



Custodial Death: Legal Framework Of India And Usa

- Shobha, LL.M, University Institute of Legal Studies, Chandigarh University

-Dr. Amritpal Kaur, Professor & HoD, B.A.LLB, University Institute of Legal Studies, Chandigarh University

ABSTRACT

Custodial violence is one of the most persistent and disturbing issues to the rule of law, safeguarding human rights, and the sanctity of constitutional governance. The issue of torture, deaths, and abuse within the confines of custody still occurs even with constitutional protections, statutory bans, and judicial policies, to demonstrate how weak the state accountability systems remain. This paper gives a comparative law study on the issue of custodial violence and state responsibility in the United States and India, two democracies that, though having different constitutional traditions, share similarities of individual rights and due process. Using constitutional provisions, statutory frameworks and case law leading judicial precedents, the paper will explore how each jurisdiction conceptualises and applies state responsibility to custodial abuse. It also determines the efficiency of domestic remedy, checks and balances on compliance with international human rights duties through instruments like the United Nations Convention against Torture. The study provides systemic deficits, institutional cultures and enforcement asymmetries as the drivers of impunity through doctrinal, comparative and empirical lenses. The paper is concluded by recommendations on legal and policy changes that can be made to increase accountability, promote transparency and make custodial environments indicative of democratic principles of dignity, justice and inviolability of human life.

Keywords: State responsibility, Custodial violence, Comparative legal analysis, Human rights, Police accountability, Constitutional law, Torture prevention, Rule of law.

1. INTRODUCTION

Custodial violence is one of the most heinous violations to human dignity and rule of law in any democratic polity. It includes a range of abuses, such as torture, dehumanizing treatment, and fatalities in the custody of law enforcers or prisons, which are perpetrated by the agents of state in the name of the law or protection. The phenomenon is not confined to the individual instances of misbehaviour; it involves the very structure of the state responsibility and the balance between the powers and the responsibility. Despite the constitutional promises and legislative protections, custodial violence remains one of the common manifestations that demonstrate structural weaknesses in the system of the government, law enforcement, and judicial administration. This paper will attempt a comparative legal investigation of the issue of custodial violence and state responsibility in India and the United States, two of the world democracies that share in constitutionalism, but with divergent legal, institutional, and socio-political structures to deal with this severe human rights issue.

1.1 Background of the Study

In both the United States and India, the state uses coercive powers to maintain law and order, as well as arrest those suspected or convicted of committing offences. But often the use of force in custody violates the allowable limits, leading to torture, degrading treatment, or death. National Crime Records Bureau (NCRB) in India still records the custodial deaths on a yearly basis, but according to scholars, there is significant underreporting. Police brutality, racial discrimination, and death in custody, especially of minorities, are debated in the United States, gaining international attention, mainly after major cases like the murder of George Floyd in 2020. Those contexts highlight that the issue of custodial violence, although presented in various ways depending on the jurisdictions, is a universal issue due to the imbalance of power, existing between the state and the individual.

The colonial policing system and traditional procedures inherited by the historical Indian system have fostered a culture of impunity in the custodial environment. The fact that judicial activism and constitutional pronouncements have proclaimed that life and liberty is sacred is not enough to stop torture, which is an indication of a gap between normative commitments and the realities. In contrast, in the US, constitutional jurisprudence, especially with the Fourth, Fifth, Eighth, and Fourteenth Amendments, has developed to provide procedural rights, and institutional biases and systemic inequalities undermine these rights.

1.2 Importance of the Research

The strength of the comparative study is that it analyses the conceptualization and operationalization of state responsibility in two mature constitutional democracies in cases of custodial abuse. Even though human dignity and due process are two fundamental pillars that the United States and India cherish, the responsibility pursue mechanisms in the two countries differ significantly. India is more dependent on constitutional redresses and judicial control, but the United States is more focused on legislative civil-rights actions and administrative enforcement proceedings. A comparative study can thus provide substantive information on the best practices and possible reform measures to advance transparency and accountability in custodial

governance. Furthermore, the work contributes to the global literature on human rights because it frames the concept of custodial violence within larger language of state responsibility, institutional responsibility, and adherence to international law including the United Nations Convention against Torture and other international criminal acts (UNCAT). The applicability of this discussion is magnified by the fact that India is not a signatory to UNCAT and that the conduct of law enforcement in both countries is under increasing criticism.

1.3 The following is the research problem and objectives

The major issue that this paper is dealing with is the continued high rates of custodial violence and inefficiency of available mechanisms to ensure accountability of states and agents. The study aims at exploring:

- The definition, covering mechanisms, and remedial process of custodial violence under the legal system of India and the United States;
- The extent to which state responsibility is supported by the provisions of the constitution, statutory acts and judicial interpretations; and
- The relative efficacy of enforcement measures and institutions of oversight in relating custodial abuse.

The study objectives are hence tri-fold:

1. To examine legal and constitutional principles that provide the law of custodial violence and state liability in India and the United States;
2. To evaluate the weaknesses and strengths of both systems in their provision of justice and reparation to the victims; and
3. To make suggestions on how the domestic practices can be harmonized with international human-rights standards.

1.4 Hypothesis

The research working hypothesis is that custodial violence does not exist due to absence of legislation, but as a result of structural failure to enforce, monitor and political will. Moreover, the degree of responsibility of custodial environments is directly linked with the strength of independent institutions and responsiveness of the judiciary. A comparative analysis between India and United States will reveal that, despite the similar constitutional principles declared by both jurisdictions, their practical practice is characterized significantly differently due to institutional design, cultural considerations, and legal remedial measures to victims.

1.5 Research Methodology

This research follows a doctrinal and comparative research methodology. Primary sources include provisions in a constitution, statutes, case law and international instruments; these are secondary sources including scholarly commentaries, journal articles, official reports and empirical data. The comparative approach seeks to compare the constitutional-judicial model in India with the statutory-administrative model in the United States in order to determine the presence of convergence and divergence points. The human-rights

jurisprudence is also used during the analysis to put the matter into perspective within the international legal discussion of state responsibility and the ban of torture.

2. REVIEW OF LITERATURE

The issue of custodial violence has been a topic of academic and judicial investigation and has been one of the most heinous human rights abuses in constitutional democracies. The available literature shows that the phenomenon has been approached multidimensionally, with its law, institutional, sociological, and ethical dimensions analysed. Although there is wide-ranging normative discussion and judicial intervention, researchers agree that the presence of custodial violence is a side effect of the deficits in accountability and enforcement on the systemic level.

The research utilized academic literature on custodial violence in India.

The nature of Indian legal scholarship has always defined custodial violence as a colonial legacy of policing and poor institutional responsibility. Justice V.R. Krishna Iyer (1980) referred to torture as an unacceptable means of investigation which is symptomatic of a justice system that places more importance on confessions than constitutional rights.¹ Upendra Baxi (1982) continued to suggest that the continuity of custodial torture indicates a state condoning of illegality, which is maintained by procedural complacency and ignorance.

More recent publications by K.G. Kannabiran (2004) and A.P. Singh (2015) have noted that in spite of judicial activism, such as landmark cases like *D.K. Basu v. State of West Bengal Nilabati Behera v. State of West Bengal* (1997). *State of Orissa* (1993) -implementation of judicial guidelines is infrequent. Surveys carried out by the National Human Rights Commission (NHRC), among other agencies like the Commonwealth Human Rights Initiative (CHRI) indicate that there is a consistent trend of death in custody and under-reporting of torture cases. The annual reports of NHRC highlight the fact that there is no enacted law that is comprehensive in anti-torture and that India should ratify the United Nations Convention Against Torture (UNCAT).²

The restriction of current penal provisions, especially Sections 120 and 120(B) of the *Bhartiya Nyaya Sanhita, 2023*,³ criminalizing custodial assault, but poorly applied in practice, have also been subject to analysis by legal commentators. Researchers have observed that institutional culture, absence of independent investigations, and political manipulations remain the bane of state accountability, which makes the constitutional protection under Articles 20, 21, and 22 more of a dream than a reality.⁴

2.2 The research on the subject of Custodial Violence, in the United States is discussed in

The discussion of custodial violence within the United States has been frequently connected with the widespread problem of police brutality, race-based discrimination, and the rights of prisoners. Jerome H.

