



CUSTODIAL TORTURE IN INDIA: THE ROLE OF CCTV SURVEILLANCE AND ELECTRONIC EVIDENCE IN PREVENTING AND PROVING CUSTODIAL ABUSE

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ABSTRACT :

Custodial torture occupies a distinctive place in Indian constitutional law because the State controls the victim at the very moment when the victim's ability to document abuse is weakest. The problem is therefore not only the existence of a legal prohibition but the production, preservation and independent assessment of evidence about what occurred in a controlled environment. This paper examines whether CCTV surveillance and electronic evidence can address that deficit. Taking *Paramvir Singh Saini v. Baljit Singh* as its principal judicial focus, it places the decision within Articles 20(3), 21 and 22, the safeguards of the Bharatiya Nagarik Suraksha Sanhita, 2023 and the electronic-evidence framework of the Bharatiya Sakshya Adhiniyam, 2023, and considers why conventional proof rules, as seen in *State of M.P. v. Shyamsunder Trivedi* and *Munshi Singh Gautam v. State of M.P.*, are difficult to apply to custodial crimes. CCTV may deter abuse and supply objective evidence after it occurs, but neither function is automatic: coverage gaps, malfunction, short retention, manipulation, police control over storage, delayed access and uncertainty about certification all reduce a recording's value. The paper proposes an integrated framework of independent storage, automatic preservation on complaint, court-controlled access, clear rules for missing footage, independent forensic verification, recorded interrogations, privacy safeguards and a dedicated anti-torture statute. Technology is not a substitute for constitutional safeguards; it is a means of making them verifiable.

I. INTRODUCTION

Torture in custody differs from ordinary criminal violence. The victim is held by an institution that controls movement, access to lawyers and family, medical examination, official records and, often, the first investigation. A detainee may leave custody with injuries but without an independent witness, while the State ordinarily holds the documents and digital records that establish the chronology of arrest, interrogation and treatment. The central question is therefore not whether Indian law recognises dignity in custody, which it plainly does, but whether the legal system generates reliable evidence capable of testing the State's account.¹

Paramvir Singh Saini v. Baljit Singh moves the discussion from abstract safeguards to verifiable records. The Supreme Court directed that police stations and specified investigative agencies maintain audio-video CCTV systems with broad coverage, night vision, adequate storage and oversight mechanisms.² A recording can convert an allegation about what happened behind a closed door into evidence that can be independently examined.

This paper does not argue that CCTV is a complete solution. Cameras fail, are switched off, face the wrong way or produce footage that is hard to authenticate or obtain, and surveillance can itself intrude on privacy. The argument is narrower: electronic records can substantially improve a detainee's evidentiary position, but only if the law regulates the whole life cycle of the record, from creation and storage to preservation, access, authentication and judicial use.

The paper asks two questions. First, to what extent can CCTV prevent custodial torture by making police conduct visible? Second, when torture is alleged, to what extent can CCTV and related electronic records establish what occurred? It answers them through doctrinal analysis of constitutional provisions, statutes, Supreme Court decisions, Law Commission reports and international standards, and uses the Court's recent CCTV compliance proceedings to test the framework in practice.³ Its central theme is the distinction between installing cameras and preserving evidentiary integrity.

Custodial torture is, at its core, a problem of power over both the person and the record. The most meaningful technological safeguard is therefore not merely a camera on a wall. It is a system in which the recording is continuous, sufficiently comprehensive, automatically preserved, independently accessible and difficult for the officers under investigation to alter.

Part II describes custodial torture as a problem of proof, and Part III sets out the constitutional and statutory framework. Part IV traces the shift from conventional to technological proof. Parts V and VI examine *Saini* and the preventive function of CCTV, while Parts VII and VIII address electronic evidence and the audio-visual provisions of the BNSS. Part IX draws on international and comparative practice, Part X considers privacy and other limits, Part XI applies the analysis to decided cases and *Sathankulam*, and Parts XII to XIV identify gaps, propose reforms and conclude.

¹See *D.K. Basu v. State of W.B.*, (1997) 1 S.C.C. 416, 432–37.

²See *Paramvir Singh Saini v. Baljit Singh*, (2021) 1 S.C.C. 184, 196–201.

³See *Suo Motu Writ Petition (Crl.) No. 3 of 2025, Lack of Functional CCTVs in Police Stations* (Sup. Ct. Sept. 4, 2025).

II. CUSTODIAL TORTURE AS AN EVIDENTIARY PROBLEM

A. Nature and invisibility of custodial abuse

Custodial torture includes physical violence, coercive interrogation, threats and humiliating treatment used to punish, intimidate or extract information from a person under official control. Indian law does not consolidate this conduct into a single offence of torture. Different forms may attract provisions on hurt, grievous hurt, wrongful confinement, extortion of confessions, culpable homicide or murder, alongside constitutional remedies. The gap matters because torture is not only an isolated assault; it is an abuse of custodial power.

