
BETWEEN THE LAW AND THE LATHI: THE LEGAL PARADOX OF CUSTODIAL DEATHS IN DEMOCRATIC INDIA

BY NIVYA LOHIYA¹

ABSTRACT

Custodial deaths in India remain one of the country's most serious and neglected human rights abuses within its criminal justice system. Despite strong constitutional protections and legislative reforms, such as the Bharatiya Nyaya Sanhita (BNS) and Bharatiya Nagarik Suraksha Sanhita (BNSS) the reality on the ground reveals a pattern of abuse, impunity and systemic neglect. This article examines the constitutional and legal protections against custodial violence. It takes into account recent data and implementation failures while analysing key court rulings including the 2025 Meraj Ansari case. The article concludes with practical recommendations that highlight the importance of independent oversight, accountability reforms and a political commitment to prevent custodial deaths from undermining India's constitutional democracy.

INTRODUCTION

Article 21 of the Indian Constitution provides for the Right to Life and Personal Liberty, including the Right to live with dignity. In view of this, a person convicted of an offence in India also has the Right to live a respectful and dignified life. In sharp contrast to this, there has been a rapid increase in the rate of brutal arrests and custodial violence, ultimately resulting in the death of persons detained in custody. The Latin maxim "salus populi est suprema lex," which means that the safety of the people is the supreme law, emphasizes the need for the protection of dignity during arrest and custody, while "salus republicae est suprema lex" highlights the need for coexistence between the people and the state, asserting that the state's actions must be right, fair, and reasonable. However, in reality, the practice of custodial violence is increasingly adopted to curb crime, which undermines the credibility of the Rule of Law and the functioning of the Criminal Justice system.

¹ The author is a law student at Institute of Law, Nirma University.

Custodial death is defined as the death of a person in police custody or judicial custody while undergoing a trial or serving a sentence. According to the National Crime Records Bureau (NCRB) 2022 report, there were 75 deaths in police custody: 32 due to illness, 31 by suicide, and only 1 officially linked to assault. The National Human Rights Commission (NHRC) presents a higher estimate, reflecting systemic under-reporting. Between 2021–22 and 2022–23, the NHRC recorded 175 and 164 police custody deaths respectively, along with an additional 186 judicial custody deaths in 2024–25. The Status of Policing in India Report (SPIR) 2025 shows that 20% of officers deem torture “very important” for maintaining order, and 35% consider it “somewhat important.” These figures reflect an institutional mindset at direct odds with various principles of law enshrined in the Constitution.

The reprehensible practice of custodial violence and death is not only a crime against humanity but also a blatant violation of human rights, which poses hindrances to the development of democracy and the well-being of individuals in contemporary societies. The misuse of police power, motivated by the desire to quickly solve cases or for personal gain, has raised serious concerns about the credibility of the rule of law and the criminal justice system. The custodial violence crisis in India includes police brutality, illegal detention, and other forms of police excesses, with statistics revealing a disturbing trend.

The article aims to establish that custodial deaths in India are not isolated incidents, but the result of deep-rooted problems in our legal and policing systems. Despite strong constitutional provisions and court rulings, a lack of accountability, misuse of power, and weak implementation of reforms have allowed such deaths to continue unchecked. Practical, structural, and human rights-based reforms are essential to ensure that justice is not denied behind closed doors.

CONSTITUTIONAL GUARANTEES AND STATUTORY PROVISIONS ON CUSTODIAL PROTECTION

The Indian Constitution provides a robust framework for the protection of individuals in police and judicial custody, firmly asserting that fundamental rights do not cease to exist at the point of arrest. It recognizes that every person regardless of accusation or conviction is entitled to life, dignity, and humane treatment.

The instances of custodial violence and death undermine the constitutional principles of due process, equality before the law, and state accountability thereby eroding public trust in the judicial system.

Article 21 guarantees that *“No person shall be deprived of his life or personal liberty except according to procedure established by law.”* This article has been expansively interpreted by the Supreme Court to include the right to live with dignity, protection against torture, and access to legal remedies. Court precedents have also shed light upon the importance of entitling prisoners and detainees to human dignity, reinforcing that fundamental rights survive incarceration.

Article 22 provides for *“Protection against arrest and detention in certain cases.”* It mandates the right to be informed of the grounds of arrest, the right to consult and be defended by a legal practitioner of one’s choice, and production before a magistrate within 24 hours. It is designed to prevent arbitrary detention and ensure access to a fair and speedy legal trial.

