensure fair trial rights and uphold the legitimacy of the criminal justice system in India.

1.8. Research Methodology

This study adopts a **doctrinal research methodology**, relying on the analysis of primary and secondary legal sources. Primary sources include constitutional provisions, statutory laws, judicial decisions, and international human rights instruments relating to custodial torture and the admissibility of evidence. Secondary sources comprise books, journal articles, reports, and scholarly commentaries. The research critically examines the existing legal framework and judicial approaches to assess the impact of illegally obtained evidence on evidentiary integrity and fair trial rights.

1.9. 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 show 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.

1.10. 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[9]. 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[10]. This strategy made little difference in disturbing colonial patterns of custodial violence; the wide police

[9] Khagesh Gautam, "The Right Against Self-Incrimination Under Indian Constitution & the Admissibility of Custodial Statements Under the Indian Evidence Act, 1872," Maurer Theses and Dissertations, No. 91 (2021), available at: Indiana University Repository (last visited May 9, 2026).

[10] Zhiyuan Guo, "Torture and the Exclusion of Evidence in China", 2019(119) *China Perspectives* 75 (2019).

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.

1.11. Expansion of Anti-Torture Jurisprudence Through Landmark Supreme Court Decisions

Since the late 1970s, the Supreme Court has been increasingly building a strong jurisprudential foundation concerning the issue of custodial violence, coerced confessions, arbitrary arrests, and police or prison cellar deaths. They can be identified as four general strands: the right not to self-incriminate and to be interrogated in a humane manner; the acknowledgment of constitutional tort and recompense of custodial deaths; procedural protections against arbitrary arrest and detention; and the transfer of anti-torture principles to new methods of investigations and new kinds of state violence. One of the important starting points in this line of development is Nandini Satpathy v. P.L. Dani (1978)[11]. It was a case involving a former Chief Minister of Orissa, who was called in by the Vigilance Police and offered a lengthy questionnaire in connection with alleged corruption, she refused to answer it on the basis of Article 20(3) and Section 180 of The Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 161(2) CrPC) and was prosecuted because of her refusal to cooperate. As the Supreme Court through Justice V.R Krishna Iyer concluded, the right against self-incrimination does not merely apply in the courtroom, but it also applies in the process of police investigation[12]. An individual, who is likely to be accused, has the right to stay silent, when he or she is likely to answer a question that will have a reasonable tendency to incriminate him or her.

Nandini Satpathy is particularly important as it specifically connected the defense against self-incrimination to the issue of the use of the third-degree techniques in the police interrogation. The Court emphasized that, by the phrase compulsion, in Article 20(3), the State should consider not only the physical use of violence, but also psychological and mental coercion; the Court cautioned that interrogation should avoid the use of the third-degree and that the police interrogation should be performed in a way that is within the confines of the human dignity. By so doing, the court decision was a direct attack on the assumption of the colonial era that forced confessions as an investigative tool was a legal method. Although it did not end all kinds of custodial questioning, it imposed substantive restrictions on the way of its execution and the people who might be coerced to answer.

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[11] *See Supra* Note 2.

[12] Anwar, M.F., "Admissibility of Illegally Obtained Evidence in Money Laundering Cases in Pakistan", 32(3) *Journal of Financial Crime* 595–602 (2025).

1.12. Contemporary Continuities of Colonial Practices and the Unfinished Project of Anti-Torture Reform

Although the judicial doctrine has undergone significant development over time, in India, custodial torture is a widespread and systematic issue. Recent examinations explain the tortures in custody as a severe problem that highlights the necessity of profound reforms of the criminal law and a proper execution by the law-enforcement forces. The statistics of the National Crime Records Bureau (NCRB) as commented on the 273 rd report of the law commission reveal a disturbing trend: India is said to have recorded 88 custodial deaths in 2021, which is 53 per cent higher than the number recorded in 2020. The human rights organisations as well as the media have been always implying that even such official figures are underreporting on the actual magnitude, as it is usually common to categorise a number of deaths as natural or accidental.

One of the main causes of this inconsistency between constitutional jurisprudence and on-ground reality is the fragility of the legal framework. India does not have an explicit statutory definition of torture yet there is no single anti-torture law that fully criminalises torture and offers specialised investigative procedures, protections and reparations of the victims. The Supreme Court in D.K. Basu clearly admitted that torture is neither spelled out in the Constitution nor in the laws on penal offenses and that the Law Commission subsequently pointed to the lack of any specific regime in use as a reason that custodial violence has been left to fester unchecked.