The evidentiary difficulty follows from the setting. An arrest in public may have independent witnesses, but inside a police station the alleged victim may be in a lock-up, interrogation room, corridor or vehicle, other detainees may be unwilling to testify, and police personnel may be the only direct witnesses. Official documents are generated by the institution whose conduct is challenged. The Supreme Court has repeatedly acknowledged that direct ocular evidence is uncommon in such cases and that courts must weigh the evidence with that reality in mind.⁴

The invisibility of custodial abuse also has an institutional dimension. Complaints must ordinarily be routed through the same institution, victims depend on the police for bail and charge-sheeting, and reprisals are a real fear. Official figures on custodial deaths are therefore likely to understate the problem, since they do not capture torture that does not end in death or abuse in vehicles, at the point of arrest or in informal places of detention.

B. The problem of exclusive control

Exclusive control produces four connected problems: isolation, because the detainee cannot summon a witness or create an independent record; documentary control, because arrest memos, general diaries and medical requests originate with the police; investigative dependence, because the same force may investigate allegations against its own personnel; and delayed complaint, because victims often complain only after release, when injuries have healed and footage may have been overwritten.

This is why the Law Commission's proposal for a statutory presumption remains relevant. Under proposed section 114B of the Evidence Act, where a person in police custody suffered injuries, the court could presume that the police caused them unless the contrary was shown.⁵ The proposal was never enacted, and the Bharatiya Sakshya Adhiniyam, 2023 ("BSA") does not reproduce it. The system relies instead on general rules concerning facts especially within a person's knowledge and inferences from withheld evidence.⁶

C. Custodial death and custodial torture as proof problems

Custodial death illustrates the imbalance most clearly, but the same reasoning applies to non-fatal torture. In *State of M.P. v. Shyamsunder Trivedi*, the Supreme Court recognised that insisting on ordinary direct evidence can produce injustice because police officials are often the only persons who can explain what happened to someone in custody.⁷ *Munshi Singh Gautam v. State of M.P.* again stressed the closed nature of custodial crimes and the need to assess evidence without ignoring how such crimes occur.⁸ These decisions do not mean that allegations against the police must be accepted automatically. They reject an unrealistic standard that treats the absence of an independent eyewitness as neutral when the State controlled the environment. They also show that CCTV should be weighed alongside medical evidence, arrest documentation, station records and testimony rather than in isolation.

D. Why electronic records matter

Electronic records create an independent, contemporaneous account. A recording can establish presence, movement, duration of detention, interaction between officers and detainees and visible physical conduct, while audio can capture threats and questioning that video cannot. Digital arrest records, call-detail records, location data, medical records and photographs can then test the recording's consistency. The value of such evidence lies in reducing dependence on witnesses who are structurally placed to disagree with the victim, but only if the record is complete and preserved. A missing recording may matter as much as an existing one, so the legal framework must address preservation and the consequences of non-production as well as admissibility. The importance of electronic evidence is therefore not that it is technologically sophisticated. Its value lies in its capacity to reduce dependence on testimony from people who are structurally positioned to disagree with the victim, and that value exists only if the record is complete and preserved.

III. CONSTITUTIONAL AND STATUTORY FRAMEWORK

A. Article 21 and dignity in custody

Article 21 is the constitutional foundation of protection against custodial torture. The Supreme Court treats personal liberty as including dignity and holds that custody does not remove a person from the protection of fundamental rights.⁹ Because any deprivation of liberty must follow a fair, just and reasonable procedure, investigation cannot be conducted by methods that destroy the dignity of the person investigated.¹⁰ Article 22 adds procedural protection at arrest: the arrested person must be told the grounds of arrest, may consult a lawyer of choice and must ordinarily be produced before a Magistrate within

⁴Law Comm'n of India, 113th Report, Injuries in Police Custody and Suggested Amendments to the Evidence Act, 1872 (1985); Law Comm'n of India, 152nd Report, Custodial Crimes (1994).

⁵Law Comm'n of India, 113th Report, *supra* note 4, at 16–20.

⁶Bharatiya Sakshya Adhiniyam, No. 47 of 2023, §§ 109, 119.

⁷*State of M.P. v. Shyamsunder Trivedi*, (1995) 4 S.C.C. 262, 268–70.

⁸*Munshi Singh Gautam v. State of M.P.*, (2005) 9 S.C.C. 631, 637–39.

⁹*See Sunil Batra v. Delhi Admin.*, (1978) 4 S.C.C. 494, 518–20; *Sheela Barse v. State of Maharashtra*, (1983) 2 S.C.C. 96, 100–02; *Kishore Singh Ravinder Dev v. State of Rajasthan*, (1981) 1 S.C.C. 503, 506–07.

¹⁰*See Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248, 281–83.

twenty-four hours. These safeguards create external points at which a detainee's legal position and physical condition can be reviewed.

Article 20(3) complements Article 21 by protecting an accused against compelled self-incrimination. In *Selvi v. State of Karnataka*, the Court rejected the involuntary use of certain investigative techniques and linked protection against compelled extraction of information to both self-incrimination and personal liberty.¹¹ Investigation is not a licence to obtain information by coercion merely because it may assist the prosecution. Public-law compensation for established violations in custody supplements, but does not replace, criminal accountability.¹²

B. The BNSS framework

The Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS") retains procedural safeguards on arrest, information to relatives, medical examination, production before a Magistrate and remand.¹³ Section 196(2) requires a Magistrate's inquiry, in addition to the police investigation, where a person dies or disappears or rape is alleged in custody, creating an external mechanism at the point where the risk of institutional self-review is greatest.¹⁴ The BNSS also incorporates audio-video recording into procedure. Section 105 requires searches and seizures to be recorded and the recording forwarded without delay to a Magistrate.¹⁵ This is not a CCTV rule for interrogation, but it shows a legislative movement toward contemporaneous electronic records of police procedure that can inform a future custodial-interrogation framework. The common thread in these provisions is that the record, or the review of it, is placed with someone other than the officer whose conduct is in question.