¹ V.R. Krishna Iyer, "Human Rights and Inhuman Wrongs" (1980) 22 *Journal of the Indian Law Institute* 235.

² National Human Rights Commission, Annual Report 2022-23 (NHRC, New Delhi, 2023).

³ *Bhartiya Nyaya Sanhita, 2023*, § 120 (replacing Indian Penal Code, 1860, § 330).

⁴ *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610, ¶ 35 (observing that despite constitutional safeguards, custodial torture persists due to lack of accountability mechanisms).

Skolnick (1966) and James Q. Wilson (1980) associated the extreme force used by the police with structural biases and discretion in the systems. The legal history of civil remedies under 42 U.S.C. 1983 that allows victims to initiate a case against the state authorities due to the constitutional breach has been examined by legal scholars, including David Rudovsky (2000) and Rachel Harmon (2016). These articles highlight the fact that civil litigation is a meaningful check and balances system, but the procedural obstacles and the doctrine of qualified immunity often limit its effectiveness.

Such sociological work as *The New Jim Crow* (2010) by Michelle Alexander contextualizes custodial abuse in the structural context of racial inequality and mass incarceration. The practice of police department investigations by the Department of Justice (DOJ) known as pattern or practice has also been heavily evaluated, with experts recognizing its potential as a prevention measure, but criticizing inconsistent political backing. U.S. literature thus reflects on the custodial violence as a human right as well as a civil rights problem, which is strongly featured by social hierarchies and institutional opposition to change.⁵

2.3 Comparative and Theoretical Perspectives

There are comparative studies of custodial violence, which are rather limited but informative. Nigel Rodley (2009) and Manfred Nowak (2012) state that responsibility of the state is not limited to direct involvement in torture but it also includes prevention, investigation, and reparation failures. Antonio Cassese (2005) places this in international law, stating that the banning of torture is a *jus cogens* norm which applies to all states regardless of the ratification.

Comparative analyses done by Indian scholars, e.g., Anup Surendranath (2018) and Pratiksha Baxi (2020), have shown that India is striving to maintain the protection of custodial rights by means of judicial activism, as opposed to the United States which prioritizes statutory and administrative regulation.⁶ Both systems, nevertheless, face the problems of impunity and institutional obscurity.⁷

2.4 Research Gap

The literature has shown that there are clear studies at the national level but lacks cross-jurisdictional comparison of the United States and India.⁸ Very little empirical research has formally tested the interaction between constitutional clauses, jurisprudential principles and institutional frameworks to determine state accountability in the context of custodial violence. In addition to that, there is limited research on the role of international human rights norms in the development of domestic accountability frameworks. The proposed study will address this gap by performing a comparative discussion of the doctrines of the two jurisdictions, their overlap and divergence in the law standards, enforcement and adherence to the international requirements.⁹

⁵ 31 Samuel Walker, "The New Paradigm of Police Accountability: The U.S. Justice Department 'Pattern or Practice' Suits in Context" (2003) 22 St. Louis University Public Law Review 3.

⁶ Manfred Nowak, *Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Oxford University Press 2012) 114.

⁷ Pratiksha Baxi, *Public Secrets of Law: Rape Trials in India* (Oxford University Press 2020) 194.

⁸ Upendra Baxi, *The Crisis of the Indian Legal System* (Vikas Publishing House 1982) 178.

⁹ Nigel S. Rodley, *The Treatment of Prisoners under International Law* (3rd edn, Oxford University Press 2009) 125.

3. CONCEPTUAL AND THEORETICAL FRAMEWORK

3.1 Custodial Violence - Concept, Definition and Scope

Custodial violence involves any physical or mental injury to individuals in their custody by state forces regardless of whether the individual is arrested or imprisoned, subjected to interrogation or medical care, or his or her constitutional rights are being abused. It goes beyond brutal acts of torture to refer to the intimidation, extended detention, denial of medical treatment, and procedural abuse that undermine the rights to life, liberty, and dignity enshrined in Articles 21, 8, and 14 of the Indian Constitution and the 8th and 14th Amendments of the United States Constitution.¹⁰

3.2 Dimensions: Structural, Psychological, and Physical Violence

Custodial violence takes three dimensions that are interrelated. Physical violence comprises of beating, coerced confessions and custodial deaths. Psychological violence is characterized by the use of humiliation, threats and sleep deprivation as a means of coercion. The more profound systemic manifestation is structural violence, which develops due to institutionalized impunity, deficient oversight and absence of accountability mechanism.¹¹ A combination of these dimensions shows both active and passive complicity of state in infringing the dignity of people under custody.¹²

3.3 State Responsibility: Constitutional, Statutory and International

In the international system, the doctrine of state responsibility establishes both direct and vicarious liability of the state with regard to the acts of its agents committed in the official capacity and India guarantees the protection of the rights in Articles 20(3), 21, and 22 of the Constitution, whereas the United States provides protection in the constitutional torts in 42 U.S.C. SS1983.

3.4 Theoretical Underpinnings: Rule of Law, Human Dignity and Accountability

This study has a theoretical basis that is based on three principles. The Rule of Law requires that the power of the state shall be maintained within the boundaries of the law and shall be reviewed by the court.¹³ The principle of Human Dignity asserts that all individuals including the accused have inherent value regardless of whether they are under custody or not. Lastly, Accountability Theory notes that the government should hold the officials accountable when they commit wrongdoings so that law is upheld over arbitrariness.¹⁴

¹⁰ Constitution of India, art 21; US Constitution, amend VIII and XIV.

¹¹ Pratiksha Baxi, *Public Secrets of Law: Rape Trials in India* (Oxford University Press 2020) 196.

¹²

https://academy.ishr.ch/upload/resources_and_tools/Oxford%20commentary%20on%20UNCAT%20%26%20OP_en.pdf?utm_source=chatgpt.com

¹³ A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959) 198.

¹⁴ Manfred Nowak, *Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Oxford University Press 2012) 102.

4. LEGAL FRAMEWORK IN INDIA

4.1 Constitutional Protection Articles 20, 21, 22, etc.

The Indian Constitution offers a strong system that protects people against unjustified state conduct and custodial mistreatment. Article 20(3) also provides the right against self-incrimination where the person alleged is not forced to give any testimony against him/herself.¹⁵ Article 21 that safeguards the right to life and personal liberty has been broadly construed by the Supreme Court to include the right to live with dignity and protection against torture or inhuman treatment. Article 22 provides procedural protections to the arrested or the detained, such as the right to know the cause of arrest, the right to have access to a legal practitioner and the right to be brought before a magistrate within twenty-four hours. Together, these provisions demonstrate the constitutional ideal in the personal liberty, procedural fairness and the sanctity of the human dignity.¹⁶

4.2 Statutory and Procedural Provision IPC(BNS), CrPC, Evidence Act

Constitutional guarantees are supported by secondary legislation. In the Indian Penal Code (IPC), the imposition of hurt or grievous hurt to extort confessions is criminalised in Sections 330(184 BNS), 331(185 BNS),¹⁷ and wrongful confinement to induce the information is criminalised in Section 348 (176 BNS).¹⁸ (The Code of Criminal Procedure (CrPC) provides procedural guidelines; one section, 41B, requires identification of arresting officers and another section, 50A, calls upon police to inform a relative or a friend of an arrest. Section 176(1A) of the CrPC also has a duty of a judicial inquiry in any case of a death in custody or rape. In Section 24, the Indian Evidence Act, 1872, makes confessions made because of threat, inducement or coercion inadmissible, therefore protecting the voluntariness of evidence and fairness in criminal trials.