Article 20 provides for *“Protection in respect of conviction for offences.”* It protects individuals from being punished for an act that was not an offence at the time it was committed, or from being subjected to a penalty greater than what was prescribed at the time of the offence, prevent a person from being prosecuted and punished more than once for the same offense and ensure that no person accused of an offence shall be compelled to be a witness against himself. In essence, Article 20 aims to ensure a fair and just legal process for those accused of crimes, preventing arbitrary or oppressive actions by the state.

The persistence of custodial deaths showcases an unpleasant contrast between constitutional safeguards and the ground realities. To bridge this constitutional gap, enforcement must be matched with transparency, accountability, and cultural change within institutions of power.

While Constitutional safeguards form the normative core of custodial rights these safeguards are put in operation through statutory legislations like Indian Penal Code(IPC), 1860, Code of Criminal Procedure(CrPC),1973 and Indian Evidence Act,1872.However, these laws were either too generic, outdated, or dependent on high thresholds of proof leaving victims without meaningful recourse.

Recognizing this, the Indian Parliament enacted three significant criminal law reforms in 2023: the Bharatiya Nyaya Sanhita (BNS) replacing the IPC, Bharatiya Nagarik Suraksha Sanhita (BNSS) replacing the CrPC, and Bharatiya Sakshya Adhiniyam replacing the Indian Evidence Act. These reforms aimed to address long-standing gaps, particularly by strengthening protections against custodial torture, specifying accountability for law enforcement officials, and aligning with international standards on the treatment of detainees.

Sections 330 and 331 of the IPC criminalized the act of causing hurt or grievous hurt to extort confessions and Section 302 was applied in extreme cases of custodial death. However, these were general provisions not tailored to custodial abuse. Section 103(2) of the BNS however specifically penalizes any public servant who causes hurt or grievous hurt to extract a confession or information in state custody. Custodial deaths resulting in homicide continue to be covered under Section 101 of the BNS which corresponds to the IPC's Section 302.

Procedurally, the BNSS largely retains the structure of the CrPC but attempts to modernize it through digital integration. For instance, Section 185 of the BNSS carries forward CrPC Section 176(1A), mandating a judicial inquiry in every case of custodial death, disappearance, or rape. Arrest procedures under Section 35 of the BNSS now emphasize digital documentation, including use of CCTV and proper arrest records, helping ensure transparency. However, a significant barrier to accountability persists in the form of Section 218 of the BNSS, which mirrors Section 197 of the CrPC, requiring prior government sanction to prosecute public servants. This provision continues to delay or prevent the prosecution of errant officials.

In the domain of evidence, the Bharatiya Sakshya Adhiniyam introduces a major reform. Section 119 establishes a presumption of misconduct in cases where a person sustains injuries while in police custody, effectively shifting the burden of proof to the authorities. This is a progressive step toward ensuring justice for victims of custodial violence. The Act also continues to uphold long-standing evidentiary protections against forced confessions under coercion (Sections 22 to 25) much like Sections 24 to 27 of the Indian Evidence Act.

While the laws have evolved but the administrative and judicial systems for implementing still lack behind the desired pace. The success of these reforms depends not only on their presence in legislation but also on effective enforcement, judicial oversight, independent investigations and most importantly a cultural shift within police institutions. Unless the protective framework of these laws is supported by institutional integrity and political will custodial deaths will continue to serve as a stark reminder of the disparity between the rights that are promised and those that are practiced.

Beyond the primary criminal statutes, India's legal response to custodial deaths includes several legislative and institutional mechanisms aimed at preventing abuse and promoting accountability. It includes the Protection of Human Rights Act, 1993, which established the National Human Rights Commission (NHRC) and state-level human rights bodies. Under Section 12 of the Act, the NHRC is empowered to investigate complaints of custodial deaths

and torture, either *suo motu* or through petitions. The NHRC often demands reports from states, orders compensation, and issues reform advisories. However, its recommendations are not binding and its jurisdiction is limited to cases less than a year old unless justified by exceptional circumstances diminishing its efficacy in systemic matters.