C. Substantive criminal law and the missing anti-torture statute

The Bharatiya Nyaya Sanhita, 2023 penalises voluntarily causing hurt or grievous hurt to extort a confession or information, and its illustration expressly contemplates a police officer torturing a person to induce a confession.¹⁶ Indian criminal law therefore does criminalise an important form of custodial torture, but it is not a comprehensive anti-torture statute. It offers no single definition of physical and mental torture and does not comprehensively address ordering, acquiescence or command responsibility.

India signed the Convention Against Torture in 1997 but has not ratified it.¹⁷ The Prevention of Torture Bill, 2010 passed the Lok Sabha but lapsed, and the Law Commission's 273rd Report recommended dedicated legislation and ratification.¹⁸ This matters for the present paper because CCTV cannot work in a legal vacuum. If a recording establishes torture, the law must identify the offence, the responsible persons, the procedure for investigation and prosecution, and the consequences of deliberately destroying the record. Technology can strengthen proof, but it cannot define the legal wrong.

IV. FROM CONVENTIONAL PROOF TO TECHNOLOGICAL PROOF

A. The traditional evidentiary model

Indian law has historically sought to reduce the incentive for torture by limiting the value of police confessions. Section 23 of the BSA continues the rule that confessions to police officers and confessions made in police custody are generally inadmissible, subject to the discovery exception.¹⁹ If investigators know that a coerced confession will ordinarily be unusable, the incentive to coerce should diminish.

Yet exclusion does not itself prove that torture occurred. A person may be tortured without confessing, and the discovery exception creates a continuing need to examine how information was obtained. Electronic recording of interrogation would not replace the exclusionary rule, but it could show the circumstances in which an alleged disclosure was made. A recording could also test a claim that information leading to a recovery was volunteered rather than coerced.

B. Burden and inference

Where direct evidence is unavailable, courts may rely on circumstantial evidence and the special-knowledge principle. Section 109 of the BSA requires a person to explain facts especially within his knowledge, and section 119 permits an adverse presumption from evidence that could have been produced but was withheld.²⁰ These provisions matter in custodial cases because the State may be the only party able to produce a particular record. But general principles can be applied inconsistently: one court may treat missing footage as neutral because the camera "malfunctioned," while another may ask why a system legally required to record produced nothing. A clear statutory rule would reduce that uncertainty.

C. Electronic evidence as contemporaneous evidence

Electronic evidence is strongest when generated automatically and stored outside the control of the person whose conduct it may later assess. A system that records to a server controlled by the same station house officer merely changes the record from paper to digital. Three characteristics determine evidentiary value: provenance (whether the recording came from the claimed camera at the claimed time), integrity (whether it has been altered) and accessibility (whether an independent investigator or court can obtain it promptly). Each is indispensable. An authentic but inaccessible recording is useless, an accessible recording of doubtful integrity invites challenge, and a sound system that does not cover the relevant area cannot answer the factual

¹¹See *Selvi v. State of Karnataka*, (2010) 7 S.C.C. 263, 294–97, 300–02.

¹²See *Nilabati Behera v. State of Orissa*, (1993) 2 S.C.C. 746, 754–57.

¹³Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, §§ 35, 36, 38, 48, 53, 58, 187.

¹⁴*Id.* § 196(2).

¹⁵*Id.* § 105.

¹⁶Bharatiya Nyaya Sanhita, No. 45 of 2023, § 120.

¹⁷Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85.

¹⁸Law Comm'n of India, 273rd Report, Implementation of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Through Legislation (2017); Prevention of Torture Bill, 2010, Bill No. 58 of 2010.

¹⁹BSA § 23.

²⁰BSA §§ 109, 119.

question.

These three characteristics also explain why the certificate requirement and the retention period, discussed below, cannot be treated as technical details. They determine whether a recording that exists in fact can be used in law, and by whom. A regime that guarantees provenance and integrity but leaves access to the police will still fail the detainee who most needs the record.

V. PARAMVIR SINGH SAINI AND THE CCTV MANDATE

A. The decision and its constitutional basis

Paramvir Singh Saini directly addresses the relationship between custodial violence, Article 21 and technological recording. The Court directed the installation of CCTV cameras with audio and video capability in police stations and specified investigative agencies, with night vision, broad coverage and storage of footage for eighteen months, subject to a qualification concerning commercially available storage capacity.²¹ The directions were not confined to the entrance. They extended to lock-ups, corridors, lobbies, reception areas, entry and exit points, the rooms of senior officers and other areas of the premises, because a camera that records only the public-facing entrance does little to document where detainees are held and questioned.²²

B. Independent oversight, preservation and access

The Court also required State-level and District-level Oversight Committees to supervise installation, maintenance and budgetary compliance and to review footage where human-rights violations are alleged.²³ The structure recognises that the police should not be the only institution deciding whether footage exists, is preserved and is examined.