4.3 Judiciary role -Seminal Judgments

The judiciary has had a transformative role in enhancing the protection against custodial violence by progressive interpretation of the constitution. In *D.K. Basu v. State of West Bengal* (1997).¹⁹ The Supreme Court issued the detailed procedures to arrest and detention, the way to keep arrest memoranda, medical examinations of detainees, and the necessity of notifying relatives, *State of West Bengal* (1997). In *Nilabati Behera v. State of Orissa* (1993)²⁰ The Court state liability on custodial deaths in *State of Orissa* (1993) and awarded monetary compensation at Article 32, which held that breaches of fundamental rights require successful redress. Likewise, in *Sunil Batra v. Delhi Administration* (1978)²¹ The Court in *Delhi Administration* (1978) claimed that prisoners do not lose their fundamental rights under penological confines and condemned solitary confinement as inhuman and degrading. These rulings depict a pro-active judicial attitude which reconciles constitutional ideals with the enforcement facts.

4.4 Institutional Mechanism NHRC, State Commissions and Police Reforms

¹⁵ <https://egyankosh.ac.in/bitstream/123456789/63517/2/Unit-4.pdf>

¹⁶ Constitution of India, arts 20–22.

¹⁷ Indian Penal Code, 1860, ss 330–348.

¹⁸ *Bharatiya Nyaya Sanhita*, 2023 (BNS)

¹⁹ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

²⁰ *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746.

²¹ *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675.

In addition to judicial supervision, a number of institutional solutions to custodial violence exist. The National Human Rights Commission (NHRC), which is established in the Protection of Human Rights Act, 1993, inquires into the custodial deaths, prison conditions, and prescribes remedial action.²² Sub-national human rights commissions are state organizations that serve to supplement this mandate. The instructions of the Supreme Court in *Prakash Singh v. The Union of India* (2006) embarked on a massive police reform, which sought to protect law-enforcement agencies against political influence, increase accountability, and create independent Police Complaints Authorities.²³ All these mechanisms are indicative of an institutional commitment to the rule of law and the prevention of abuses in the criminal-justice system.

4.5 Implementation Gaps and Perennial challenges

Custodial violence is an enduring issue in India, in spite of an elaborate system of laws and institutions. The continuity of torture and death in custody can be mainly explained by the ineffective enforcement, absence of accountability, and the cultural endorsement of coercive methods of interrogation. There are minimal cases of prosecution of rogue officers and the following of judicial guidelines differ among the states. This lack of independent anti-torture laws and the fact that India is not a signatory to the United Nations Convention against Torture, also undermine the confidence in its human-rights promises. Moreover, the lack of proper training, overcrowding in prisons and poor investigative practices have continued to support a culture of impunity. The substantive challenge, hence, is not in the complete lack of laws, but the assurance of their practical application in terms of transparency, institutional reform, and the new commitment to human rights.²⁴

5. LEGAL FRAMEWORK IN THE UNITED STATES

5.1 Constitutional Protections (Fourth, Fifth, Eighth and Fourteenth Amendments)

The Constitution of the United States provides a detailed guideline aimed at protecting people against custodial violence, which is largely based on the Bill of Rights and the Fourteenth Amendment. The Fourth Amendment protects the citizens against unreasonable searches and seizures and as such, it provides that the state authorities cannot arbitrarily arrest, detain or infringe on the privacy of the citizens without providing justifiable reasons. The Fifth Amendment declares that one should not be forced to be a witness against himself or herself, which is the foundation of protection against coerced confessions and forced testimony. The Eighth Amendment forbids inhuman and unusual treatment in the form of punishment, which gives the constitutional foundation of the humane treatment of prisoners and detainees. Moreover, the fourteenth Amendment also offers these provisions to state activity under the Due Process and the Clause Equal Protection, which require that all persons shall be treated fairly and without any discrimination by law enforcement agencies and prisons.²⁵ Taken together, all these provisions create a logical constitutional shield

²² Protection of Human Rights Act, 1993, s 12.

²³ *Prakash Singh v. Union of India*, (2006) 8 SCC 1.

²⁴ <https://www.ijllr.com/post/protection-against-custodial-violence-in-india-a-comparative-analysis-of-the-code-of-criminal-proce>

²⁵ U.S. Const. amend. IV, V, VIII, XIV

against the misuse of authority by state authorities, thus increasing the values of fairness, human dignity, and procedural justice in the context of custodial practice.²⁶

5.2 Federal and State Laws, civil rights act, 42 U.S.C. 1983

The rights in the constitution are substantiated by a strong statutory foundation, which is the most prominent Civil Rights Act of 1871, making it a part of 42 U.S.C. section 1983. The act provides a federal cause of action to persons who have suffered a violation of their constitutional rights through the act of common law by a government official.²⁷ It has been very helpful in the case of police brutality, illegal detention, and custodial death. The other legislative act that is important is the Violent Crime Control and Law Enforcement Act of 1994 that gives the United States Department of Justice the authority to research and prosecute systemic patterns of wrongdoing within the police departments and the correctional facilities.²⁸ States have parallel laws and internal mechanisms of oversight, but their application and performance remain very different. The concept of qualified immunity, according to which officials cannot be sued without the violated right being grossly inferred, remains a significant challenge on the way to justice of the victims of custodial abuse.²⁹

5.3 Judicial Interpretation important Supreme Court Cases (Miranda v.) Arizona, etc.)

The role of the judiciary system in the United States has been important in the interpretation of the constitution and creating more protections to custodians. *Miranda v. Arizona* in the historic case. The Supreme Court in *Arizona* (1966) ruled that suspected persons should be told about the right to remain silent and to seek the aid of an attorney before any custodial interrogation.³⁰ This became the basis of a procedural protection in the form of the *Miranda* warning that prevented the use of coercive interrogation procedures. In *Estelle v. The Court* acknowledged that under the Eighth Amendment,³¹ deliberate indifference to the medical needs of a prisoner amounts to cruel and unusual punishment (*Gamble* 1976). Similarly, *Tennessee v. Garner* (1985) restricted deadly force by police officers, pointing out that lethal force can only be used when there is an absolute necessity.³² Such rulings have laid down judicial guidelines that have strengthened accountability and promote humane treatment of individuals in custody by the U.S. Supreme Court.

5.4 Oversight Structures Department of Justice, Civilian Review Boards

The control and responsibility systems in the United States have a multilayered institutional structure. The Department of Justice through the Civil Rights Division investigates the trend of abuse in law enforcement agencies and in the correctional system. It is authorized to enforce the federal civil rights laws and may exercise civil actions against institutions that practice systemic misconduct.³³ The federal control is complemented by the Civilian Review Boards and Police Accountability Commissions that operate at state

²⁶ Erwin Chemerinsky, *Constitutional Law: Principles and Policies* (6th edn, Wolters Kluwer 2019) 914.

²⁷ Civil Rights Act, 1871, 42 U.S.C. §1983.

²⁸ Violent Crime Control and Law Enforcement Act, 1994, 34 U.S.C. §12601.

²⁹ Joanna C. Schwartz, *Qualified Immunity and the Rule of Law*, 113 *Colum. L. Rev.* 1800 (2013).

³⁰ *Miranda v. Arizona*, 384 U.S. 436 (1966).

³¹ *Estelle v. Gamble*, 429 U.S. 97 (1976).