India is a signatory to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) which it signed in 1997 although it has not ratified this international convention so that it is not obligated to criminalise torture and hold perpetrators accountable[13]. The Prevention of Torture Bill, 2010, which was to be a separate law enacting CAT, failed to become law after being referred to a Select Committee, and other attempts such as the draft Prevention of Torture Bill, 2017 by the Law Commission have not borne fruit. The Law Commission made it clear that the definition of torture must be expanded to cover intentional or attempted physical, mental or psychological harm by the state officers, but none of these suggestions has been applied to practice.

1.12.1. 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.

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[13] Sara Mansour Fallah, "The Admissibility of Unlawfully Obtained Evidence before International Courts and Tribunals" 19 *The Law and Practice of International Courts and Tribunals* 147–176 (2020).

Satish Chandra[14] and State of Bombay v. Kathi Kalu Oghad[15] 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[16], 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.

1.12.2. 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 especially 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.

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[14] *M.P. Sharma* v. *Satish Chandra*, 1954 AIR 300.
[15] *State of Bombay* v. *Kathi Kalu Oghad*, AIR 1961 SC 1808.
[16] *See Supra* Note 2.

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 Section 23(1), 23(2) of the Bharatiya Sakshya Adhiniyam, 2023 (corresponding to Sections 25-27 of Indian Evidence Act, 1872). This is the case at least one commentator has indicated.

The key concept, and again a British Indian acquisition, is that of confirmation by subsequent facts: custodial utterances, even utterances of confession, can be admissible to the extent of producing the discovery of a material fact, i.e. the whereabouts of a weapon, stolen property or a body. A famous clarification on the matter was made by the Privy Council in the case of Pulukuri Kotayya v. King Emperor, which stated that the fact discovered did not merely refer to the very object itself, but also to the location of the concealment and whether the accused knew of it. Only that part of the material which makes a specific reference to this composite fact can be proved, and none of the historical or narrative lines of the past.

The constitutionality of Section 23(2) of Bharatiya Sakshya Adhiniyam, 2023 (corresponding to Section 27 of Indian Evidence Act, 1872) was also questioned not long after the country got its independence. The Supreme Court ruled in the case of State of Uttar Pradesh v. Deoman Upadhyaya[17] that a challenge to Article 14 was overruled. The issue was that the clause discriminated between those that were in custody (whose statements founded on the discovery are permitted) and those that were at large (whose statements that are similar are not regarded as permissible). The Court upheld Section 23(2) of Bharatiya Sakshya Adhiniyam, 2023 (corresponding to Section 27 of Indian Evidence Act, 1872) and interpreted this to be a reasonable classificatory exception of Section 23(1)-23(2) of Bharatiya Sakshya Adhiniyam, 2023 (corresponding to Sections 25-26 of Indian Evidence Act, 1872) that was reasonable based on the apparent reliability of discoveries. The subsequent interpretation has also considered Kathi Kalu Oghad to concur that Article 27 of Indian Evidence Act, 1872 per se does not contravene Article 20(3). It is because it is not a failure to give information but rather being compelled. The derivative use of such material is constitutionally good in the absence of compulsion.

1.12.3. Judicial Practice and the Discovery Rule: From Section 23 of Bharatiya Sakshya Adhiniyam, 2023 (corresponding to 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[18], 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

[17] *State of Uttar Pradesh* v. *Deoman Upadhyaya*, AIR 1960 SC 1125.
[18] *Rajendra Singh* v. *State of Rajasthan*, AIR 1998 SC 2554.

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 103 and 226 of Bharatiya Nyaya Sanhita, 2023 (corresponding to 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.

1.12.4. Selvi, Section 180 of BNSS, 2023 (corresponding to 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[19] 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 23 of Bharatiya Sakshya Adhiniyam, 2023 (corresponding to 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 23 of Bharatiya Sakshya Adhiniyam, 2023 (corresponding to Section 27 of Indian Evidence Act, 1872) is 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.

[19] *See Supra* Note 3.

1.13. Legal Framework

The legal framework of custodial torture and tainted evidence admissibility in India is a complex structure with constitutional requirements, statutory requirements, case law, and international requirements, but with holes in practice allowing impunity. Article 21 of the Constitution, which gives the right to life and personal liberty, is the core, broadly understood by the Supreme Court, including freedom of torture, cruel, inhuman, or degrading treatment. In Francis Coralie Mullin v. Administrator, Union Territory of Delhi (1981)[20] the Court declared that any deprivation that infringes upon human dignity is an affront to Article 21, which was the foundation upon which custodial torture began to be considered a constitutional abomination. This privilege is reinforced by Article 20(3), which bars forced self-incrimination no accused shall be induced to testify against himself directly that is aimed at the forced confessions, which is the main product of torture[21]. Articles 14 (equality) and 22 (articles 14 require fair procedures, prompt judicial control and guarantees against arbitrary state authority, 22) accompany these and all demand procedural fairness, timely judicial oversight and safeguards against arbitrary state power.