Preservation is central. The eighteen-month retention period recognises that a detainee may first need medical treatment, legal advice or release before complaining; if footage is overwritten quickly, the right to complain is severed from the ability to prove the complaint. The Court also contemplated access to footage for a person alleging violations. Recording creates potential evidence, but access determines whether that potential becomes proof.

C. Continuing compliance problems

The record since the judgment shows that installation is not the end of the problem. In April 2023 the Court recorded substantial non-compliance across States and Union Territories.²⁴ In September 2025 it opened suo motu proceedings on allegations that CCTV systems in Rajasthan police stations were non-functional and that footage had not been made available in custodial-death matters.²⁵ Reporting on the proceedings indicates that the Court sought information on camera specifications, audio capture, storage, maintenance, connectivity, centralised monitoring and procedures for malfunction.²⁶

These developments reveal the central weakness of technology-based safeguards: compliance must be measurable. A State can claim that a station has a camera while the camera points away from the relevant area, records no audio, lacks storage, is offline or is not independently monitored. The legal question is not "Is there a camera?" but "Did a reliable and accessible record exist at the relevant time?"

D. Measuring compliance

If compliance is to be measurable, five indicators are the most useful. The first is coverage: whether every area listed in the directions is actually within a camera's field of view. The second is uptime: the proportion of time each camera was recording, supported by system logs. The third is audio: whether sound is captured and intelligible. The fourth is retention: whether footage is kept for the full period and cannot be overwritten locally. The fifth is independent access: whether someone other than the station can retrieve the footage on request. A station that meets the first four but not the fifth still leaves the evidence in the hands of those it may implicate.

VI. CCTV AS A PREVENTIVE SAFEGUARD

A. Deterrence

CCTV works prospectively when officers know their conduct is recorded and that detection is likely. That matters for custodial torture, which often occurs where officers believe external observation is limited. Deterrence, however, depends on credible monitoring. If cameras can be switched off without consequence, their preventive value is small. The 2025 proceedings illustrate the point: the Court's questions on outages, centralised dashboards and monitoring show a concern with functioning rather than mere installation.²⁷

Deterrence also has a cultural dimension. A camera that is known to be monitored, audited and backed by consequences changes what officers regard as safe conduct, whereas a camera known to be unmonitored becomes part of the furniture. The preventive effect therefore depends on the credibility of oversight as much as on the hardware. Officers must also know that an unexplained outage will be noticed and questioned, not merely logged.

B. Completeness of coverage

Coverage must follow the stages of custody: entry and exit points, lock-ups, interrogation areas, corridors, waiting areas and the routes by which a detainee is moved. Gaps should be documented rather than left invisible. Abuse may also occur outside the station, during transport or at the point of arrest, so a

²¹*Paramvir Singh Saini*, (2021) 1 S.C.C. at 196–201.

²²*Id.*

²³*Id.* at 201–04.

²⁴*Paramvir Singh Saini v. Baljit Singh*, Order dated Apr. 18, 2023, S.L.P. (CrL.) No. 3543 of 2020 (Sup. Ct. Apr. 18, 2023).

²⁵*See* *Suo Motu Writ Petition* (CrL.) No. 3 of 2025, *supra* note 3.

²⁶*Supreme Court Seeks Rajasthan's Response on CCTVs at Police Stations*, Indian Express (Sept. 27, 2025).

²⁷*See* *Suo Motu Writ Petition* (CrL.) No. 3 of 2025, *supra* note 3.

station-only mandate draws a geographic boundary around the evidence. Body-worn and vehicle cameras and mandatory recording of specified stages of arrest and transport could narrow that gap.

C. Audio matters

Audio has independent value. Video can show movement and visible conduct but not threats or coercive questioning, which is why *Saini* required both.²⁸

D. Maintenance as a legal obligation

Maintenance should be treated as part of the safeguard rather than an administrative afterthought. Power supply, storage, connectivity, timestamp accuracy, camera positioning and system logs all affect reliability, and an outage while a person is in custody should automatically notify an independent authority and the Magistrate. Otherwise the State may benefit from the failure of a system it was legally required to maintain.

E. Limits of deterrence

CCTV cannot remove the incentives that produce torture: pressure for confessions, inadequate training, weak forensic capacity and over-reliance on custodial interrogation. The Supreme Court has long cautioned that arrest is not a routine step in every investigation.²⁹ Technological safeguards should therefore operate alongside investigative reform, and the strongest long-term reduction in torture will come from reducing the practical value of coercive interrogation itself.

F. Cost, infrastructure and proportionality

Continuous audio-video recording with long retention is not costless. Storage, uninterrupted power, reliable connectivity and technical maintenance must be funded and staffed, and stations in remote areas face particular difficulty. These constraints explain some non-compliance, but they cannot excuse it, since the duty to protect persons in custody is constitutional and not discretionary. The practical answer is standardised technical specifications, central or State-level funding and centralised storage, which also serves the goal of independent custody. Cost arguments should be met by designing cheaper and more reliable systems, not by accepting weaker evidence.