³² *Estelle v. Gamble*, 429 U.S. 97 (1976).

³³ <https://www.justice.gov/crt/deprivation-rights-under-color-law>

and municipal levels. These are external agencies that consider police misconduct complaints, prescribe disciplinary action, and suggests policy changes.³⁴ The Office of the Inspector General also inspects the federal detention facilities, such as those of the Department of Homeland Security and Bureau of Prisons, to comply with the human rights and safety standards. All these mechanisms represent the values of transparency, oversight and democratic accountability.

5.5 Custodial Abuse Cases Practical Challenges and Trends

Although the United States has one of the most developed constitutional and statutory frameworks, this country continues to face a big challenge in dealing with custodial violence. Racial profiling, excessive use of force and discriminatory policing practices are signs of structural inequities that go deep.³⁵ The continuous use of qualified immunity tends to exclude any meaningful accountability, whereas overcrowded prisons and insufficient mental health services in correctional facilities contribute to even worse human rights problems. The excessive use of solitary confinement and the fact that minorities are disproportionately targeted is a burning concern. Public movements like Black Lives Matter have been especially loud in recent times; thus, sparking new debates regarding the policing standards and transparency, as well as, use-of-force.³⁶ However, inequality between states and institutional opposition are barriers to uniform implementation. The challenge that is enduring to the United States is not the lack of laws, but the lack of the presence of law in the gap between ideals of the constitution and realities of the constitution in the practice of its custodial systems to achieve justice, dignity, and accountability.³⁷

6. COMPARATIVE ANALYSIS : INDIA AND THE UNITED STATES

6.1 Constitution/Statute Comparisons and Differences

India and the United States not only codify the basic protections against custodial violence in their constitutions but also have differing sources and structural priorities based on these provisions. Articles 20, 21 and 22 of the Constitution in India provide the right against self-incrimination, right to life and personal liberty and procedural rights to arrest and detention.³⁸ The judiciary has widely interpreted these provisions especially under Article 21 which has become the main pillar of jurisprudence on human-rights in the country.³⁹ On the other hand, the protections found in the United States are largely based on the Bill of Rights that is, the Fourth, Fifth, Eighth, and Fourteenth Amendments.⁴⁰ All these amendments ban unreasonable searches and seizures, self-incrimination, cruel and unusual punishment, and ensure the due process and equal protection of the law.⁴¹ Where the U.S. model focuses more on codified constitutional doctrines that are enforced by statutory and judicial systems, India stresses more on judicial creativity and interpretative

³⁴ Samuel Walker, *The New World of Police Accountability* (2nd ed., SAGE Publications, 2014).

³⁵ U.S. Commission on Civil Rights, *Police Use of Force: An Examination of Modern Policing Practices* (2018).

³⁶ Deva Woodly, *Reckoning: Black Lives Matter and the Democratic Necessity of Social Movements* (Oxford University Press, 2021).

³⁷ Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colour-blindness* (New Press, 2010).

³⁸ The Constitution of India, arts. 20–22.

³⁹ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248; *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608.

⁴⁰ U.S. Const. amends. IV, V, VIII & XIV.

⁴¹ *Miranda v. Arizona*, 384 U.S. 436 (1966); *Tennessee v. Garner*, 471 U.S. 1 (1985); *Estelle v. Gamble*, 429 U.S. 97 (1976).

expansion.⁴² India Statutorily, the latest reforms that have occurred in India have resulted in the adoption of The Bharatiya Nagarik Suraksha Sanhita (BNSS) replacing the Code of Criminal Procedure (CrPC); The Bharatiya Nyaya Sanhita (2023) which replaces the Indian Penal Code (IPC); The Bharatiya Sakshya Adhiniyam (BSA), replacing the Evidence Act.⁴³ These laws reform the criminal law, processes, and forensic standards, with new language, new crimes, and victim-centric law. Statutory safeguards in the United States exist in the form of civil-rights law like 42 U.S.C.1983, which, in permitting civil action against constitutional infractions by state actors, sanctions the enforcement of law-enforcement patterns of abuse at the federal level, and in the Violent Crime Control and Law Enforcement Act (1994), which permits federal regulation of law-enforcement patterns of abuse. Though India has a new framework, modernising both the substantive and procedural law, it still continues to be largely based on constitutional jurisprudence as opposed to a strong statutory civil-liability framework similar to that of the United States.⁴⁴ As a result, although both systems declare a dedication to defending people in custody, the United States emphasizes more on statutory enforcement and civil recourse, whereas India emphasizes on constitutional protection and judicial review, which now is supplemented with new legislative reforms of penal and procedural laws.⁴⁵

6.2 Procedural Protections and Standards of the Investigation

The investigative standards and procedural rights play a crucial role in the prevention of custodial abuse. Before the reforms, Indian jurisprudence such as in *D.K.Basu v. State of West Bengal*, provided a set of guidelines that included arrest memos, medical examination, relatives notification, and video-taping of the custody process.⁴⁶ The BNSS also emphasizes the practice of victim-centered procedures, which includes the ideas of the Zero FIR, e-summons, holistic forensic requirements, and digital evidence protocols. However, the implementation is uneven with one state to another as well as limited by resources.⁴⁷ The United States is one of the countries where procedural protection lies in the landmark jurisprudence: *Miranda v. Arizona* also mandates the police to notify the detainees about the right to remain quiet and to have an attorney; the fourth amendment exclusionary rule discourages unlawful searches and interrogations. The investigative system is strengthened by independent grand juries, prosecutorial independence and high standards of forensic practices.⁴⁸ The U.S. model has the advantage of having very explicit statutory requirements and effective investigatory independence, which in many cases surpasses the state-executive dominance of the Indian system. India still faces international problems like long periods of police custody, dismal forensic facilities, insufficient investigative units and incomplete digitised records even after BNS/BNSS reforms require better standards. The United States with its structural superiority struggles with

⁴² Upendra Baxi, "The Supreme Court and Human Rights," (1980) 23 JILI 323.

⁴³ Bharatiya Nyaya Sanhita, 2023; Bharatiya Nagarik Suraksha Sanhita, 2023; Bharatiya Sakshya Adhiniyam, 2023 (Acts 22, 23 & 24 of 2023).

⁴⁴ Nilabati Behera v. State of Orissa, (1993) 2 SCC 746; D.K. Basu v. State of West Bengal, (1997) 1 SCC 416.

⁴⁵ Justice M.N. Venkatachaliah (ed.), Constitutional Governance and Human Rights, (ILI, New Delhi, 2022) p. 178.

⁴⁶ Joginder Kumar v. State of U.P., (1994) 4 SCC 260; Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

⁴⁷ Ministry of Home Affairs, Press Note on Implementation of New Criminal Laws, 1 July 2024 (Govt. of India).

⁴⁸ *Miranda v. Arizona*, 384 U.S. 436 (1966).

uneven distribution of institutional application across states,⁴⁹ resource discrepancies, and institutional inertia, especially in rural jurisdictions and in jurisdictions with minority populations.

6.3 Courts and Remedies and Enforcement

The efficacy of rights is stated by judicial remedies. The Indian courts have acknowledged a constitutional tort by establishing cases like *Sunil Batra v. Delhi Administration*⁵⁰ and *Nilabati Behera vs. State of Orissa*,⁵¹ compensating custodial deaths and torture in Article 21 writ jurisdiction. Nevertheless, lack of specific anti-torture law and few statutory compensation plans imply that the enforcement is dependent on judicial activism and administrative goodwill. The United States has a system, 42 U.S.C 1983⁵² to allow a civil action against state authorities in cases concerning constitutional offenses, courts might impose large sums in damages, and federal injunctions against correctional administrations cause systemic change. However, the doctrine of qualified immunity⁵³ limits the liability in many cases, because a right had to be clearly established to impose responsibility. In comparison to the United States, which provides a stronger structural channel of redress and deterrence through statutory civil suits, India uses judicial compensatory writs and suggestions by quasi prior to quellant agencies thus offering moral, however less predictable, enforcement.⁵⁴ However, the deterrence might be better with the introduction of the BNS and procedural reforms, but the gap in statutory remedy still stands out as a major difference.

