BNSS SECTION 196 AND NHRC GUIDELINES ON CUSTODIAL DEATHS: CAN INDIA MATCH UK ARTICLE 2 INQUEST STANDARDS AND US CIVIL RIGHTS REMEDIES?

Vaibhav Singh Payal, Law College Dehradun, Uttaranchal University

Ms. Purnima Tyagi, Law College Dehradun, Uttaranchal University

ABSTRACT

The custodial deaths essentially reflect on the most alarming contradiction at the core of democracy; the power of the state to imprison a citizen includes the responsibility of the state to protect the life of that citizen. Legally, the challenge in India is not the non-existence of principles, but the gap between the current procedures and systems, and an investigative model that is capable of achieving objective finding, and public answerability and restoration. This manuscript aims a doctrinal and comparative framework to discover if the Section 196 of the Bharatiya Nagarik Suraksha Sanhita, 2023, in addition to the operational NHRC guidelines of custodial deaths, can attempt to meet the benchmarks of the Article 2 inquests in the UK and the US civil rights remedial system. It illustrates that India has, and builds upon, vital constitutional/ statutory/ administrative architecture, in particular doctrinal judicial relief, the constitution of the magistrate inquiry, family and forensic, and the duty to report. Of course, these architecture elements are ameliorated by poor institutional autonomy, inconsistent evidence integrity, limited active citizenry engagement, and the lack of a dedicated civil remedy for judicial crime. Ultimately, the comparison conveys that the UK system presents an investigative model of relative independence, scope, and engagement of the bereaved, whereas the US system shows how civil and tort law combined with public liability and systemic and structural interventions are substitutes for criminal law. The manuscript finishes on the note that India has the potential in moving closer to each of these models, albeit it can only be by rights enforcing codified investigative standards, institutional accountability, and a more definitive remedial framework.

Keywords: custodial deaths; Bharatiya Nagarik Suraksha Sanhita; National Human Rights Commission; Article 2 inquests; civil rights remedies.

Introduction

We cannot dismiss deaths during detainment as mere administrative blunders. These events pose a question regarding the constitutional validity and justification of the deployment of State power. The State, for a given period, is in complete monopoly over the body, movement, and safety of the individual, and this monopoly is almost absolute. This question, in the given context, has become more pronounced in India against the backdrop of the movement from the Code of Criminal Procedure to the Bharatiya Nagarik Suraksha Sanhita[1], the continued functioning of the framework on custodial deaths by the National Human Rights Commission, and the resettling of the Judiciary over the practices, conditions of detention, and the opacity of the evidence surrounding deaths that occur in detention. The matter is, therefore, constitutional, procedural, and institutional, and most fundamentally, moral.

The question this study seeks to answer is, does India's current framework, as it stands, provide for the Country to build a strong investigation and remedy framework that meets higher comparative standards. Almost all deaths that occur in police detention that include incidents of rape or disappearances warrant a judicial inquiry as laid down by Section 196 of the Bharatiya Nagarik Suraksha Sanhita, 2023[2]. The question of justice in the broadest sense remains for a justice versus remedy framework (i.e., a balance between the concepts of inquiry, justice, and the fulfillment of the right to participate in the inquiry). Procedural reform without the public provision, the independence nourished by the evidence of accountability, and the right to participate remains, therefore, an inverted periodical cycle.

This Article employs a doctrinal and comparative framework to achieve its goal. It looks first at Indian constitutional law, Section 196, and the guidelines set by the National Human Rights Commission (NHRC) on the reporting, enquiry, preservation of evidence, and post-mortem. This framework is then analysed in conjunction with Article 2 of the European Convention on Human Rights[3], the practice of inquests in the United Kingdom, and the practice of civil rights litigation in the United States[4]. The main argument is that India is, at best, able to approach those standards, but not able to achieve them, lacking greater independence, procedural

1 R V Kelkar, *Lectures on Criminal Procedure: Based on Bharatiya Nagarik Suraksha Sanhita, 2023* 82 (Eastern Book Company, Lucknow, 7th edn., 2025).
2 The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 196.
3 David Harris, Michael O'Boyle, et.al., *Harris, O'Boyle and Warbrick: Law of the European Convention on Human Rights* 219 (Oxford University Press, Oxford, 5th edn., 2023).
4 Sheldon H Nahmod, Civil Rights and Civil Liberties Litigation: The Law of Section 1983 117 (Thomson Reuters, Eagan, 2024).

visibility, and remedial architecture. Comparative borrowing should be selective (that is, dealing with one or more elements only) and should have discipline and realism (that is, should be able to be implemented) in terms of the institutions concerned.