India's delay in ratifying the UN Convention Against Torture (UNCAT) further reflects its legislative gap. Although the Prevention of Torture Bill, 2010 was passed in the Lok Sabha, it lapsed in the Rajya Sabha. In 2017, the Law Commission, in its 273rd Report, recommended a revised version of the bill, yet no dedicated anti-torture legislation has materialized to date. This legislative vacuum continues to hinder India's compliance with international human rights obligations.

In a promising development, a Private Member's Bill titled the Custodial Death (Prevention, Protection and Compensation) Bill, 2023 was introduced in the Rajya Sabha to create a comprehensive legal framework to address custodial deaths and torture in India. The bill seeks to define custodial torture and death in unambiguous legal terms, thereby removing interpretative gaps that often hinder prosecution. It mandates that all cases of custodial deaths be investigated by independent agencies such as the Central Bureau of Investigation (CBI) or the state's Criminal Investigation Department (CID), ensuring impartiality and transparency.

A key feature of the bill is the proposed establishment of a National Custodial Death and Torture Prevention Authority, tasked with oversight, data collection, and institutional accountability. Additionally, the bill introduces an automatic compensation mechanism for victims' families, reducing dependency on prolonged litigation. Importantly, it also proposes to hold supervisory officers vicariously liable in cases where custodial misconduct occurs under their command, recognising the role of hierarchical responsibility in systemic abuse. This legislative initiative reflects a crucial step towards aligning India's custodial jurisprudence with international human rights standards.

Furthermore, custodial deaths in judicial settings fall under prison administration, governed by the Prisons Act, 1894 and revised through the Model Prison Manual, 2016. Issued by the Ministry of Home Affairs the manual provides modern guidelines on inmate safety, healthcare, grievance redressal, and mandatory reporting of deaths. Despite these guidelines, implementation remains uneven across states due to lack of political will, staff shortages, and outdated prison infrastructure.

Despite the presence of multiple laws and institutional mechanisms India lacks a unified and binding legal framework to effectively prevent custodial deaths. The Custodial Death Bill, 2023 is introduced for addressing systemic gaps but its enactment and enforcement remain uncertain.

The judiciary in India has played a pivotal role in shaping the legal and moral discourse surrounding custodial deaths. While constitutional and statutory safeguards have laid the foundation for custodial death and violence it is through key judicial pronouncements that the rights of those in custody have gained real enforceability.

In the case of *D.K. Basu v. State of West Bengal* (1997) the Supreme Court took suo motu cognizance and held that custodial torture and deaths are not just violations of statutory law but infringements of Article 21 of the Constitution. The Court laid down a detailed list of 11 mandatory guidelines for arrest and detention, including the requirement of arrest memos, notification to the immediate family, medical examinations every 48 hours, and prompt production before a magistrate. These directions were later incorporated into the Code of Criminal Procedure giving them statutory force. Crucially the Court held that compensation for custodial death can be granted directly under Article 32 or 226, recognizing it as a constitutional tort.

In the case of *Nilabati Behera v. State of Orissa* (1993), where the mother of a 22-year-old boy who died in police custody approached the Supreme Court. The Court awarded her ₹1.5 lakh in compensation and ruled that the right to life under Article 21 must be enforced by constitutional courts even in the face of administrative denials. It clarified that monetary compensation can be a public law remedy separate from criminal or departmental proceedings. The judgment reinforced the idea that the State has vicarious liability in cases of custodial deaths and cannot escape its constitutional responsibility by citing procedural gaps or lack of direct evidence.

Bringing the legal discourse to the present in the 2025 Meraj Ansari custodial death case of Jharkhand a 26-year-old man died under suspicious circumstances in police custody in Hazaribagh. The Jharkhand High Court took suo motu cognizance of the incident and demanded detailed reports from the Director General of Police and the Home Secretary within 48 hours. It ordered a videographed post-mortem under judicial supervision and questioned the accountability mechanisms within the local police force. The case is currently under judicial review but has already led to widespread public outrage, a recommendation for a CBI probe and intervention by the NHRC.

These landmark cases reflect the judiciary's strong stance on custodial violence, reinforcing constitutional protections through compensation, procedural safeguards, and direct intervention. Still their impact is limited by weak implementation, institutional apathy and executive non-compliance.

GROUND REALITY AND DATA ANALYSIS

Despite robust constitutional and judicial safeguards custodial deaths continue to occur with an alarming frequency in India. The gap between law in theory and law in practice reveals deep-rooted structural flaws in the criminal justice system ranging from institutional impunity and poor oversight to societal desensitization.

