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## BEHIND BARS, BEYOND RIGHTS: EXAMINING THE RESPONSIBILITIES FOR CUSTODIAL DEATH

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### ABSTRACT

The Article is to bring to light the Custodial death and its responsibilities. To curb out the custodial death there are major changes establish after Independence, for determining the reason and responsibilities of the custodial death. Till the date there is no law for anti-torture and custodial violence. As the custody is similar to the word guardianship therefore there are responsibilities and duties upon the detainee for the cause of custodial death. This duties and responsibilities are prescribed to determine the cause of death given under BNSS.

**Keyword:** Custodial Death, Custodial Violence, Human Rights Protection, BNSS, 2023, NHRC Guidelines, Police Accountability, Article 21.

### INTRODUCTION

The death of detained person in the police or judicial custody refers to custodial death. Recently law commission has stated that the abuse by the detainee in its custody will refer to custodial violence.

**Cause of the custodial death** can be occurred by different types that are:

- a. **Lack of strong law to avoid custodial death**
- b. **Lack of infrastructure:** mostly every prison In India does not have enough cell, the capacities of the prison is much less than the actual accommodated prisoner, thus it

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INDIA CONST. art. 21.

INDIA CONST. art. 22.

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85.

Custodial Death – Who is Responsible?, IPLEADERS,  
<https://blog.ipleaders.in/custodial-death-responsible/>

affect poor condition of the prisoner because of overcrowding shortage of man power less safety.

- c. **Disobeying the international standard:** Indian prison disobey the international standard which was signed by India under the United Nations Convention Against Torture in 1997. The country has just signed to obey the treaty but does not ratify it.

**d. Other factors:**

- Lack of medical facilities
- Lack of attention to torture from other prisoner
- Poor training and accountability
- No attention to suicide cases

## **PROVISION UNDER INDIAN LAW AND OTHER BODIES FOR PROHIBITING CUSTODY DEATH**

### **CONSTITUTIONAL PROVISIONS:**

1. **Article 21** of the Indian constitution gives right to life and liberty which prohibit the prisoner from being torture in the custody by the authorities to obtain confession.
2. **Article 22** of the Indian constitution gives right to the citizen of India from being arrest and detention in certain cases.
  - a. **Duty of state government:** In the seventh schedule of the Indian constitution police as well as public are the state subject, thus the state government have obligation to perform their responsibility for the protection of human rights.
  - b. **Central government duties:** The central government should issue the advisories to the state for the protection of the prisoners as stated under The Protection of Human Rights Act, 1993. The central government should establish NHRC and state human right commission to keep account of human right violation by public servant.
  - c. **Legal Provision:** The provision to avoid torture to obtain confession and to make arrest are as follows:

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INDIA CONST. sched. VII.

Protection of Human Rights Act, 1993, No. 10, Acts of Parliament, 1994 (India).

Custodial Deaths in India: A Toxic Play of Power, DW, <https://www.dw.com/> (last visited May 15, 2026).

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### **BHARATIYA NAGARIK SURAKSHA SANHITA,2023:**

- 1. Section 35 of BNSS:** Section 35 of the BNSS was amended in 2009 amendment which ensure to safeguard the during the arrest of the person where reasonable grounds and proper documentation and transparency to public, family and to friends of the arrested person was included.
- 2. Section 179 of BNSS:** This section of the code prohibits to induce or to threat or give promise by investigating officer to obtain confession from the person.
- 3. Section 183 of BNSS:** The section says that the confession can be only recorded by the competent magistrate, while taking confession the competent magistrate shall ensure that the confession is made voluntarily and not under threat and should sign on the memorandum made by the him during recording confession.
- 4. Section 43 of BNSS:** This section does not give right to cause the death accused if his resist the arrest where the offence which is not punishable to death or life imprisonment of committed by accused.
- 5. Section 46 of BNSS:** This section protects a person from unnecessary restrain, he shall be release if there is no reasonable ground to make him restrain.

### **BHARATIYA NYAYA SANHITA,2023**

- 1. Section 152 of BNS:** This section says that whoever confine a person to obtain confession on illegal way shall be punished under the said provision for a term which may extend to 3 year or fine.
- 2. Section 184(1) of BNS:** The section provides punishment whoever causes hurt to the person to obtain confession forcibly, the punishment for the offence is imprisonment for a term which may extend to 7 years or fine.
- 3. Section 184(2) of BNS:** The section provide punishment whoever cause grievous hurt

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Bharatiya Nagarik Suraksha Sanhita, 2023, § 35, No. 46, Acts of Parliament, 2023 (India).  
Bharatiya Nagarik Suraksha Sanhita, 2023, § 179, No. 46, Acts of Parliament, 2023 (India).  
Bharatiya Nagarik Suraksha Sanhita, 2023, § 183, No. 46, Acts of Parliament, 2023 (India).  
Bharatiya Nagarik Suraksha Sanhita, 2023, § 43, No. 46, Acts of Parliament, 2023 (India).  
Bharatiya Nagarik Suraksha Sanhita, 2023, § 46, No. 46, Acts of Parliament, 2023 (India).

to the person to obtain confession forcibly, the punishment for the offence is imprisonment which may extend to 10 years of fine.