6.4 Civilian Oversight Accountability Structures NHRC vs. DOJ/Civilian Oversight

Institutional strength is brought out through accountability mechanisms. In India, the National Human Rights Commission (NHRC) and State Human Rights Commissions⁵⁵ do oversight roles; they inquire and give recommendations on custodial deaths. Much of their authority, however, is recommendatory, and requires state-executive cooperation. The new changes in the law have not as yet turned these organizations into investigational and prosecutorial institutions of binding authority. The Civil Rights Division of the Department of Justice in the United States⁵⁶ has the statutory power to examine patterns or practices of law-enforcement violations and also to put into force consent-decrees or civil actions. Independent supervision is ensured by the local civilian review boards and police-accountability commissions, whereas the Office of the Inspector General oversees the federal detention facilities.⁵⁷ These institutions have an amalgamation of legal compulsion and communal management, thus making accountability more enforceable. Therefore, though India has structures of oversight, they are comparatively weak in enforcing them compared to the model of the United States of greater institutional independent and coercive authority. In the case of India,

⁴⁹ U.S. Commission on Civil Rights, *Police Use of Force: An Examination of Modern Policing Practices* (Washington D.C., 2018).

⁵⁰ *Sunil Batra v. Delhi Administration*, (1978) 4 SCC 494.

⁵¹ *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746.

⁵² 42 U.S.C. § 1983 (2018).

⁵³ *Harlow v. Fitzgerald*, 457 U.S. 800 (1982); *Pearson v. Callahan*, 555 U.S. 223 (2009).

⁵⁴ *The Bharatiya Nyaya Sanhita*, 2023 (Act No. 45 of 2023).

⁵⁵ *Protection of Human Rights Act*, 1993 (Act No. 10 of 1994), ss. 3, 21.

⁵⁶ 42 U.S.C. § 14141 (2018) [now codified at 34 U.S.C. § 12601 (2018)]; See also 28 C.F.R. Part 42 (2023).

⁵⁷ *Inspector General Act of 1978*, 5 U.S.C. App. 3 (2018).

best-practice reform would be reforms that give the NHRC binding investigatory authority, create independent police-oversight agencies, and implement the effect of oversight recommendations.

6.5 Policing Practices and Institute Culture

Custodial abuse is also significantly affected by the institutional culture. Police culture in India is based on colonial discipline, control, centered on obedience, investigation based on confession, and excessive executive intervention.⁵⁸ The BNS/BNSS reforms are supposed to strengthen victim-centric, digital, forensic-founded policing, but the institutional patterns still remain deep rooted. Custodial deaths, torture admissions, and under-reporting are an indicator of cultural resistance to change. Police in the United States is institutionalised, but issues of racial bias, militarisation, and overrepresentation of the minority groups persist. Black Lives Matter and other movements also expose structural inequality,⁵⁹ and institutional culture changes, e.g. body-cams and de-escalation training, can make a change even in well-invested systems. The comparative point is that India needs to go hand in hand with legal change and culture change as the United States has proven that even powerful legal protection can be disrupted by the culture. Neither of these jurisdictions needs only a legislative change, but a continuous institutional transformation, including training, supervision, transparency, and community involvement.⁶⁰

6.6 Effectiveness of Legal Remedies and Compensation Systems

The effectiveness of remedies in both jurisdictions depends on issues like accessibility, timeliness and enforceability. Compensation is given in the case of India mostly by constitutional writs or recommendations of the National Human Rights Commission (NHRC).⁶¹ However, the execution of such awards is not uniform and victims are often faced with procedural challenges, lack of awareness and intimidation. The absence of a specific Anti-Torture Act as well as the fact that India is not a signatory to the United Nations Convention against Torture further weaken the solidity of its remedial framework. In contrast, the United States has a relatively strong compensatory machinery, which is achieved by civil-rights litigation or class action lawsuits. Damages are regularly awarded by courts and municipalities tend to pay damages to reduce reputation damage. But the high cost of litigation is deliberately prohibitively high and the limited use of the qualified immunity is a major obstacle to justice to the economically disadvantaged victims. Also, the policies that indemnify the police officers against liability by the states sometimes destroy personal responsibility.⁶²

There is a common paradoxical characteristic in both systems; strong judicial precedents with weak institutional execution. Judicial solutions are likely to be responsive, not proactive, and indemnification rarely leads to meaningful systemic change.⁶³

⁵⁸ Prakash Singh v. Union of India, (2006) 8 SCC 1.

⁵⁹ National Crime Records Bureau, Custodial Deaths Report 2023 (Ministry of Home Affairs, 2024).

⁶⁰ Black Lives Matter Global Network Foundation, Policy Platform on Policing and Accountability (2021).

⁶¹ United Nations, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.

⁶² David Rudovsky, Civil Rights Litigation and Police Misconduct: Current Challenges, 43 Harv. C.R.-C.L. L. Rev. 481 (2008).

⁶³ Joanna C. Schwartz, Qualified Immunity's Costs, 128 Yale L.J. 2 (2018).

6.7 Learning and Best Practices in Individual Jurisdictions

The U.S. experience in India points to the need of enforcing statutes and independent prosecutorial controls. This may reinforce the human-rights system in India by passing a specific anti-torture law, granting an authoritative role to the NHRC, and integrating civilian control. In addition, the integration of police accountability into the criminal-justice curriculum and the enhancement of forensic capacity can lessen the tendency to use coercive interrogation techniques.⁶⁴

In the case of the United States, the jurisprudence of India provides clues to the application of judicial creativity and moral interpretation. In its interpretation of the Indian Constitution, the Indian Supreme Court has created an interpretation of Article 21 that adds dignity, humane treatment and compensation, which reflects how constitutional morality can fill in the legislative gaps. Despite the structural limitations of U.S. courts,⁶⁵ it is possible that they would gain a deeper connection to the human-dignity jurisprudence, which will help to align procedural justice with substantive fairness. The two jurisdictions should focus on preventative responsibility that will turn custodial institutions into environments of constitutional obedience.⁶⁶ Examples of convergent measures to global best practice can be seen in technology-based supervision, including compulsory use of CCTV cameras and use of digital custody registries, and open investigations of in-custodial deaths and involvement of the wider community in regulation agencies. In the end, whereas India attempts to realize its constitutional ideals during judicial activism, the United States promotes its guarantees during statutory precision. However, both are still facing the same constant dilemma of balancing state power with human dignity. The moral of the story is simple: the rightness of the criminal-justice system does not lie in its ability to punish, but in its ability to protect the rights of people.⁶⁷

7. INTERNATIONAL COMPARATIVE PERSPECTIVE

On one hand, custodial deaths are a long-term international human-rights problem, highlighting the conflict between state power and safeguarding personal freedom. Torture is outlawed by international instruments, such as the Universal Declaration of Human Rights (UDHR, 1948),⁶⁸ the International Covenant on Civil and Political Rights (ICCPR, 1966), and the Convention Against Torture (CAT, 1984); however, the way nations react to this issue differs depending on the constitutional and institutional frameworks in place.⁶⁹

India

The right to life and individual liberty is enshrined in Article 21 of the constitution in India. The Supreme Court, in *D.K. Basu v. State of West Bengal* (1997),⁷⁰ came up with binding principles of arrest and detention. Nevertheless, the lack of a certain anti-torture law and lack of India to ratify CAT make it hard to adhere to

⁶⁴ Law Commission of India, Report on Implementation of Custodial Reforms, Report No. 283 (2024).