According to the NCRB 2022 report, 75 deaths in police custody were officially recorded, while more than 2,100 deaths in judicial custody were reported across Indian prisons. In 2023 these numbers remained static suggesting a lack of systematic and progressive reforms. Only one police custody death was reported as resulting from police assault while others were attributed to suicide or illness often without independent verification raising concerns about underreporting or misclassification.

According to the National Human Rights Commission (NHRC) the situation is even more concerning. Between April 2022 and March 2023, the NHRC recorded 164 deaths in police custody and 1,862 deaths in judicial custody. As of May 2025, 186 police custody deaths had already been reported in the 2024-2025 period. Despite its monitoring role the NHRC lacks the authority to enforce its recommendations, and state authorities often ignore or delay implementing them.

Civil society organizations such as the National Campaign Against Torture (NCAT) claim that the actual number of custodial deaths and instances of torture is far higher than official data suggests. Their 2023 report estimated over 1,200 instances of custodial torture per year, with very few resulting in convictions. Most victims come from marginalized groups such as Dalits, Muslims, Adivasis and economically disadvantaged sections showing a pattern of structural violence under the guise of law enforcement.

Furthermore the low conviction rate in custodial death cases reveals a deeper failure. According to the NCRB's 2022 Prison Statistics out of hundreds of reported deaths only 23 police personnel were charged and zero convictions were recorded that year. This reflects both the

culture of silence and complicity within the police hierarchy and the weakness of prosecutorial systems dependent on prior government approval.

These numbers expose a harsh truth that custodial deaths are not isolated incidents but repeated patterns made possible by systemic flaws such as lack of independent oversight, inadequate documentation and a social acceptance of police immunity.

CHALLENGES TO ACCOUNTABILITY IN CUSTODIAL DEATH CASES

Despite constitutional promises and legislative reforms, custodial deaths persist in India due to a nexus of institutional weaknesses, political interference, and structural impunity. One of the most critical issues is the lack of police accountability, driven by the absence of truly independent oversight. Investigations into custodial deaths are often conducted by the same police department involved in the abuse, leading to a conflict of interest and biased reporting. Internal accountability mechanisms such as departmental inquiries rarely result in prosecution or punishment.

A significant contributor to this culture of impunity is the concentration of power within law enforcement where officers often operate without meaningful checks or civilian oversight. Institutions like the National Human Rights Commission (NHRC) or State Police Complaints Authorities are limited in capacity often lacking enforcement powers, independence, or funding.

The judicial process further exacerbates the problem. Investigations are routinely delayed, evidence is destroyed or fabricated, and witnesses face threats, coercion, or intimidation, especially in high-profile cases. Despite the Witness Protection Scheme (2018), its implementation is largely ineffective, particularly when police are the accused. Consequently, witness hostility and lack of forensic integrity frequently derail justice.

Additionally Section 197 CrPC and Section 218 BNSS which requires prior government sanction to prosecute public servants acts as a powerful legal barrier. Even when inquiries take place, forensic and post-mortem reports are often manipulated and autopsies are conducted without video recording violating procedural norms. In many cases police personnel accused of torture receive promotions or are protected by local political leadership undermining rule of law.

Custodial deaths are not isolated failures but symptoms of a larger structural crisis involving institutional biases, lack of deterrence and delayed justice. These challenges are entrenched in

the custodial systems meant to prevent abuse—police, prosecution, medical examiners and courts making reform not just necessary but also urgent.

LEGAL AND INSTITUTIONAL REFORMS FOR SAFEGUARDING RIGHTS IN CUSTODY

To reverse the rising tide of custodial deaths, India must adopt multi-level reforms focusing on law enforcement and institutional integrity. There is an urgent need to criminalize custodial torture explicitly as recommended by the 273rd Law Commission Report and reiterated in the Custodial Death (Prevention, Protection and Compensation) Bill, 2023.

Secondly investigations into custodial deaths must be taken out of police control. Cases of custodial deaths should automatically be transferred to the Central Bureau of Investigation (CBI) or a State Criminal Investigation Department (CID) under judicial oversight to ensure credibility and transparency.

To enhance forensic reliability, all post-mortem examinations should be conducted by independent medical boards, and these should be video recorded. Additionally, forensic protocols must be digitized to prevent any tampering. CCTV surveillance should be operational in all police stations and lock-ups, with regular audits of the footage carried out by external agencies.