Constitutional and Statutory Foundations of Custodial Death Accountability in India

India's legal framework relating to death in custody is multilayered, as opposed to formalistic. To a certain extent, the constitutional doctrine, the Bharatiya Nagarik Suraksha Sanhita (Indian Citizen's Safety Code), and the NHRC's regulatory instructions do create a framework that is likely to enable accountability. However, the crucial question is whether that framework, in reality, ensures the principle of investigation.[5]

Constitutional Protection and Public Law Compensation

With the constitution, the state is expected to be ever-cognizant of the context of detention. Under Article 21, the Indian constitution guarantees the right to life and the protection of dignity and bodily integrity and fair procedural integrity. Article 22[6] provides protection against the arbitrary use of detention and arrest. Changes brought about by *Nilabati Behera v. State of Orissa*[7] in the legal landscape of public interest litigation brought about the case's recognition of the use of public interest law to justify the payment of public law damages in the context of custodian deaths. *Nilabati Behera* marks the beginning of life in custody being placed firmly within the bounds of a central constitutional framework.[8]

The effects of *D. K. Basu v. State of West Bengal*[9], whereby the constitutional framework is extended to the guarantees of the right to life in custody and the protection of dignity and integrity of the person against extreme forms of discrimination, are of greater benefit to the victims of custodial death. These directives will continue to be relevant beyond the ambit of the Bharatiya Nagarik Suraksha Sanhita. Kelkar's framework of criminal law is of great significance in context, notion and design of procedural framework where inquest and inquiry are embedded and not post-mortem, isolated and ritual in nature of design.[10]

---

5 M P Jain, *Indian Constitutional Law* 120 (LexisNexis, Gurgaon, 9th edn., 2025).
6 The Constitution of India, arts. 21, 22.
7 (1993) 2 SCC 746.
8 *Supra* note 5 at 109.
9 (1997) 1 SCC 416.
10 *Supra* note 1 at 125.

Section 196 of the Bharatiya Nagarik Suraksha Sanhita

Section 196 of the Bharatiya Nagarik Suraksha Sanhita, 2023 is the law on custodial deaths, bringing in three innovations: 'mandatory trigger,' 'jurisdictional reference to the place of the incident,' and 'need of inquiry alongside the police investigation.' The Section is applicable in cases of a custodial death, disappearance, or custodial rape, and requires inquiries to be conducted as soon as possible, as well as the relatives being notified, as well as being allowed to be present, and the body being subject to a medical inspection.[11]

However, Section 196 still leaves a number of questions unresolved. It tells us who should inquire, and in what circumstances, but leaves out answers pertaining to the availability of the inquiry, disclosure of documents, timelines, and what should happen in response to improper or incomplete inquiries. For these reasons the Ministry of Home Affairs compilation of the National Human Rights Commission's selected custodial death directives remains relevant as they still retain the duty to report within 24 hours, and a connection to inquiry practice relating to the integrity of documents, post-mortem and methods that are in place to oversee from the Centre. Hence, the law is comprehensive, but remains half self-executing.[12]

National Human Rights Commission Guidelines and Evidentiary Discipline

The National Human Rights Commission's (NHRC) custodial death guidelines incorporate operational elements by mandating the reporting of custodial deaths, magisterial enquiries, inspection of the scene, outreach to witnesses, review of medical documentation, and the requirement of video documentation of post-mortems (PMs). These guidelines also increase the scope of custodial death by articulating the understanding that custodial deaths can occur due to neglect of medical care, deaths in transit, disorder in prisons, and institutional omissions in addition to custodial violence. In doctrinal terms, guidelines are helpful in translating abstract constitutional responsibilities into a chain of administrative acts that can be verified, which is a vital requirement for situations where the State is in custody of the place of death and the vital evidence.[13]

[11] *Supra* note 2.

[12] Ministry of Home Affairs, Government of India, "NHRC Selected Letters and Guidelines on Deaths in Custody" (April, 2019).

[13] National Human Rights Commission, "Review of Guidelines Regarding Conducting of Magisterial Enquiry in Cases of Death in Custody or in the Course of Police Action" (May, 2024).