### **BHARATIYA SHAKSHA ADHINIYAM, 2023**

1. **Section 22 of BSA:** The confession made under promise or threat or under inducement is not admissible in the court proceeding
2. **Section 23 of BSA:** The confession made before the police officer is not admissible in the court proceeding as the confession may be obtained under treat or undue influence or by promise, Thus the confession made in front of the competent magistrate is admissible with proper procedure laid under 164 of CrPC.

### **PROVISION UNDER BSA FOR THE OFFENCE OF CUSTODIAL DEATH OF THE PRISONER:**

Sometime the death of the prisoner caused due to torture or other crime committed by the detainee or by the other companion of the person in the prison, such offence are covered under IPC to penalize the offence of custodial death.

1. **Section 101 of BNS:** If a police officer is found accused for the death of the prisoner under his custody he shall be charged for murder. Even the companion of the prisoner can be also charged for the offence of murder is found liable.
2. **Section 105 of BNS:** Under this section the police officer can be held liable for the offence of culpable homicide not amounting to murder for the custodial death caused because of the negligence of the police officer.
3. **Section 113 of BNS:** The police officer or the companion prisoner can be held liable for abetment to suicide for the custodial death of the prisoner. And can be punished under this section for a term of imprisonment which may extend to 10 year or with fine.

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Bharatiya Nyaya Sanhita, 2023, § 152, No. 45, Acts of Parliament, 2023 (India).  
Bharatiya Nyaya Sanhita, 2023, § 184(1), No. 45, Acts of Parliament, 2023 (India).  
Bharatiya Nyaya Sanhita, 2023, § 184(2), No. 45, Acts of Parliament, 2023 (India).  
Bharatiya Sakshya Adhinyam, 2023, § 22, No. 47, Acts of Parliament, 2023 (India).  
Bharatiya Sakshya Adhinyam, 2023, § 23, No. 47, Acts of Parliament, 2023 (India).  
Bharatiya Sakshya Adhinyam, 2023, § 24, No. 47, Acts of Parliament, 2023 (India).

4. **Section 184(1) of BNS:** The section provides punishment whoever causes hurt to the person to obtain confession forcibly, the punishment for the offence is imprisonment for a term which may extend to 7 years or fine.
5. **Section 184(2) of BNS:** The section provide punishment whoever cause grievous hurt to the person to obtain confession forcibly, the punishment for the offence is imprisonment which may extend to 10 year of fine.

### **PROCEDURE UNDER SECTION 188 OF BNSS FOR THE RESPONSIBILITIES OF CUSTODIAL DEATH**

Section 176 (1) says that the magistrate is empowered to hold an inquiry to investigate the custodial death, where if the suspect is police officer for the cause of the custodial death, further in the case of *shyamsundar vs. state of M.P 1997* it was held that the section also gives power to magistrate to transfer the investigation to CBI or SIT that to avoid fraud by the police during investigation under 176(1) at any stage.

The new clause was added to the section in 2005 amendment:

Section 188(1A): Where the custodial violence was brought into light as a *custodial violence committed against the prisoner by the police officer of or the authorities.*

The addition of the clause state that if a person dies or disappear or a woman is raped under the custody. the competent magistrate shall make an order for the inquiry of such offence committed under custody by the police officer.

This provision covers the custodial offences; thus, ingredient is as followed:

1. The inquiry shall be conducted by the competent magistrate, it can be a metropolitan or judicial magistrate.
2. The shall word has been introduced in this section which makes it compulsory to make an inquiry of the death or the offence committed under custody.

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Bharatiya Nagarik Suraksha Sanhita, 2023, § 188(1A), No. 46, Acts of Parliament, 2023 (India).  
Shyamsunder Trivedi v. State of M.P., (1995) 4 SCC 262 (India).  
National Crime Records Bureau, Prison Statistics India 2023.  
Custodial Deaths: What Is the Procedure for Inquiry?, LIVE LAW, <https://www.livelaw.in/>

As the inquiry is made compulsory but section 188 says that executive magistrate may hold an inquiry for the death caused in the custody. As a result section 188(1A) is wrongly interpreted that whenever the death is unnatural then only the said section 188(1A) will come into force and thus only the word shall will be implemented. As a result whenever the death is caused the detainee or the authority or the police officer can make changes in the evidence and can foul the cause. As a result the inquiry will not be made compulsory and no investigation will be conducted.