VII. ELECTRONIC EVIDENCE AND THE PROOF OF CUSTODIAL ABUSE

A. Section 63 of the Bharatiya Sakshya Adhiniyam

Section 63 of the BSA sets conditions for the admissibility of electronic records and requires a certificate identifying the record, the device or system and the relevant conditions. The Schedule provides for identification of the source and hash information, with certification by the person in charge and an expert.³⁰ The Supreme Court has treated the certificate as a condition for admitting secondary electronic evidence.³¹ The framework promotes reliability, but custodial cases expose an unusual problem: the person or institution controlling the device may be the institution accused of wrongdoing. The law should therefore distinguish ordinary private records from records generated by a public-authority surveillance system whose existence is itself mandated by law.

B. The custodian-as-accused problem

Suppose a detainee alleges that he was beaten in a police station at 11:30 p.m. The corridor should have been recorded, but the police say the footage cannot be produced because the responsible officer has not provided the certificate. If the custodian's certificate is practically indispensable, the institution under scrutiny controls the gateway to the evidence.

Arjun Panditrao Khotkar offers a procedural answer: where a party cannot obtain the certificate despite efforts because the device is in another person's possession, the court may require production, and the law does not demand the impossible.³² Courts should apply this robustly in custodial cases. Yet an order obtained after a complaint may come too late if the footage has been overwritten. The solution is therefore not merely easier certification but automatic preservation before any admissibility dispute arises.

C. Integrity, missing footage and adverse inference

The strongest evidence is the original record or a preserved copy whose provenance and integrity can be shown. Systems should generate immutable logs of when recording started and stopped, any interruption in power or connectivity, and who accessed the file. Hash values can show that the file before the court matches the preserved record, and independent forensic examination should be available where authenticity is disputed. Where a recording is challenged as tampered with, gaps in the recorded timeline, sudden power failures and edited timestamps should themselves be treated as evidence, and the examiner should not report to the police.

Missing footage raises a distinct question. If a camera was required to record an area and the system was operating, but no footage is produced, the court should ask why. Section 119 of the BSA permits an adverse presumption where producible evidence is withheld, and supports a principled response to unexplained non-production.³³ Courts should distinguish genuine technical failure, supported by contemporaneous logs, maintenance records and independent alerts, from a claim of unavailability made only after a complaint. The more an authority controls the record and the more important it is,

²⁸*Paramvir Singh Saini*, (2021) 1 S.C.C. at 196–201.

²⁹*See Joginder Kumar v. State of U.P.*, (1994) 4 S.C.C. 260, 263–64 (India); *Arnesh Kumar v. State of Bihar*, (2014) 8 S.C.C. 273, 277–79.

³⁰BSA § 63(4) & sched.; see also *id.* §§ 62–63.

³¹*Anvar P.V. v. P.K. Basheer*, (2014) 10 S.C.C. 473, 489–90 (India); *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 7 S.C.C. 1, 28–34.

³²*Arjun Panditrao Khotkar*, (2020) 7 S.C.C. at 33–34.

³³BSA § 119; see also *Shyamsunder Trivedi*, (1995) 4 S.C.C. at 268–70.

the stronger the case for demanding an explanation.

D. Other electronic evidence

CCTV is not the only digital source. Mobile-phone location data can test the claimed timing of an arrest, call records can identify communication between officers, digital general diaries and arrest records can establish chronology, and medical photographs can be compared with the time of examination. Recordings by relatives can corroborate the detainee's condition before and after custody. The BNSS requires audio-video recording of certain searches and seizures and provides for videography of crime scenes in serious offences, creating further records that can be checked against the station's CCTV chronology. All of these sources remain subject to section 63 and to the need to establish provenance and chain of custody.³⁴

E. Reconstructing a timeline

The practical strength of electronic evidence lies in combining sources. Suppose a detainee says he was taken into a station at 10:30 p.m. and beaten before a medical examination at 2:00 a.m., while the police record a voluntary appearance at 1:00 a.m. Station footage showing his arrival, phone-location data placing him near the station earlier in the evening, the digital general diary and the time-stamped medical photographs can each be compared. Inconsistency between them does not prove torture, but it shifts the inquiry from a contest of credibility to a comparison of records, and it identifies precisely which explanation the State must give. This works only if each source has been preserved and its provenance can be shown.

VIII. THE BNSS AND THE EMERGING AUDIO-VISUAL PROCEDURAL FRAMEWORK

The BNSS is important not because it creates a complete CCTV regime, which it does not, but because it accepts audio-video recording as a procedural safeguard. Section 105 requires recording of searches and seizures and prompt transmission to a Magistrate, embodying a principle valuable for custodial evidence: the record should move outside the immediate control of the officer who created it.³⁵ Section 196 similarly reflects the value of external scrutiny where custody ends in death, disappearance or alleged rape.³⁶ A future anti-torture framework could build on both by requiring automatic preservation of, and judicial access to, footage whenever a person alleges torture, serious injury or coercive interrogation.