⁶⁵ U.S. Department of Justice, Pattern or Practice Investigations of Law Enforcement Agencies Report (2023).

⁶⁶ Amnesty International, Global Report on Custodial Violence and Accountability Mechanisms (2023).

⁶⁷ National Crime Records Bureau, Prison Statistics India 2023 (Ministry of Home Affairs, 2024).

⁶⁸ Universal Declaration of Human Rights, 1948, art. 5.

⁶⁹ International Covenant on Civil and Political Rights, 1966, arts. 6 & 7.

⁷⁰ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

international requirements completely. The National Human Rights Commission (NHRC) oversees the violation of custody, but does not prosecute and thus restricts deterrence and responsibility.⁷¹

America

In America the constitutional protection is based on the Eighth Amendment, which stipulates against cruel and unusual punishment and the Fourteenth Amendment, which guarantees due process. The victims of custodial abuse can have civil redress by 42 U.S.C. 1983, which allows initiating lawsuits against state authorities on the basis of violation of rights. Death in Custody Reporting Act (2013)⁷² obliges the federal data collection concerning the custodial fatalities, and the Department of Justice Civil Rights Division investigates the systematic misconduct cases. Still, the chronic racial inequalities and the excessive force are important challenges.

United Kingdom

The United Kingdom also has detainee protection by the Human Rights Act (1998),⁷³ which brings the European Convention on Human Rights (ECHR) into the legal framework of the country. Articles 2 and 3 on the ECHR put a positive obligation on the state to protect life and to avert torture.⁷⁴ The transparency and accountability are offered through independent mechanisms, including the Independent Office for Police Conduct (IOPC) and compulsory coronial inquests. The UK model is generally seen as being in accord with international standards with the domestic law.⁷⁵

Australia

In Australia, custodial supervision is state-based. A major inquiry that led to a major change was the Royal Commission into Aboriginal Deaths in Custody (1987/1991)⁷⁶ which revealed significant discrimination in the system and suggested significant reforms. In 1989, Australia signed the CAT and made torture a criminal offense by the domestic law. Monitoring detention facilities is done by the Australian Human Rights Commission (AHRC)⁷⁷ and state-level watchdogs, but Indigenous deaths in custody remain a serious issue.

South Africa

South Africa safeguards the right to dignity and life in its Constitution of 1996, which, in particular, Sections 10 and 12⁷⁸ forbid torture and inhuman treatment. Investigation of deaths in custody is carried out by the Judicial Inspectorate of Correctional Services (JICS). The legal accountability has been enhanced by the ratification of both the ICCPR and CAT, along with the Prevention and Combat Torture of Persons Act

⁷¹ National Human Rights Commission, India, Annual Report 2022–23.

⁷² Death in Custody Reporting Act of 2013, Pub. L. No. 113-242, 128 Stat. 2860.

⁷³ Human Rights Act 1998 (UK), ss. 2–3.

⁷⁴ European Convention on Human Rights, arts. 2 & 3.

⁷⁵ Independent Office for Police Conduct (UK), Annual Statistics 2023.

⁷⁶ Royal Commission into Aboriginal Deaths in Custody, Final Report (1991).

⁷⁷ Australian Human Rights Commission Act 1986 (Cth).

⁷⁸ The Constitution of the Republic of South Africa 1996, ss. 10 & 12.

(2013)⁷⁹. However, overcrowding and administrative inefficiency continue to be challenges to complete implementation.⁸⁰

Canada

The rights of detainees are protected in Canada under the Canadian Charter of Rights and Freedoms (1982) enshrining the right to life, liberty and the security of the person⁸¹. The Office of the Correctional Investigator (OCI) investigates all custodial deaths and gives recommendations on how to reform.⁸² The international obligation of Canada to the CAT is strengthened by the fact that, despite periodic cases of Indigenous and minority detainees, there are still inherent systemic imbalances.⁸³

Comparison

In comparison, the United Kingdom, Canada and Australia show a greater compatibility with the global human-rights standards with statutory integration and external control. The US depends mainly on the litigation and federal intervention, whereas India faces the problem of the inadequacy of legislation and enforcement. The constitutional model of South Africa represents the progressive integration of anti-torture values. All in all, global experience emphasizes that constitutional assurances cannot be sufficient, but their practical application, independent institutions, and compliance with international conventions will be required to eliminate custodial mortality and secure the rule of law.⁸⁴



⁷⁹ Prevention and Combating of Torture of Persons Act 2013 (South Africa).

⁸⁰ Judicial Inspectorate for Correctional Services, Annual Report 2022.

⁸¹ Canadian Charter of Rights and Freedoms 1982, ss. 7 & 12.

⁸² Office of the Correctional Investigator, Canada, Annual Report 2023.

⁸³ United Nations Treaty Collection, "Status of Ratification: Convention Against Torture," 2023.

⁸⁴ United Nations Treaty Collection, "Status of Ratification: Convention Against Torture," 2023.

8. STATE RESPONSIBILITY AND INTERNATIONAL LAW

8.1 UN Convention against Torture (CAT) and Other International Instruments

The United Nations Convention against Torture (1984) represents the major international tool which outlaws torture and all forms of cruel, inhuman, or degrading treatment. It requires that the States outlaw torture, curb custodial maltreatment, investigate claims, and accuse culprits irrespective of their official role. Considering CAT along with other human rights tools such as the International Covenant on Civil and Political Rights (ICCPR), the Universal Declaration of Human Rights (UDHR), and the United Nations Standard Minimum Rules to the Treatment of Prisoners (the Nelson Mandela Rules)⁸⁵ provides a duty to protect the dignity of detainees, timely judicial oversight, and to provide remedial relief to victims that is non-derogatory. Additionally, the ban has become a *jus cogens* and thus enforces an unwaivable, universal duty on the global community.⁸⁶

8.2 Positions and Compliance Obligations of India and the United States

In 1994, the United States ratified the Convention and enacted legislative implementing measures, including the Torture Convention Implementation Act,⁸⁷ and includes in its judicial protection measures such as the exclusionary rule and civil remedies available under 42 U.S.C. 1983. However, the United States still has reservations, especially concerning the extraterritorial application and the clear definition of the cruel, inhuman, or degrading treatment. In its turn, India has signed the Convention in 1997 but did not ratify it;⁸⁸ instead of being enforced through statute, it has relied on constitutional guarantees, found in Articles 20-22 and 32, judicial case laws,⁸⁹ including such cases as *D.K. Basu v. State of West Bengal*, and the Prevention of Corruption Act to deal with custodial offences. Although there is a history of judicial activism, a lack of an anti-torture law is a significant compliance gap.⁹⁰

8.3 Principle of State Liability and International Responsibility

International law believes that a custodial violence creates State responsibility whenever it is committed by government authorities or with their consent. The four main pillars of responsibility, the prevention, investigation, punishment, and compensation duty, form the core accountability framework⁹¹. The United States takes a constitutional tort-based and federal civil-rights-based approach to liability, but in India it is a constitutional writ-based and public-law-based compensation approach; and despite the lack of systemic implementation.⁹² A comparative evaluation shows that the two jurisdictions accept that the State had the

⁸⁵ United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, adopted 10 Dec. 1984, entered into force 26 June 1987, 1465 U.N.T.S. 85.

⁸⁶ Universal Declaration of Human Rights, 1948, adopted 10 Dec. 1948, G.A. Res. 217A (III), U.N. Doc. A/810.

⁸⁷ United States, Torture Convention Implementation Act, 18 U.S.C. §§ 2340–2340A (1994).