Furthermore, a strong witness protection system needs to be established, automatically covering all cases of custodial death. This system should include measures for relocation, protections for anonymity, and safeguards for whistleblowers, particularly for police or medical professionals who expose misconduct.

To address custodial deaths effectively, it is essential to establish special fast-track courts with a mandate to complete trials within 6 to 12 months. Judicial delays can embolden perpetrators and demoralize victims. Additionally appointing special public prosecutors who are trained in human rights law can enhance the prosecution of such cases.

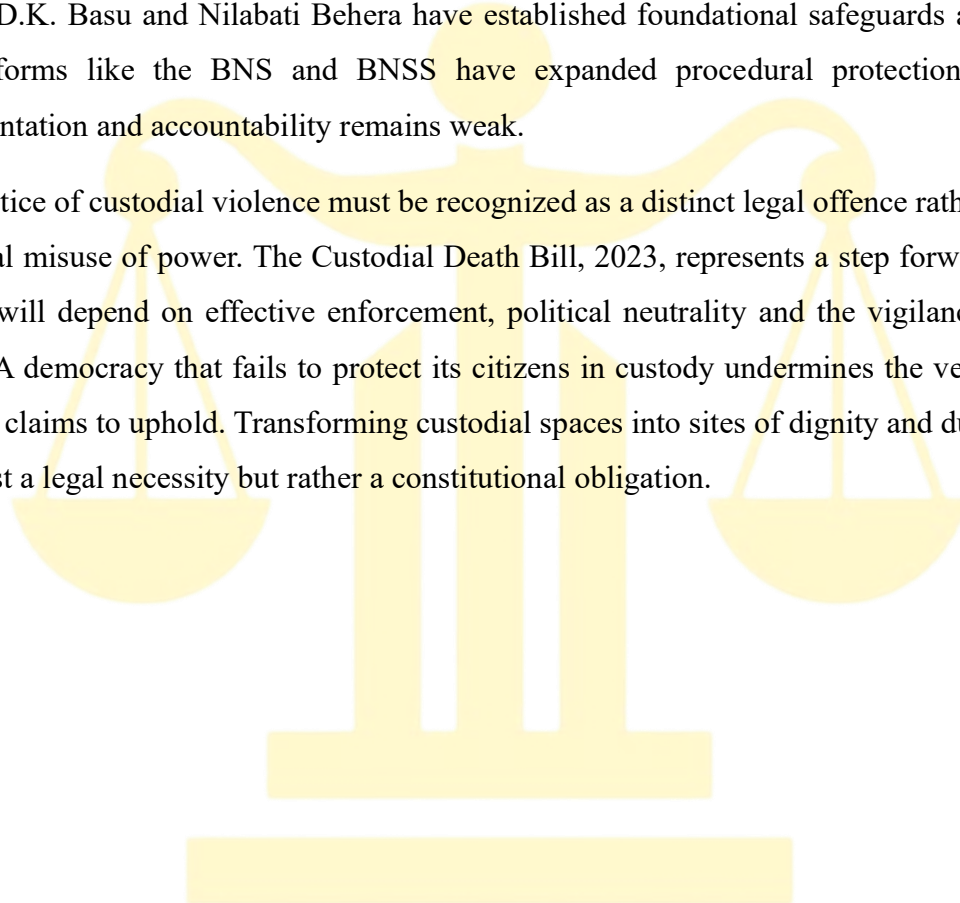
Moreover police academies and in-service training programs should incorporate training in human rights and ethical policing. Officers must be educated about constitutional rights, due process and the consequences of abuse not only from a legal perspective but also as a core part of their professional ethics.

Preventing and eradicating custodial deaths requires a comprehensive institutional reorientation along with political neutrality in law enforcement and strong public support for upholding constitutional morality. It is only then India can aspire to prevent its custodial facilities from becoming places of ruthless violence.

CONCLUSION

Custodial deaths are not simply instances of individual wrongdoing but signify deeper institutional and legal drawbacks. Despite the existence of a constitutional and statutory framework designed to protect life and dignity the frequent violations of these rights behind closed police station doors reflect a dangerous culture of impunity and silence. Landmark cases such as D.K. Basu and Nilabati Behera have established foundational safeguards and recent legal reforms like the BNS and BNSS have expanded procedural protections but the implementation and accountability remains weak.