The BNSS thus offers an opportunity to move from a fragmented model, comprising CCTV by judicial direction, recording in selected procedures and general evidence rules, to an integrated electronic-record architecture defining what must be recorded, who controls the original, how long it is retained, when preservation is triggered and what follows if it is unavailable. A key distinction is between recording premises and recording interrogations. *Saini* regulates surveillance of premises; it does not require every interrogation to be recorded and preserved as a sealed master. The United Kingdom's Police and Criminal Evidence framework offers a useful model, since its Codes of Practice contain detailed rules for recording suspect interviews.³⁷ India can adapt the underlying principle without copying the foreign framework.

Pending comprehensive legislation, much can be done through binding administrative instructions and rules of court. State governments can require automatic off-site backup and outage reporting, High Courts can issue practice directions on preservation requests and production of footage, and Magistrates can be instructed to call for footage at the first production of a detainee who alleges ill-treatment. These interim steps would not replace a statute, but they would begin to shift custody of the record away from the station.

Any such architecture should also identify who may inspect footage and on what terms. Access by the complainant, the Magistrate, the oversight committee and the investigating agency should each be defined, logged and audited, so that the record is available to those who need it and protected from those who might misuse or alter it.

IX. COMPARATIVE AND INTERNATIONAL PERSPECTIVES

A. Convention Against Torture

The Convention requires States to criminalise torture, investigate allegations promptly and impartially, protect complainants and witnesses, and exclude statements obtained through torture.³⁸ Although India has not ratified it, its requirements reinforce the point that proof cannot remain solely in the hands of the institution accused of abuse: credible investigation demands independence, protection of complainants and preservation of evidence. CCTV can support these requirements, but it cannot replace them.

B. Istanbul Protocol and the Mandela Rules

The Istanbul Protocol adds guidance on medical and forensic documentation and stresses independence and careful recording of physical and psychological evidence.³⁹ A recording of an assault is valuable, but so are medical records, photographs, injury diagrams and a documented chain of custody. The Nelson Mandela Rules similarly require injuries to be recorded and reported on admission and during custody.⁴⁰

³⁴BNSS §§ 105, 176(3).

³⁵BNSS § 105.

³⁶*Id.* § 196(2).

³⁷Police and Criminal Evidence Act 1984, c. 60, Codes C & E (U.K.).

³⁸Convention Against Torture arts. 4, 12–15, Dec. 10, 1984, 1465 U.N.T.S. 85.

³⁹U.N. Office of the High Comm'r for Human Rights, Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Rev. ed. 2022).

⁴⁰U.N. General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), G.A. Res. 70/175, annex (Dec. 17, 2015).

C. European human-rights approach

In *Salman v. Turkey*, the European Court of Human Rights held that where a person enters custody in good health and is later found injured, the State must give a plausible explanation.⁴¹ This mirrors the concern behind the Law Commission's proposed presumption, and in India reliable electronic records could reduce reliance on presumptions by supplying direct contemporaneous evidence. The principle does not eliminate the need for proof; it recognises that proof must account for the State's control over the relevant facts.

D. United Kingdom: recorded interrogation

England and Wales show how recording can be embedded in procedure rather than treated as standalone surveillance. The lesson for India is institutional: the master record should be preserved so as to reduce the investigating officer's control over the evidentiary copy. Differences in institutional design, police organisation and infrastructure mean the model cannot be transplanted wholesale, but the value of recording increases when custody of the master copy is designed together with the duty to record. The comparison also cautions against assuming that recording alone changes police behaviour: the English model works because the recording, its sealing and its later use in court are parts of one procedure.

X. PRIVACY, DIGNITY AND OTHER LIMITS OF SURVEILLANCE

A. Surveillance and Article 21

Technology intended to protect dignity can intrude on it. Continuous surveillance of persons in custody engages privacy under Article 21, and *Puttaswamy* requires legality, a legitimate aim and proportionality for State restrictions.⁴² The aim of preventing torture is weighty, but the method must remain proportionate. Cameras should not record inside toilets or other places where privacy is indispensable, which is why the Court's directions cover the areas outside washrooms.

B. Lawyer-client communication

A surveillance system must not undermine the right to consult a lawyer. If a detainee's confidential conversation with counsel is recorded and can be accessed by investigators, the safeguard may become a source of constitutional harm. The system should therefore include technical and legal controls over privileged communication, including designated private spaces outside the ordinary camera field or restricted access to recordings.

C. Women, children and vulnerable detainees

Special care is necessary where footage concerns children, survivors of sexual violence or persons with heightened vulnerability. Access should be logged, limited to authorised purposes and subject to penalties for misuse. The objective is to preserve evidence without turning custodial surveillance into a permanent source of exposure or humiliation.

D. Data protection

The Digital Personal Data Protection Act, 2023 exempts certain State processing, including specified law-enforcement contexts.⁴³ A dedicated governance framework for custodial CCTV is therefore particularly important, addressing retention, access, copying, disclosure, audit trails, deletion after the retention period and consequences for unauthorised use.

E. The false-assurance problem

A camera can create the dangerous assumption that an event did not happen because it does not appear on footage. Torture may occur outside the field of view, during transport, during a malfunction or in an uncovered location. Courts should not treat the absence of footage as proof of the absence of abuse; the absence itself may require explanation, particularly where the authority had a duty to maintain the recording.