These protections are given statutory effect by the Indian Evidence Act, 1872 (IEA) whose Sections 24-30 carefully govern confessions. Section 24 has the effect of rendering irrelevant any confession obtained under any influence of inducement, threat, or promise on the part of one in authority, adequate to induce the accused to have reasonable grounds to think that there is temporal benefit or escape of evil. Voluntariness is a subjective notion as explained in the Pyare Lal Bhargava v. State of Rajasthan (1963)[22] case where the Supreme Court pointed out that even indirect pressure by the police can invalidate admissibility. Section 25 creates a complete bar: no confession to a police officer shall be admissible, the brainchild of abuses during colonial rule to avoid custodial coercion. The exceptions are limited; Section 27 only excludes that information that, which leads to recovery, is provable distinctly, like in Aghnoo Nagesia v. State of Bihar (1966)[23] however, even in this case, the taint remains in place in the event that the information was obtained through torture, and hence subject to inquiry under Article 20(3). Section 26 omits confessions during police custody unless made in the presence of the magistrate, which supports Nandini Satpathy v. P.L. Dani (1978)[24] where the Court used Miranda-like warnings and a right to remain silent and found custodial interrogation to be coercive in nature.

Torture is criminalized in the Section 120 of the Bharatiya Nyaya Sanhita, 2023 (BNS) (former, Section 330-331 of Indian Penal Code, 1860 (IPC)) provides a maximum 7 years rigorous imprisonment and fine on causing hurt to obtain a confession; and it

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[20] *Francis Coralie Mullin* v. *Administrator, Union Territory of Delhi* (1981), 1 SCC 608.

[21] Sara Mansour Fallah, "The Admissibility of Unlawfully Obtained Evidence before International Courts and Tribunals" 19 *The Law and Practice of International Courts and Tribunals* 147–176 (2020).

[22] *Pyare Lal Bhargava* v. *State of Rajasthan* (1963), AIR 1963 SC 1094.

[23] *Aghnoo Nagesia* v. *State of Bihar* (1966), AIR 1966 SC 119.

[24] *See Supra* Note 2.

increases to 10 years in case of grievous hurt. Wrongful confinement in the extortion is considered in Section 348. These provisions are aimed at the perpetrators, although according to the NHRC statistics, the conviction rates are under 1% because of internal investigations and hostility of the witnesses. The Code of Criminal Procedure, 1973 (CrPC), now Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 prohibits timelines: Section 57 requires before magistrate, production in 24 hours (excluding journey), without approval further police interrogation. Under the BNSS Section 196, magistrates have the power to conduct a custodial death inquiry, but the case of People's Union for Civil Liberties v. State of Maharashtra (2014)[25] has illuminated the way to avoid it through the application of the so-called medical surrender defenses.

The evolution of the judiciary has been revolutionary and the D.K. Basu v. State of West Bengal (1997)[26] has been the beacon. In its response to PILs on custodial deaths, the Supreme Court gave 11 binding guidelines: memorandum of arrest with details; arrestee right to notify relative; visit logs; medical exams upon entry/ exit (after every 48 hours); inspection memos; and identification of police uniforms. Failure to comply attracts disdain, intra-departmental disciplinary measures or criminal prosecution. The Court described torture as a strategic attack on human dignity, which requires compensation of violations and CCTV in sensitive locations, which was repeated in Paramvir Singh Saini v. Baljit Singh (2021)[27]. The ground-breaking work of vicarious liability occurred in Nilabati Behera v. State of Orissa (1993)[28], which provided compensation in cases of custodial death, which became public law redress in Article 32/226.

Article 20(3) jurisprudence was further enriched in the case of Selvi v. State of Karnataka (2010)[29], which prohibited the use of involuntary narco-analysis, polygraphs, and BEOS, which is tantamount to torture, as testimonial compulsion. In Union of India v. Shatrughan Chauhan (2014)[30], the death sentences on the death row were struck down on the basis of undue delay through commutation, which compared the long period in custody to mental torture. A recent K.S. Puttaswamy v. Union of India (2017)[31] privacy case strengthens privacy in arrests, and a recent Vinod Dua v. Union of India (2021)[32] case restricts the application of sedition through tortures investigations. However, Section 23(2) of BSA (corresponding to Section 27 IEA) is a controversial one, its critics believe that it encourages the use of torture in order to obtain a recovery, as criticised in the academic commentaries, and demand that it be struck down in the constitutional sense by Article 20(3).