However, the success of guidelines-based systems relies on the timely preservation of evidence. In that context, the Supreme Court in the case of *Paramvir Singh Saini v. Baljit Singh*[14], which mandated the installation of CCTV at police stations and other areas related to police investigation, is significant. So is the subsequent decision in *Tusharbhai Rajnikantbhai Shah v. Kamal Dayani*[15] which is illustrative of the fact that the installation of cameras in police stations should not be treated as a formality. Allegations that the camera was not functioning or not directed at all leads to the inability of a custodial death or torture investigation to disprove the official version. When the first source of evidence is lost, a legally justifiable investigation becomes substantively untenable.

The Implementation Record and the Limits of Compliance

The empirical record shows doctrinal adequacy cannot be judged by statutory language alone. Data from figures will show that from the 2016-2017 year to the 2021-2022 year, death of persons in police custody and death of persons in judicial custody show a very large gap. The police station and other forms of custody, as well as prisons, escort practices, and the various levels of care and medical services offered, as well as the structures of accountability that run Judgment of death in custody of judicial custody is of great importance and affect the total levels of overcrowding of correctional facilities.[16]

[14] (2021) 1 SCC 184.
[15] 2024 INSC 588.
[16] Ministry of Home Affairs, Government of India, "Lok Sabha Unstarred Question No. 3019 on Custodial Deaths" (Ministry of Home Affairs, March, 2022).

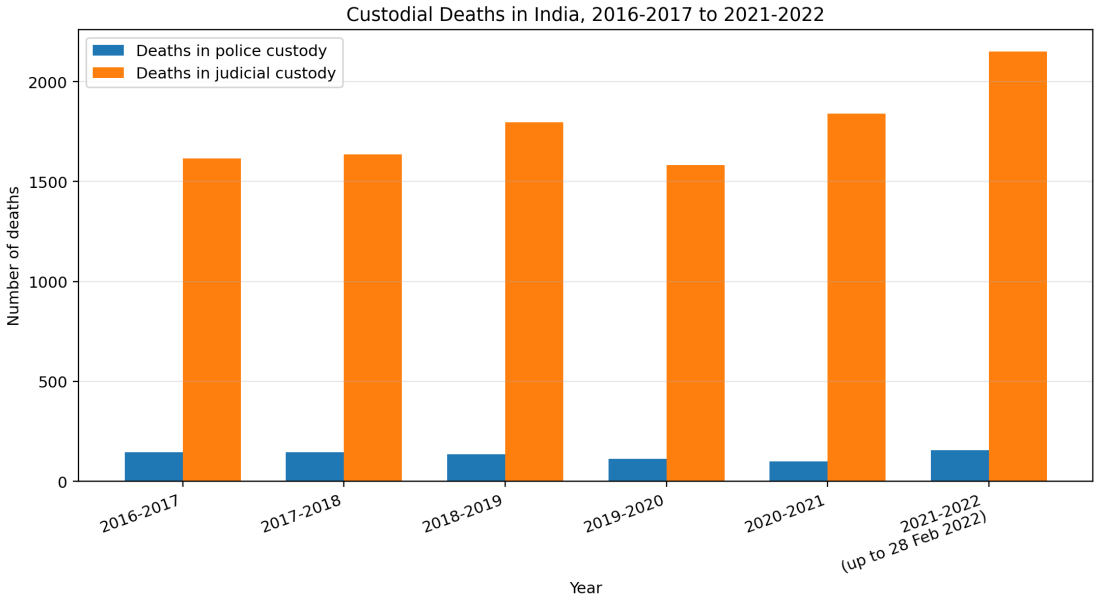

Figure 1. Custodial deaths in India, 2016-2017 to 2021-2022.[17]

Each year, deaths in judicial custody result in more deaths than in police custody, and the gap has been most pronounced over the years 2020-2021 and 2021-2022. There is a need to address the issue of custodial deaths and not just police lockups. This includes prisons, prison health care, and inter-agency accountability.[18]

Figure 2. places the focus on the National Human Rights Commission and the intake in the years 2023-2024. There was a staggering increase in new reports of judicial custody deaths as compared to police custody deaths[19]. This was further evidence supporting that the Commission's supervisory docket is more concerned with the prison estate as opposed to lock up deaths. This is an important fact because it challenges the assumption that custodial deaths are almost exclusively a police problem. It is more appropriate to refer to custodial deaths as a detention-governance problem that encompasses courts, prison agencies, health systems, and executive oversight.

[17] *Ibid.*
[18] National Crime Records Bureau, "Prison Statistics India 2022" (Ministry of Home Affairs, 2023).
[19] National Human Rights Commission, "Annual Report 2023-2024" (2025).