XI. CASE STUDIES AND JUDICIAL APPLICATION

The doctrinal points made above are best tested against decided cases and a prominent factual example. The cases show how courts have approached proof where the State controls the environment; the example shows how records behave in practice.

A. State of M.P. v. Shyamsunder Trivedi

Shyamsunder Trivedi addresses the proof problem before the widespread use of digital surveillance. The Supreme Court recognised that direct ocular evidence of police torture or custodial death is rarely available and cautioned against an unrealistic insistence on ordinary forms of proof.⁴⁴ The case supplies the conceptual foundation for this paper: where the State controls the environment, the evidentiary framework must be sensitive to that control. Applied to CCTV, the principle has a practical consequence. If the State has been ordered to create an objective record, the absence of that record should not automatically operate to the State's advantage. The more comprehensive the statutory or judicial duty to record, the stronger the justification for demanding an explanation when the record is missing.

B. Munshi Singh Gautam v. State of M.P.

Munshi Singh Gautam involved allegations of custodial violence leading to death and illustrates the importance of examining the sequence of custody,

⁴¹*Salman v. Turkey*, App. No. 21986/93, Eur. Ct. H.R. ¶¶ 99–100 (June 27, 2000) (Grand Chamber).

⁴²*Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1, 298–302.

⁴³Digital Personal Data Protection Act, No. 22 of 2023, § 17.

⁴⁴*Shyamsunder Trivedi*, (1995) 4 S.C.C. at 268–70.

injuries, official explanations and subsequent conduct together.⁴⁵ For an electronic-evidence framework, the lesson is that CCTV should not be examined in isolation. A recording should be placed alongside medical evidence, arrest documentation, station records and testimony.

C. Sathankulam

The deaths of P. Jayaraj and J. Bennix at Sathankulam, Tamil Nadu, in June 2020 became a major public example of the difficulties surrounding custodial violence investigations. The matter received judicial intervention, and the investigation was transferred to the Central Bureau of Investigation. The episode is relevant because it illustrates how the availability, interpretation and preservation of records can become central to reconstructing events inside a police station.

The case also shows why technological evidence should not be treated as self-executing. Even where footage exists, investigators must identify the relevant time periods, preserve the original files, compare the recording with medical and documentary evidence, and establish who had access to the system. The value of CCTV lies in the evidentiary chain surrounding it.

D. Paramvir Singh Saini as the central technological case

Unlike the earlier custodial-torture cases, *Saini* addresses the evidentiary environment rather than only the conduct of individual officers. Its directions on camera location, audio, night vision, storage and oversight are an institutional attempt to make custodial conduct observable, and the compliance proceedings show that its effect depends on implementation.⁴⁶ The decision supplies both the legal foundation and the principal limitation of CCTV: it creates a duty to record, but a duty does not guarantee a reliable recording. The next stage of reform must convert the directions into enforceable operational rules with consequences for malfunction, non-preservation and obstruction. If the State has been ordered to create an objective record, its absence should not automatically operate in the State's favour.

XII. GAPS IN THE EXISTING FRAMEWORK

First, India lacks a comprehensive statutory definition of torture. Existing criminal provisions cover important forms of violence but do not provide a unified framework for physical and psychological torture, ordering, acquiescence and command responsibility.

Second, the CCTV regime is principally judicially created. Judicial directions can be powerful, but a detailed statutory framework would make duties easier to enforce, budget, audit and litigate, and would provide clear consequences for non-compliance.

Third, the person controlling the electronic record may be the person whose conduct is challenged. The certification architecture under section 63 of the BSA was not designed for this institutional conflict.

Fourth, no sufficiently clear statutory rule specifies what happens when a mandatory recording is missing. General adverse-presumption principles exist, but their application depends heavily on judicial discretion.

Fifth, the system does not comprehensively require audio-video recording of interrogation itself. Premises surveillance can show where a detainee was, but an interrogation may be difficult to reconstruct from corridor footage alone.

Sixth, independent preservation remains crucial. If footage is stored locally, the officer responsible for the station may still have practical control over the evidence, and independent or centralised storage would reduce that risk.

Seventh, privacy rules require further development, especially in relation to medical examinations, lawyer-client communication and vulnerable persons.

Eighth, infrastructure matters: power supply, connectivity, storage capacity, maintenance and trained personnel determine whether the constitutional safeguard exists in reality.

The gaps identified above also interact. A statute defining torture without independent custody of footage would leave the offence hard to prove, while independent custody without a rule on missing footage would leave the State free to explain away every gap. Reform is therefore needed on all fronts at once.

XIII. RECOMMENDATIONS

The analysis above points to fourteen reforms, grouped loosely around legal definition, the creation and custody of records, evidentiary consequences, and safeguards and transparency. They are designed to work together; adopting some without the others would leave the gaps identified in Part XII open.

1. Enact a comprehensive anti-torture statute. Parliament should enact a statute defining torture consistently with international standards and covering physical and mental torture, attempts, ordering, instigation, aiding and acquiescence. The statute should establish appropriate offences and remedies and provide a framework for independent investigation.⁴⁷

2. Convert the CCTV directions into legislation. The core requirements of *Saini*, namely audio and video, night vision, broad coverage and minimum retention, should be codified and periodically updated through technical standards, so that they no longer depend on the continuing supervision of the Court.

