

Life, Liberty, and Liability: Towards a Rights Respecting Custodial Justice Framework

Running Title: *Constitutional Torts and Victim Compensation in India and Comparative Jurisdictions*

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Abstract: Custodial deaths represent one of the most severe violations of constitutional guarantees of life and liberty under Article 21 of the Indian Constitution. Despite judicial interventions in cases such as *Nilabati Behera v. State of Orissa* (1993) and *D.K. Basu v. State of West Bengal* (1997), India's custodial justice framework remains fragmented, lacking codified standards for accountability and victim compensation¹⁴. This paper situates custodial violence within the broader continuum of rights violations, linking surveillance, predictive policing, and wrongful detention to custodial harm¹³. It argues that custodial deaths must be treated as constitutional torts, mandating enforceable remedies and automatic compensation schemes. Comparative jurisprudence from the European Court of Human Rights (*McCann v. United Kingdom*, 1995; *Big Brother Watch v. United Kingdom*, 2021)¹⁰¹⁷, U.S. §1983 actions (*Carpenter v. United States*, 2018)⁶, and South African constitutional damages¹⁵ demonstrates how state liability can be embedded into custodial governance. The paper proposes a rights respecting custodial justice architecture built on proportionality, judicial oversight, transparency, and victim rehabilitation⁵. Embedding these principles is not optional reform but an urgent constitutional imperative to preserve democratic legitimacy and harmonise India's practice with global human rights standards.

Keywords: Proportionality Doctrine, Judicial Oversight, Custodial Justice Reform Comparative Constitutional Law, State Liability, Human Rights Remedies Victim Rehabilitation

1. Introduction

Custodial deaths remain one of the most persistent and troubling violations of constitutional rights in India. Despite constitutional guarantees under Articles 20, 21, and 22, the reality of custodial violence- ranging from torture and arbitrary detention to deaths in police and prison custody- reveals a systemic failure of accountability¹². These violations strike at the very heart of the constitutional promise of life and personal liberty.

The jurisprudence of victim compensation has emerged as a critical response. Landmark cases such as *Nilabati Behera v. State of Orissa* (1993) and *D.K. Basu v. State of West Bengal* (1997) established that compensation is not a matter of charity but a constitutional obligation². Yet, India's framework remains fragmented, often dependent on judicial discretion rather than codified statutory standards.

2. Research Gap

Despite significant judicial pronouncements and civil society advocacy, the scholarship on custodial deaths and victim compensation in India remains underdeveloped in several respects: fragmented compensation jurisprudence, absence of codified frameworks, weak linkages between surveillance and custodial harm, superficial comparative analysis, neglect of victim centric remedies, and empirical deficits in NCRB/NHRC data⁴¹³.

3. Research Methodology

This study adopts a doctrinal and comparative legal research methodology, supplemented by qualitative analysis. Primary

reliance is placed on constitutional provisions, statutory frameworks, and judicial pronouncements (*Maneka Gandhi v. Union of India*, 1978; *Nilabati Behera v. State of Orissa*, 1993; *D.K. Basu v. State of West Bengal*, 1997)⁹¹¹¹⁶. Comparative analysis engages with ECHR jurisprudence (*McCann v. United Kingdom*, 1995; *Big Brother Watch v. United Kingdom*, 2021)¹⁰¹⁷, U.S. §1983 actions (*Carpenter v. United States*, 2018)⁶, and South African constitutional damages¹⁵. Secondary sources include NCRB and NHRC reports, alongside civil society publications¹²⁴.

Constitutional Foundations

Article 21 provides that "No person shall be deprived of his life or personal liberty except according to procedure established by law." In *Maneka Gandhi v. Union of India* (1978), the Supreme Court expanded this to require fairness, reasonableness, and non arbitrariness⁵.

In *Nilabati Behera v. State of Orissa* (1993), the Court held that compensation for custodial death is a constitutional obligation². Similarly, *D.K. Basu v. State of West Bengal* (1997) laid down guidelines to prevent custodial torture, including arrest memos and medical examinations.

In *Selvi v. State of Karnataka* (2010), the Court prohibited involuntary narco analysis, affirming dignity and the right against self incrimination under Article 20(3)¹⁴.

Comparative Jurisprudence

The European Court of Human Rights treats custodial deaths as violations of Article 2 and Article 3 of the Convention (*McCann v. United Kingdom*, 1995; *Big Brother Watch v. United Kingdom*, 2021)¹⁰¹⁷. It requires not only compensation but also effective remedies, including independent investigations⁷.

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In the United States, §1983 actions allow individuals to sue state officials for custodial harm (*Carpenter v. United States*, 2018)⁶. These actions embed accountability into statutory law, unlike India's discretionary model³.

South Africa's Constitutional Court has developed constitutional damages jurisprudence, emphasising victim rehabilitation and systemic reform¹⁵.

Towards Compensatory Jurisprudence

Building on *Nilabati Behera* (1993), custodial deaths must be treated as constitutional torts. Automatic compensation schemes should be codified to ensure consistency and timeliness¹. Compensation must extend beyond monetary relief to include psychological counselling, livelihood support, and education for dependents⁴.

Independent judicial inquiries and forensic audits should accompany compensation, ensuring transparency and accountability¹². Comparative lessons from the ECHR and U.S. §1983 actions demonstrate enforceability when liability is embedded in law².

Rights Respecting Custodial Justice Architecture

- 1) **Proportionality Doctrine** – Custodial measures must satisfy necessity and least restrictive means (*Maneka Gandhi v. Union of India*, 1978; *K.S. Puttaswamy v. Union of India*, 2017)⁹⁸.
- 2) **Judicial Oversight** – Mandatory inquiries into custodial deaths, echoing *Selvi v. State of Karnataka* (2010)¹⁴.
- 3) **Transparency & Accountability** – Public reporting through NCRB and NHRC, independent audits, and parliamentary oversight¹².
- 4) **Compensation & Rehabilitation** – Automatic compensation schemes and victim centric remedies, aligned with South African practice¹⁵.

4. Conclusion

Custodial deaths are profound constitutional wrongs that erode democracy. The Indian judiciary has laid doctrinal foundations (*Nilabati Behera*, 1993; *D.K. Basu*, 1997; *Maneka Gandhi*, 1978)¹¹⁶⁹, but remedies remain ad hoc. Comparative jurisprudence shows how accountability can be embedded through statutory liability and automatic compensation (*McCann v. United Kingdom*, 1995; *Carpenter v. United States*, 2018)¹⁰⁶. India must adopt a four pillar architecture—proportionality, judicial oversight, transparency, and victim centric compensation—to preserve democratic legitimacy and uphold international human rights law⁵³.

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