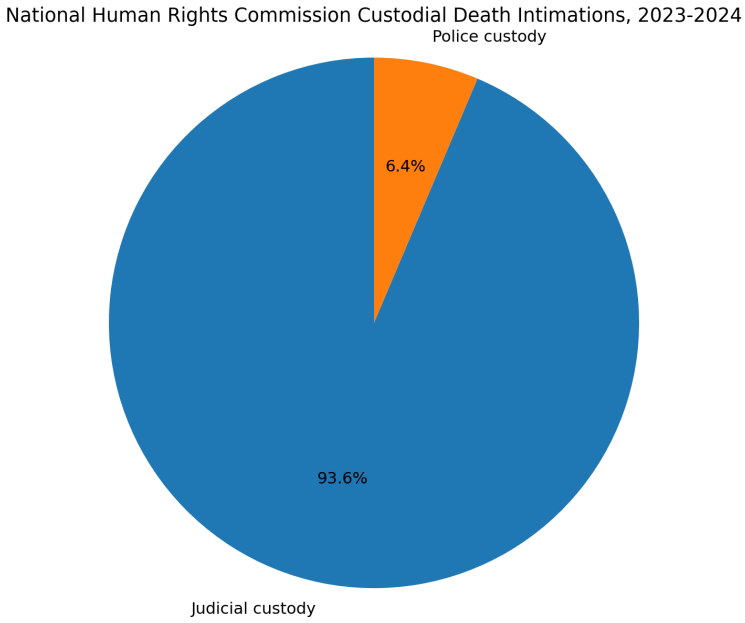

Figure 2. National Human Rights Commission custodial death intimations, 2023-2024.[20]

Of the custodial death reports received by the National Human Rights Commission for the year 2023-2024, the vast majority pertained to custodial deaths occurring in judicial custody. The distribution suggests that the failure of the police, management of the prisons, medical neglect of inmates, and inadequate monitoring deserve special attention.[21]

From the Commission's annual reports, there is a strong tendency to dispose the matters and a trend to recommend monetary relief. Such events, though, do suggest that the institution is not completely unresponsive to the challenges posed to it, but do not suggest intend critically adequacy of the investigation. Disposal is not the same as the pursuit of the truth, and monetary relief is not the same as realization of structural change. In the absence of frequent disclosure of richer, more comprehensive explanations for the disposal, the timeframe for collected disposal, post-compliance, and evidentiary procured depositions or the closure in the matter, the administrative operational throughput can, to a large extent, cover, camouflage, and, in the final analysis, fill the gap of accountability.[22]

This helps demonstrate how long stalled anti-torture discussions continue to be relevant. The Law Commission of India's Report No. 273 suggested a ban on torture with legislation. The

[20] *Ibid.*
[21] *Id.*.
[22] Michael Rowe, Policing the Police: Challenges of Democracy and Accountability 86 (Policy Press, Bristol, 2020).

report also claimed that appropriate investigations and fair and full compensation are required to meet international human rights law.[23] India's system combines compensation for damages with constitutional and procedural inquiries. It, however, lacks a consistent system for the definition of custodial torture, civil remedies, and the responsibility of an institution. The architecture that is created is protectionist in nature, but in practice lacks the design of a remedy.

There is an additional problem of implementation that concerns the fact that, often, the legal elaboration of custodial death remains police-centred, even where the available data is classified as prison-centred. Once a detainee is placed in judicial custody, the responsibility is distributed amongst prison officers, custodial staff, medical staff, etc. This frustrating system of shared responsibility makes it very difficult to assign a breach of duty to the failure to perform. To counter this, it is necessary to use the law to fuse police and prison functions. Otherwise, the principal transfer will be seen as an administrative system of safeguards, and a judicial responsibility will be shifted, thus, absolving it from responsibility.[24]

United Kingdom Article 2 Inquests as a Comparative Benchmark

The comparison with the United Kingdom is important because it speaks to the quality of the death investigation beyond the level of compensation. Article 2 of the European Convention on Human Rights[25] has provided a framework for investigation characterized by independence, scope, and allows for the level of public participation of the next of kin.