3. Create independent digital custody of footage. CCTV footage from police stations should be automatically copied to a secure server controlled by an authority independent of the station. The local system should not permit unilateral deletion or alteration.

4. Trigger automatic preservation on complaint. When a person alleges torture, serious injury, coercive interrogation or custodial death, all relevant footage should be automatically preserved beyond the ordinary retention period. The preservation order should be generated electronically and communicated to the Magistrate and the oversight authority.

⁴⁵*Munshi Singh Gautam*, (2005) 9 S.C.C. at 637–39.

⁴⁶*Paramvir Singh Saini*, (2021) 1 S.C.C. at 196–204; see also Order dated Apr. 18, 2023, *supra* note 24.

⁴⁷See Law Comm'n of India, 273rd Report, *supra* note 18.

5. Create a rebuttable presumption for unexplained missing footage. Where a mandatory camera should have recorded an event and no credible explanation is given, the court should be empowered to draw an adverse inference, giving practical effect to section 119 of the BSA.

6. Reform certification for public-authority CCTV. For footage generated by a mandatory public surveillance system, certification should ordinarily be performed by an independent designated custodian and technical expert rather than the police officer whose conduct is under scrutiny. This would preserve the evidentiary objective of section 63 while removing the conflict created by custodial control.

7. Record interrogations. Interrogations should be audio-video recorded in specified circumstances, with an original master copy sealed or deposited with a Magistrate or independent digital repository. The accused should be informed that recording is taking place, subject to carefully defined security exceptions.

8. Extend recording to arrest and transport. Body-worn cameras or vehicle recording systems should document specified stages of arrest and transport, particularly where force is used. This would address the geographic gap between the point of arrest and the police station.

9. Introduce real-time system monitoring. A central dashboard should identify camera outages, storage failures, power interruptions and tampering. An outage during detention should automatically generate a notification to the responsible Magistrate and oversight authority, as the Court's later CCTV proceedings demonstrate the importance of monitoring rather than mere installation.

10. Strengthen forensic examination. System logs, metadata and hash values should be preserved with each recording, independent verification should be available, and every access should generate an auditable log.

11. Protect privacy and privilege. Legislation should prohibit recording in toilets and other inherently private spaces, protect lawyer-client communication, regulate access to sensitive footage and penalise misuse.

12. Provide rapid access to victims. A person alleging custodial abuse should have a practical mechanism to seek preservation and production of relevant footage through a Magistrate or other independent authority. Delay should not be allowed to defeat access because the footage is subject to automatic deletion.

13. Publish compliance data. States should annually disclose the number of police stations with functional audio-video systems, outage periods, preservation requests, footage produced, complaints involving CCTV and disciplinary or criminal outcomes. Transparency would allow courts, legislatures and civil society to evaluate whether the system works.

14. Combine technology with investigative reform. CCTV should accompany forensic investigation, reduced reliance on custodial interrogation, training and safeguards against unnecessary arrest, so that technology makes lawful investigation easier and does not merely record unlawful investigation.

XIV. CONCLUSION

Custodial torture survives in part because the person alleging abuse and the institution accused of abuse do not possess equal control over evidence. The victim may bear the physical consequences of an assault but lack the contemporaneous record of how it occurred. The police station, by contrast, may hold the records that could establish or disprove the allegation. This evidentiary imbalance is the central problem that technology can help address.

Paramvir Singh Saini is a significant judicial response because it treats audio-video recording as part of the constitutional protection of persons in custody. It is important not merely for ordering cameras but for connecting coverage, audio, storage and oversight with the prevention of custodial torture. The later compliance proceedings, however, show that the effectiveness of the mandate depends on functionality, maintenance, monitoring and independent access.

The electronic-evidence regime under the BSA provides a framework for authenticity and admissibility, but custodial CCTV presents a special institutional problem: the custodian of the evidence may be the person whose conduct the evidence is meant to examine. The solution is therefore not to weaken evidentiary standards but to change the custody of the record. Independent preservation, automatic retention, technical verification and judicial access can ensure that admissibility rules do not become an obstacle created by the very institution under scrutiny.

CCTV also has limits. It cannot record an event outside its field of view; it cannot cure a camera that is switched off; it cannot replace medical evidence or independent investigation; and it cannot remove the structural incentives that may encourage coercive interrogation. It may also create privacy risks if designed without constitutional safeguards.

The most defensible conclusion is that CCTV and electronic evidence should be understood as part of an evidentiary architecture rather than a stand-alone technological solution. The architecture should make custodial conduct observable, preserve the resulting record independently, provide prompt access to the person who needs it, and attach meaningful consequences to unexplained destruction or non-production. If those conditions are met, technology can transform the investigation of custodial torture from a contest in which the State controls most of the evidence into an inquiry in which the relevant events can be objectively reconstructed.

Ultimately, the constitutional promise of dignity in custody requires more than rules that prohibit abuse. It requires a system in which compliance with those rules can be demonstrated. The contribution of CCTV is precisely this possibility of verification. Its success will depend not on the number of cameras installed but on whether the resulting evidence remains complete, authentic, preserved and independent of the institution whose conduct it may expose.

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