

Custodial Deaths and Compensation: Building a Constitutional Framework for Accountability in the Surveillance Era

Rajesh M¹., Dr. Sunil Dutt Chaturvedi², Dr. Karan Singh Yadav³

¹Research Scholar, School of Law, Singhania University, Jhunjhunu, Rajasthan

²Associate Professor, School of Law, Singhania University, Jhunjhunu, Rajasthan

³Principal, Set Raj Narayan Gupta Women Law College, Behror, Rajasthan

Abstract—Deaths in custody represent one of the most serious breaches of fundamental rights under Article 21 of the Indian Constitution. Although the Supreme Court has recognized compensation as a constitutional duty in cases such as *Nilabati Behera v. State of Orissa* (1993 [11]) and *D.K. Basu v. State of West Bengal* (1997 [5]), India still lacks a uniform statutory framework to ensure timely and adequate relief. This paper examines custodial violence in the broader context of surveillance and wrongful detention, arguing that compensation must be automatic and victim-centred. Comparative insights from the European Court of Human Rights (*McCann v. United Kingdom*, 1995 [10]; *Big Brother Watch v. United Kingdom*, 2021 [16]), U.S. civil rights litigation under §1983 (*Carpenter v. United States*, 2018 [6]), and South African jurisprudence on constitutional damages [15] highlight how liability can be embedded into governance. The study proposes a four-pillar model—proportionality, judicial oversight, transparency, and rehabilitation—to strengthen custodial justice and align India with global human rights standards.

Index Terms—Custodial Deaths; Victim Compensation; Constitutional Torts; Surveillance; Human Rights

I. INTRODUCTION

Custodial violence continues to challenge India's constitutional promise of liberty and dignity. Despite protections under Articles 20, 21, and 22, instances of torture, arbitrary detention, and custodial deaths remain widespread. Judicial recognition of compensation as a constitutional remedy has been significant, yet the absence of codified standards leaves victims dependent on judicial discretion

(*Nilabati Behera v. State of Orissa*, 1993 [11]; *D.K. Basu v. State of West Bengal*, 1997 [5]).

The rise of surveillance technologies has intensified these risks. Predictive policing and algorithmic profiling often target marginalized groups, leading to wrongful arrests and custodial harm (Privacy International, 2019 [13]; Amnesty International, 2021 [4]). This paper argues that custodial deaths must be treated as constitutional torts, requiring enforceable compensation schemes that extend beyond financial relief to include rehabilitation and systemic reform.

II. COMPENSATION JURISPRUDENCE IN INDIA

Indian courts have gradually recognized compensation as a constitutional obligation. In *Rudal Sah v. State of Bihar* (1983), the Supreme Court awarded damages for unlawful detention, laying the foundation for public law remedies. *Nilabati Behera* (1993 [11]) affirmed that compensation was a constitutional duty, not charity. *D.K. Basu* (1997 [5]) introduced guidelines to prevent custodial torture, embedding compensation within constitutional accountability.

Despite these advances, compensation remains inconsistent. Awards vary widely, often depending on judicial discretion rather than statutory entitlements. Families of victims face delays, bureaucratic hurdles, and inadequate relief (NHRC, 2020 [12]; NCRB, 2023 [1]).

III. COMPARATIVE PERSPECTIVES

- European Court of Human Rights (ECHR): Custodial deaths are treated as violations of Articles 2 and 3, requiring compensation and independent investigations (*McCann v. United Kingdom*, 1995 [10]; *Big Brother Watch v. United Kingdom*, 2021 [16]) [7].
- United States: §1983 actions allow individuals to sue state officials for custodial harm, embedding accountability into statutory law (*Carpenter v. United States*, 2018 [6]) [14].
- South Africa: Constitutional damages jurisprudence emphasizes victim rehabilitation, systemic reform, and dignity restoration (Zuboff, 2019 [15]).

These models demonstrate the importance of codification, uniformity, and integration of compensation with accountability.

IV. TOWARDS A CODIFIED COMPENSATION FRAMEWORK

India must move from discretionary relief to a statutory compensation regime. Essential features should include:

1. Uniform Minimum Compensation: Statutory entitlements based on severity of violation, ensuring consistency.
2. Automatic Initiation: Compensation triggered upon inquiry findings, without requiring litigation.
3. Parallel Criminal Liability: Compensation must not substitute prosecution; both remedies should operate concurrently.
4. Independent Oversight Authority: A Custodial Justice Commission to monitor disbursement and accountability.
5. Victim-Centric Remedies: Compensation should extend beyond monetary relief to include psychological counselling, livelihood support, and education for dependents (Amnesty International, 2021 [4]).

V. SURVEILLANCE AND CUSTODIAL HARM

Unchecked surveillance exacerbates custodial violence. Predictive policing and algorithmic

profiling create pathways to wrongful detention, disproportionately affecting vulnerable populations (Privacy International, 2019 [13]). Courts must recognize surveillance misuse as a constitutional tort, mandating compensation for individuals subjected to custodial harm arising from algorithmic bias.

Embedding judicial oversight and transparency mechanisms into surveillance regimes is essential to prevent custodial abuse. Independent audits, parliamentary reporting, and judicial authorization of surveillance warrants can serve as structural safeguards (European Parliament LIBE Committee, 2018 [7]).

VI. CONCLUSION

Custodial deaths are not isolated incidents but systemic failures of governance. Judicial recognition of compensation has been vital, yet its discretionary nature undermines substantive justice. Comparative jurisprudence demonstrates that embedding liability into governance strengthens accountability. India must adopt a codified compensation framework—anchored in proportionality, judicial oversight, transparency, and victim rehabilitation—to transform compensation from symbolic relief into enforceable constitutional protection. Only then can custodial justice harmonize with democratic legitimacy and global human rights standards.

REFERENCES

- [1] National Crime Records Bureau. (2023). *Crime in India: Statistics on custodial deaths*. Government of India.
- [2] Barak, A. (2012). *Proportionality: Constitutional rights and their limitations*. Cambridge University Press.
- [3] De Hert, P. (2015). Balancing security and liberty in digital surveillance. *European Journal of Law and Technology*, 6(1), 1–20.
- [4] Amnesty International. (2021). *Surveillance and human rights report*. Amnesty International Publications.
- [5] D.K. Basu v. State of West Bengal, (1997) 1 SCC 416.
- [6] Carpenter v. United States, 138 S. Ct. 2206 (2018).

- [7] European Parliament LIBE Committee. (2018). *Report on mass surveillance and fundamental rights*. Brussels: European Parliament.
- [8] K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.
- [9] Maneka Gandhi v. Union of India, (1978) 1 SCC 248.
- [10] McCann v. United Kingdom, 21 EHRR 97 (1995).
- [11] Nilabati Behera v. State of Orissa, (1993) 2 SCC 746.
- [12] NHRC. (2020). *Annual report on human rights violations in custody*. National Human Rights Commission of India.
- [13] Privacy International. (2019). *Global surveillance and predictive policing report*. Privacy International.
- [14] Richards, N. M. (2013). The dangers of surveillance. *Harvard Law Review*, 126(7), 1934–1965.
- [15] Zuboff, S. (2019). *The age of surveillance capitalism: The fight for a human future at the new frontier of power*. PublicAffairs.
- [16] Big Brother Watch v. United Kingdom, App. No. 58170/13 (ECHR, 2021).
- [17] Shreya Singhal v. Union of India, (2015) 5 SCC 1.
- [18] Anuradha Bhasin v. Union of India, (2020) 3 SCC 637.