The practice of custodial violence must be recognized as a distinct legal offence rather than an incidental misuse of power. The Custodial Death Bill, 2023, represents a step forward but its success will depend on effective enforcement, political neutrality and the vigilance of civil society. A democracy that fails to protect its citizens in custody undermines the very idea of justice it claims to uphold. Transforming custodial spaces into sites of dignity and due process is not just a legal necessity but rather a constitutional obligation.



REFERENCES:

1. **Eva Verma**, 'An Era of Guardians Becoming Perpetrators – Custodial Deaths: An Analysis Between the Laws of India and UK' (2024) 4(1) <https://www.criminallawjournal.org/article/73/4-1-10-665.pdf>
2. **Umang Banaudhia**, 'Upholding Human Dignity: Addressing Custodial Violence and Police Brutality in Contemporary India' (2023) 10(11) *TIJER - International Research Journal* <https://tijer.org/tijer/papers/TIJER2311039.pdf>
3. **Aditi Pradhan**, 'What Data Tells Us of Police Accountability – And What It Doesn't' <https://www.hindustantimes.com/analysis/what-data-tells-us-of-police-accountability-and-what-it-doesnt-101701781515745.html>
4. Constitution of India 1950, art 20.
5. Constitution of India 1950, art 21.
6. Constitution of India 1950, art 22.
7. Indian Penal Code 1860, s 302.
8. Indian Penal Code 1860, s 330.
9. Indian Penal Code 1860, s 331.
10. Bharatiya Nyaya Sanhita 2023, s 101.
11. Bharatiya Nyaya Sanhita 2023, s 103(2).
12. Bharatiya Nagarik Suraksha Sanhita 2023, s 35.
13. Bharatiya Nagarik Suraksha Sanhita 2023, s 185.
14. Bharatiya Nagarik Suraksha Sanhita 2023, s 218.
15. Code of Criminal Procedure 1973, s 176(1A).
16. Code of Criminal Procedure 1973, s 197.
17. Bharatiya Sakshya Adhiniyam 2023, s 119.
18. Bharatiya Sakshya Adhiniyam 2023, ss 22–25.
19. Indian Evidence Act 1872, ss 24–27.
20. Protection of Human Rights Act 1993, s 12.
21. Prevention of Torture Bill 2010 (Lapsed), Lok Sabha Bill No 58 of 2010.
22. Prisons Act 1894.
23. Ministry of Home Affairs, *Model Prison Manual 2016* (Government of India 2016)
24. *D.K. Basu v State of West Bengal* (1997) 1 SCC 416.

25. Nilabati Behera v State of Orissa (1993) 2 SCC 746.
26. In Re: Meraj Ansari (Jharkhand HC, 2025) (unreported).
27. National Crime Records Bureau, *Crime in India 2022: Statistics Volume I* (Ministry of Home Affairs, Government of India 2023) <https://ncrb.gov.in/en/crime-india-2022>.
28. National Crime Records Bureau, *Prison Statistics India 2022* (Ministry of Home Affairs, Government of India 2023) <https://ncrb.gov.in/en/prison-statistics-india-2022>.
29. National Human Rights Commission, *Monthly Custodial Death Data (April 2022 – March 2023)* <https://nhrc.nic.in/statistics>.
30. National Campaign Against Torture, *India: Annual Report on Torture 2023* (NCAT 2024) <http://www.uncat.org/reports/india-annual-report-on-torture-2023.pdf>.
31. Next IAS, 'Torture in Police Custody: India's Justice Challenge' (8 April 2025) <https://www.nextias.com/ca/editorial-analysis/08-04-2025/torture-in-police-custody-india-justice-challenge>.
32. *Custodial Death (Prevention, Protection and Compensation) Bill 2023*, Private Member's Bill introduced in Rajya Sabha, March 2023.
33. Ministry of Home Affairs, *Status of CCTV Installation in Police Stations* (Parliamentary Reply, 2024) <https://prsindia.org>.
34. NHRC, *Standard Guidelines for Autopsy in Custodial Death Cases* (2013) https://nhrc.nic.in/sites/default/files/Guidelines_autopsy.pdf.
35. National Legal Services Authority (NALSA), *Witness Protection Scheme 2018* <https://nalsa.gov.in>.