The NCRB (National crime record bureau) shows that 70% of the death is shown as natural, taking into consideration the national human right commission passed an order to make an inquiry whether the report if the custodial death is false or correct.

The supreme court of India by a Public litigation petition filed in 2020 ordered all states and UT to make implement section 188(1A) compulsory

The amendment also introduced section 188(5) which makes it compulsory that the body of the deceased shall be sent to nearest surgeon for post mortem within 24 hrs, and if the procedure is not followed prescribed under the said section the reason shall be mentioned.

## **THE NHRC GUIDELINES FOR THE RESPONSIBILITIES OF CUSTODIAL DEATH**

Under the Protection of human right act 1993, national human right commission was setup to determine the issue of custodial violence. The NHRC had issued some rule and guideline to handle the custodial death.

According to the guideline whenever the custodial death occurs it should be informed to the competent magistrate without any delay. The competent magistrate should complete his procedures prescribed under Criminal procedure code such collecting evidence, to note down the facts, to check the witness. The public notice should be issued to inform the witnesses and about the incident. The family should be heard about the condition of the victim which could be shared with them.

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Protection of Human Rights Act, 1993, No. 10, Acts of Parliament, 1994 (India).  
Nat'l Hum. Rts. Comm'n, Guidelines/Procedures to be Followed in Cases of Death in Police Custody (India).  
NHRC Selected Letters and Guidelines on Deaths in Custody, Ministry of Home Affairs,  
<https://www.mha.gov.in/>

The magistrate may consider the circumstance of the death, manner, sequence and cause of the death. If the magistrate feel that foul play is carried out under the authorities he shall notify it to its report. Every document and other record shall be taken into consideration.

Other record shall be collected in the connection of the death of the victim such as:

- Death report and
- Post-mortem report
- Visera analysis report
- Histopathological report
- Final cause report
- Medical treatment report
- Police investigation report
- FIR
- Ballistic report if present
- Forensic report
- Fingerprint report
- Witness statement of the family, friends, companion prisoner, police, detainee.
- Memorandum by magistrate itself

This all report and document shall be collected by the magistrate in the enquiry of the custodial death and shall be informed to NHRC within 24 hours, the inquiry shall be conducted within 2 months and the report shall be submitted to the same.

Proceeding of video record and photograph shall be conducted during:

- Post-mortem examination
- For marking of marks related to violence on body
- The entire procedure till the final report are made
- To record the independent review of the surgeon.

FIR in case of custodial violence and death:

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Protection of Human Rights Act, 1993, No. 10, Acts of Parliament, 1994 (India).  
Nat'l Hum. Rts. Comm'n, Guidelines/Procedures to be Followed in Cases of Death in Police Custody (India).  
NHRC Selected Letters and Guidelines on Deaths in Custody, Ministry of Home Affairs,  
<https://www.mha.gov.in/>

FIR shall be registered in case of custodial violence under section 173 of BNSS and custodial death under section 188(2) of BNSS.

According to commission report if the FIR is not registered the victim can file FIR to:

- Chief judicial magistrate
- Session judge in case of custodial death and also,
- Suo moto inquiry can be also conducted for the inquiry of custodial death and violence.

### **D.K BASU VS. STATE OF WEST BENGAL (1997)**

In the landmark case the supreme court has issued some guidelines to avoid custodial violence and custodial death i.e.

- Prohibition on use of third degree
- Interrogation must be clear and transparent
- Arrested person has right to inform his friend and family
- The arrested person has right to meet his lawyer
- Medical checkup should be carried after the arrest
- The information shall be provided to the control room within 12 hours

### **CONCLUSION**

Arresting the person under the authority of law can't be said to violation of law. It is the duty and responsibility of the detainee or the authority to protect the right of the arrested person. He shall no deprived of his fundamental rights. The correct procedure and manner shall be carried out by the police authority during the arrest of the person, the arrested person shall not be ill-treated in the custody as said by the apex court.

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Bharatiya Nagarik Suraksha Sanhita, 2023, § 173, No. 46, Acts of Parliament, 2023 (India).

Bharatiya Nagarik Suraksha Sanhita, 2023, § 188(2), No. 46, Acts of Parliament, 2023 (India).

D.K. Basu v. State of W.B., (1997) 1 SCC 416 (India).

D.K. Basu v. State of W.B., (1997) 1 SCC 416, ¶¶ 35–36 (India).

INDIA CONST. art. 21.

Protection of Human Rights Act, 1993, No. 10, Acts of Parliament, 1994 (India).

D.K. Basu v. State of W.B., (1997) 1 SCC 416 (India).

To protect a person from custodial violence, many guidelines has been issued by the human rights authorities and government bodies which are mentioned in this article. The article also provides information related to the responsibility of the custodial death as prescribed under law.

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