⁸⁸ United States Senate, Resolution of Ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 21 Oct. 1994, Cong. Rec. S17486–S17502 (daily ed.).

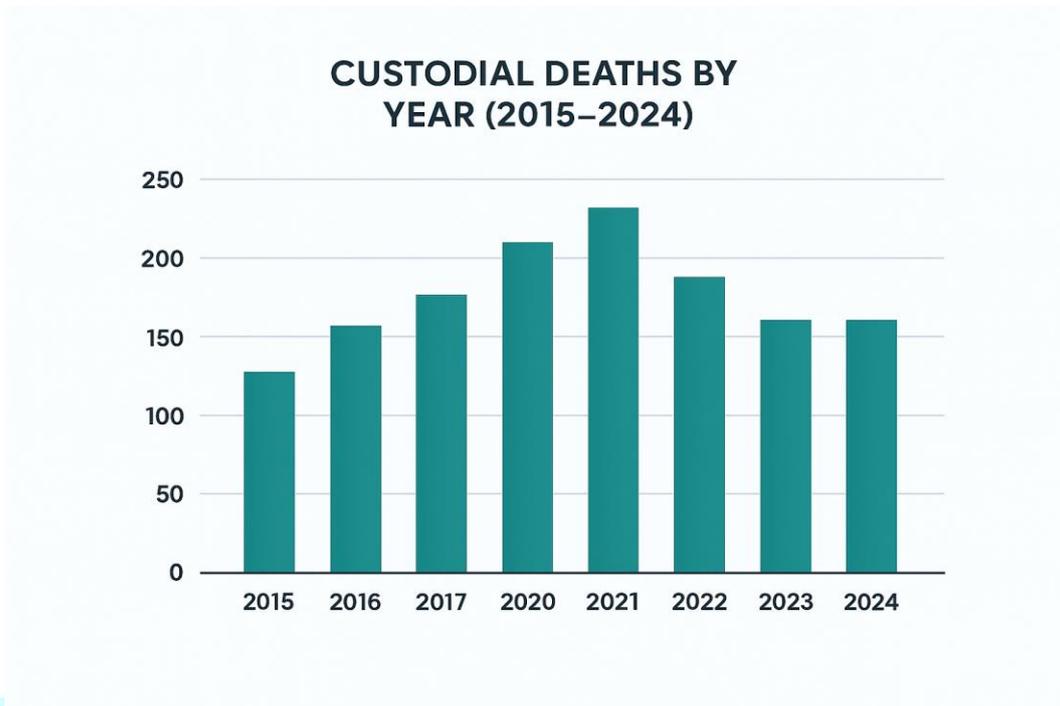
⁸⁹ The Constitution of India, Arts. 20–22, 32.

⁹⁰ Law Commission of India, Report No. 273: Implementation of 'United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment' through Legislation, October 2017.

⁹¹ International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, 2001, U.N. Doc. A/56/10, Art. 1–2, 4–8.

⁹² United States Civil Rights Act, 42 U.S.C. § 1983.

role of protecting custodial rights but the United States has developed stronger statutory enforcement policies whereas India has been dependent on jurisprudential innovations and reformed legislative engagements.⁹³



9. REMEDIES, INSTITUTIONAL REFORMS AND ENFORCEMENT

9.1 Administrative, Criminal and Civil Remedies

Solutions to custodial violence are offered at criminal, civil and administrative levels. Criminal penalties are applied to individual offenders by crimes like assault, culpable homicide, and the legislation against custodial deaths. In the United States, the prosecution made by the federal authorities in 18 U.S.C. 242 and the similar state criminal regulations is the most common form of enforcement. In India, criminal responsibility is applied in accordance with the Indian Penal Code, which is supplemented by judicial principles of arrest and detention. Civil litigation⁹⁴ awards damages on constitutional breaches: in the United States; actions under the First and Fourteenth Amendments in civil litigation, and in India; writ-based damages under the public law. The administrative accountability is achieved by means of departmental investigation, suspension, termination, and disciplinary check-up. However, administrative marks, technicality and evidentiary challenges often compromise deterrence.⁹⁵

9.2 Frameworks of Compensation and Restitution

Compensation serves as a remedial tool and as a preventive tool. The jurisprudence in the United States allows compensatory and punitive damages, attorney fees, and injunction, thus increasing the redress of the victims. The Supreme Court of India has also formulated a doctrine of public-law compensation, especially in Nilabati Behera, but precision of statute and procedural consistency are still wanting. The compensation

⁹³ S. Subramanian, “State Liability for Custodial Deaths: The Indian Experience,” (2019) 61 Journal of the Indian Law Institute 215.

⁹⁴ <https://ijrl.com/wp-content/uploads/2025/07/CUSTODIAL-DEATHS-IN-INDIA-LEGAL-FRAMEWORK-ACCOUNTABILITY-AND-REFORMS.pdf>

⁹⁵ <https://ijlr.iledu.in/wp-content/uploads/2025/04/V51487.pdf>

of aggrieved parties often involves other aspects of damages besides financial compensation such as medical treatment, rehabilitation, and legal aid.⁹⁶ However, the access to the pragmatics is unequal especially among the marginalized detainees.⁹⁷

9.3 The role of Oversight Bodies and Judicial Monitoring

A transparency level is necessary through independent oversight. Internal affairs units, civilian review boards, and Department of Justice consent decrees are the mechanisms used in the United States.⁹⁸ In India, surveillance is done by the means of national and state human rights commissions, the supervision of arrests by the judicial magistrates, and prison visiting committees.⁹⁹ In both jurisdictions, courts have a supervisory type of jurisdiction that entails enforcement of accountability measures and compliance with procedural safeguards.¹⁰⁰

9.4 Recommended Institutional Reforms and Training

To promote custodial accountability, it is required to have precision in law, establish independent investigative agencies, and use digital monitoring systems including closed-circuit television and body-worn cameras.¹⁰¹ Prosecutorial independence should be followed by mandatory reporting and time-bound requests.¹⁰² Capacity-building programmes such as human-rights-based policing schools, psychological testing, and stress-management courses are critical in tackling the root causes in the systems. The institutional culture that needs to be changed is towards clarity, ethical policing behavior, and victim-centered enforcement models to promote a preventative, rights-based custodial regime.¹⁰³

10. POLICY RECOMMENDATION AND FINDINGS

10.1 Key Comparative Findings

The comparative analysis shows that both the United States and India have constitutional prohibition of custodial violence and State liability. The American system has the advantage of codified federal laws, civil-litigation, and enforced oversight documents, but, in India, it relies more on judicial creativity and constitutional redress; however, there is still a gap in the form of the absence of specific anti-torture legislation and enforcement across jurisdictions.¹⁰⁴ The systems both face obvious hurdles to evidence, institutional bias, and difficulties in protecting vulnerable detainees.

10.2 Reforms of laws and policies proposed

In the case of India, the adoption of the Convention and the implementation of an extensive anti-torture law cannot be ignored. The US government ought to enhance measures to prevent the misuse of qualified-

⁹⁶ Law Commission of India, Report No. 273: Implementation of the UNCAT through Legislation, October 2017.

⁹⁷ Amnesty International, Torture in 2023: Global Report on Custodial Violence, London, 2023.

⁹⁸ U.S. Department of Justice, Civil Rights Division: Police Reform Consent Decrees, Washington D.C., 2020.

⁹⁹ National Human Rights Commission of India, Annual Report 2022–23.

¹⁰⁰ People's Union for Civil Liberties v. State of Maharashtra, (2014) 10 SCC 635.

¹⁰¹ Bureau of Police Research and Development (BPR&D), Model Police Manual, 2021.

¹⁰² Prakash Singh v. Union of India, (2006) 8 SCC 1.