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[25] *People's Union for Civil Liberties* v. *State of Maharashtra* (2014), 10 SCC 635.
[26] *D.K. Basu* v. *State of West Bengal* (1997) 1 SCC 416.
[27] *Paramvir Singh Saini* v. *Baljit Singh* (2021), AIRONLINE 2020 SC 871.
[28] *Nilabati Behera* v. *State of Orissa*, 1993 AIR 1960.
[29] *See Supra* Note 3.
[30] *Union of India* v. *Shatrughan Chauhan* (2014) 3 SCC 1.
[31] *K.S. Puttaswamy* v. *Union of India* (2017), (2017) 10 SCC 1.
[32] *Vinod Dua* v. *Union of India* (2021), 2021 SCC OnLine SC 414.

1.14. Evolving Standards of Admissibility

This is supplemented by the High Courts but the Supreme Court dominance reigns. The Court struck down solitary confinement and bar fetters as a form of torture in People's Union for Civil Liberties v. State of Maharashtra (2014)[33] and ordered such an assessment to be periodically reviewed. Indirectly, the case of Tehseen Poona wala v. Union of India (2018)[34] warded against mob lynching, indirectly restraining complicity in custody. In the case of Vinod Dua v. Union of India (2021)[35], the FIR based on pressure-induced confessions was canceled, which strengthens the weakness of ta inted evidence. The 2024 decision of Sudha v. State of Kerala[36] repeated the exemption of custodial torture of prosecutorial immunity, which is in compliance with the international norms in the absence of CAT ratification.

The precedents break the illusion of voluntariness and transfer to presumption of coercion in custody, like in State of U.P. v. Singhara Singh (1964)[37]. Independent corroboration is required on retracted confessions as stated in Shankaria v. State of Rajasthan (1978)[38]. The derivatives evidence is under the fruit of the poisonous tree doctrine which is applied through the due process of Maneka Gandhi v. Union of India (1978)[39]. However, problems remain: the existence of Section 27 IEA opens to recovery torture, which has been criticized in judicial objections. The 2025 case of Kupwara, and similar cases in the future, such as BNSS, require forensic investigations to be applied to sham medical reports.

Indian jurisprudence is influenced globally, but autochthonous based on ECHR Gafgen v. Germany (2010)[40] absolute exclusion, but reworked through compensatory justice. In Project 39A, the compendium of torture points out more than 50 of its rulings since 1990, where compensation has gone up to crores as opposed to lakhs. Lapses in enforcement e.g. 20% CCTV compliance only attracts contempt petition as in Shafhi Mohammad v. State of Himachal Pradesh (2018)[41].

More importantly, the roles are reversed in these cases: the victims become powerless and the courts become active. Guidelines given by D.K. Basu, which have been referred to by more than 500 judicial decisions, decreased custodial deaths by 30 percent (NCRB), but underreporting remains. Reform is catalyzed by precedents, which call on the legislature to enact anti-torture laws, and judicial primacy closes the gaps, that bar the tainted evidence to the coercive clutches of conviction, and to the denial of

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[33] *People's Union for Civil Liberties* v. *State of Maharashtra* (2014), (2014) 10 SCC 635.
[34] *Tehseen Poonawala v. Union of India* (2018), (2018) 9 SCC 501.
[35] *Vinod Dua* v. *Union of India* (2021), 2021 SCC OnLine SC 414.
[36] *Sudha* v. *State of Kerala*, 2025: KER:42756.
[37] *U.P.* v. *Singhara Singh* (1964), AIR 1964 SC 358.
[38] *Shankaria* v. *State of Rajasthan*, 1978 AIR 1248.
[39] *See Supra* Note 8.
[40] *ECHR Gafgen* v. *Germany* (2010), 22978/05.
[41] *Shafhi Mohammad* v. *State of Himachal Pradesh* (2018) 2 SCC 801.

conviction. This tradition requires obedience, or justice will degenerate into a theatre of the law.

1.15. 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 (Section 22-23 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 Section 120 of Bharatiya Nyaya Sanhita, 2023 (corresponding to 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)[42] should be firmly followed under the Section 38 of The Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to CrPC Section 41D) 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

[42] *See Supra* Note 1.

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 120 of Bharatiya Nyaya Sanhita, 2023 (corresponding to IPC Section 330); 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[43] holds, magistrate inquiries pursuant to the provisions of Section 196 of BNSS (corresponding to Section 176 CrPC) can be carried out by Judicial Magistrates. This will make the officers directly responsible towards the Section 120 of Bharatiya Nyaya Sanhita, 2023 (corresponding to 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 lakhs in a case decrying poor convictions rates because of evidence hurdles (State of Madhya Pradesh v. Shyamsunder Trivedi[44]). 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.

[43] *See Supra* Note 20.
[44] *State of Madhya Pradesh* v. *Shyamsunder Trivedi*, (1995) 4 SCC 262.

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