¹⁰³ Human Rights Watch, Broken System: Dysfunction, Abuse, and Impunity in Indian Policing, 2020.

¹⁰⁴ Law Commission of India, Report No. 273: Implementation of the UNCAT through Legislation, October 2017.

immunity and ensure that remedies are fairly accessible.¹⁰⁵ The two jurisdictions should institutionalise autonomous investigative organs, strengthen the witness-protection systems and normalize the custodial records and interrogation procedures.¹⁰⁶

10.3 Enhancing Accountability, Transparency, and Prevention

There must be augmented transparency, which is reached through body-mounted cameras, digital custody registers, independent audits and time-bound reporting.¹⁰⁷ Constant police education focusing on human rights, community-based oversight and psychological support groups can encourage ethical policing and sustainable accountability.¹⁰⁸

CONCLUSION

Custodial violence remains one of the major challenges to a moral and legal integrity of constitutional democracies. India as well as the United States, despite their different constitutional histories and institutional traditions, are united in a common cause, namely, the safeguarding of human dignity against the excesses of the state. This paper shows that the two jurisdictions protect the right to life, liberty, and the prevention of cruel or degrading treatment constitutionally, but they reach different solutions regarding the matter in terms of philosophy and practice. The U.S. system is statutory-focused and enforcement-concentrated and is based on the Bill of Rights, civil rights laws, and has an active judicial review system; India is a nation that mostly depends on constitutional interpretation and judicial innovation; Article 21 has since developed to provide an active source of human-rights jurisprudence. A progressive step towards procedural modernisation and forensic transparency in India is the introduction of new criminal laws which include- Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhinyam (BSA). However, the fact that custodial deaths and torture continue to happen leads to an implication that legal reform alone cannot be capable of helping to dismantle the ingrained institutional culture. America, although with strong statutory protections and civil remedy frameworks to the form of 42 U.S.C. §'1983 and Department of Justice scrutiny, continues to face the challenge of systemic racism, unreasonable use of force, and the doctrine of qualified immunity, all of which have the propensity to undermine the effectiveness of accountability systems. Courts in the two countries -between 2008 and 2011 Judicial intervening in both countries- between 2008 and 2011 D.K.Basu v. Miranda v. State of West Bengal. Arizona- emphasize the judiciary role of influencing custodial jurisprudence. Nevertheless, without corresponding administrative and cultural change, judicial utterances are usually reactive and not proactive. Proper management, hence, requires not only a court system and commissions but also institutional change through specific training, greater transparency, and community involvement. At the global scale, the UN Convention Against Torture (CAT), and other human-rights tools, define universal authorities of prevention, punishment and re-restitution. The United States, being a ratifying state, has direct legal obligations; the slow ratification of

¹⁰⁵ Joanna C. Schwartz, "How Qualified Immunity Fails," Yale Law Journal, Vol. 127, 2018, pp. 2–45.

¹⁰⁶ Bureau of Police Research and Development (BPR&D), Model Police Manual, 2021.

¹⁰⁷ United Nations Office on Drugs and Crime (UNODC), Handbook on Police Accountability, Oversight and Integrity, Vienna, 2011.

¹⁰⁸ National Human Rights Commission of India, Annual Report 2022–23.

India, by comparison, is the symptom of the gap between the constitutional principles and international demands. However, the two countries are still subject to the traditional international law and principles of state responsibility, which affirm that the state has to be held responsible to all instances of custodial abuse committed in its name.

Finally, both approaches show a common paradox of strong legal guarantees and weak enforcement as seen in the comparative analysis. The gap between law and practice requires accountability of the institution, precision in laws and moral dedication. Custody should no longer be a place of coercion but it should be a realm of constitutional conscience. Whether a democracy can punish the guilty or not is not the actual measure of a democracy, the measure is whether it can protect the helpless even in the confines of the state custody.

BIBLIOGRAPHY

Primary Sources

Constitutional and Statutory Provisions

- Constitution of India, 1950.
- Constitution of the United States of America, 1787 (as amended).
- Bharatiya Nyaya Sanhita, 2023 (BNS).
- Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS).
- Bharatiya Sakshya Adhinyam, 2023 (BSA).
- Indian Penal Code, 1860 (repealed).
- Code of Criminal Procedure, 1973 (repealed).
- Indian Evidence Act, 1872 (repealed).
- Protection of Human Rights Act, 1993.
- United States Civil Rights Act, 1871, 42 U.S.C. § 1983.
- Violent Crime Control and Law Enforcement Act, 1994.
- Eighth Amendment to the U.S. Constitution – Cruel and Unusual Punishments Clause.
- Fourth Amendment to the U.S. Constitution – Protection against Unreasonable Searches and Seizures.
- Fifth Amendment to the U.S. Constitution – Privilege against Self-Incrimination.
- Fourteenth Amendment to the U.S. Constitution – Due Process and Equal Protection Clauses.

Case laws

India

- D.K. Basu v. State of West Bengal, (1997) 1 SCC 416.
- Sunil Batra v. Delhi Administration, (1978) 4 SCC 494.
- Joginder Kumar v. State of U.P., (1994) 4 SCC 260.
- Nilabati Behera v. State of Orissa, (1993) 2 SCC 746.
- Mehmood Nayyar Azam v. State of Chhattisgarh, (2012) 8 SCC 1.

- Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.
- Re: Inhuman Conditions in 1382 Prisons, (2016) 3 SCC 700.

United States

- Miranda v. Arizona, 384 U.S. 436 (1966).
- Tennessee v. Garner, 471 U.S. 1 (1985).
- Estelle v. Gamble, 429 U.S. 97 (1976).
- Graham v. Connor, 490 U.S. 386 (1989).
- Monroe v. Pape, 365 U.S. 167 (1961).
- City of Canton v. Harris, 489 U.S. 378 (1989).
- Hope v. Pelzer, 536 U.S. 730 (2002).

Secondary sources

Books

- Basu, D.D., Commentary on the Constitution of India (LexisNexis, 9th ed., 2020).
- Singh, M.P., V.N. Shukla's Constitution of India (Eastern Book Company, 14th ed., 2022).
- Pandey, J.N., Constitutional Law of India (Central Law Agency, 2021).
- Seervai, H.M., Constitutional Law of India (Universal Law Publishing, 2019).
- David Cole & Jules Lobel, Less Safe, Less Free: Why America is Losing the War on Terror (New Press, 2007).
- Brandon L. Garrett, End of Its Rope: How Killing the Death Penalty Can Revive Criminal Justice (Harvard University Press, 2017).
- Michael Avery, Police Misconduct: Law and Litigation (Thomson Reuters, 2021).
- Upendra Baxi, The Indian Supreme Court and Politics (Eastern Book Co., 2019).

Articles and Journals

- Radhika Coomaraswamy, "Custodial Violence, Torture and the Role of the Judiciary" (1999) 41 Journal of the Indian Law Institute 187.
- Rajeev Dhavan, "The Supreme Court and Human Rights Jurisprudence in India" (1996) 38 JILI 300.
- Lauren McCarthy, "Accountability and Oversight in Policing: Comparative Perspectives" (2020) Harvard Law Review Forum 133(4) 115.
- Richard H. Fallon, "Constitutional Constraints on Policing in the United States" (2018) 131 Harvard Law Review 1929.
- Pratiksha Baxi, "Custodial Torture: Judicial Responses in India" (2015) Economic and Political Weekly 50(12) 49.
- Rachel Harmon, "Legal Remedies for Police Misconduct" (2016) New York University Law Review 91(4) 835.
- Dr. Aparna Chandra, "Police Reform and Accountability in India: Institutional Challenges" (2021) NLU Delhi Policy Review 5(2) 87.