Procedural Duty and Minimum Standards

The guidance now positions the Article 2 inquest to be the normal mechanism for the State's duty to investigate where a death may trigger the State's responsibility under the European Convention on Human Rights. The guidance positions the obligation as being broader than a purely cause of death concerns and requires a death investigation that is effective and examines the context. The benefit of utilizing this model in comparative contexts is the insistence that, in terms of legal requirements, internal narrative is not enough, and that a public investigation

[23] 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).
[24] *Supra* note 18 at 239.
[25] European Convention on Human Rights, 1950, art. 2.

is a legally adequate structuring of the investigation.[26]

This method is closely related to the Strasbourg Doctrine. In *Jordan v. United Kingdom*[27], the European Court of Human Rights described independence, effectiveness, reasonable promptness, and public scrutiny, and participation of the next of kin to the extent necessary to protect their legitimate interests. The authors explain that the procedure for Article 2 is of the utmost significance since the right to life would be undermined if deaths resulting from State action or inaction were investigated through opaque or discretionary mechanisms. The real lesson from the comparisons would therefore be procedural credibility as opposed to just mere legality.[28]

Breadth of Inquiry and Bereaved Participation

The benchmark becomes even clearer in cases of detention. In *R. (Amin) v. Secretary of State for the Home Department*[29], the House of Lords explained that the prison death put in question the legal justification of State responsibility for the death. The insistence then, in that case, of probing in the deeper levels of context is relevant to India. The State, in many cases, cut the last act death from the situational omission, and in many cases the last act of death from the situations of the State, in many cases, resulted from the denial of situational medical, in many cases, resulted from State death/segregation, in many cases, resulted from State, in many cases, resulted from State, in many cases, resulted from death supervision, or in many cases, resulted from situational medical, or in many cases, resulted from the death of State/segregation. A very limited scope of an inquiry into the immediate cause of death would most likely be unacceptable from the perspective of modern accountability frameworks.

The same spreading desire is found in *R. (Middleton) v. West Somerset Coroner*[30] where inquest in surroundings of Article 2 accepted explanations (or excuses) for death by asking by what means and in what circumstances the deceased came to death, rather than confining the inquiry to a mechanistically controlled, brief answer. Coronial advocacy for death investigation is a principled disruption of the concept of practice addressing the public institutional aspect,

[26] Chapter 20: The Article 2 Inquest, *available at:* https://www.judiciary.uk/guidance-and-resources/chapter-20-the-Article-2-inquest/ (last visited on April 30, 2026).
[27] (2003) 37 EHRR 52.
[28] *Supra* note 3 at 208.
[29] [2003] UKHL 51, [2004] 1 AC 653.
[30] [2004] UKHL 10, [2004] 2 AC 182.

in which narrative classification, participation, and learning are as vital as participation. Indian magistrate-led inquiry, as F. (not final) posits, appears magnetically important, but lacks normative depth.[31]

Comparative Relevance for India

The UK civil law angle should not be idealized. It works within a particular coronial tradition, a particular statutory framework, and a particular civil law culture, which is largely determined by the statutorily embedded declarations of civil rights and the emerging case law of the European Convention. Nevertheless, the UK angle is still important, as it flags the essential requirements for a meaningful investigation into a death of a person which is the result of a civil law breach: independence of the investigation from the persons affected by the death, delimitation precision of the investigation, appropriate level of disclosure, and participation of the immediate relatives which is, in fact, a case of civil law participation. These are the minimum foundations from which F. (not final) posits, may help in a country like India.[32]

United States Civil Rights Remedies and Their Comparative Value

The United States offers a different perspective. Rather than focusing on the death investigation procedure, the essence lies in the civil enforcement structure, where constitutional violations transform into actionable claims, institutional liability, and, in some instances, interventions on the basis of patterns or practices against police.[33]

Section 1983 and Private Enforcement

The principal law in question is 42 U.S.C. § 1983[34], which allows civil suits against those acting under state law to violate someone's constitutional or federal rights. This creates a remedy for custodial abuse that does not rely on the state to indict its own. Nahmod's primary text highlights the significance of this law. Section 1983 turned constitutional rights for individuals into something that could be actively pursued in the courts, beyond the defence of the right, to seek claims including remedies, and stoppages, and where necessary, a case

[31] Rebecca Scott Bray and Greg Martin, "Introduction: Frontiers in Coronial Justice: Ushering in a New Era of Coronial Research", 12 *International Journal of Law in Context* 103 (2016).
[32] *Supra* note 3 at 231.
[33] *Supra* note 4 at 299.
[34] 42 U.S.C. § 1983.

settlement at institutional levels.[35] This sort of imaginative redressive theory remains almost entirely lacking in the law on custodial death in India.

Even settlements, in contrast to judgments, ensure some measure of accountability through civil lawsuits. Torrible's study on police civil lawsuits in England and Wales more generally illustrates that private law and civil recovery mechanisms may shift institutional incentives, generate disclosure, and/or provide new motivation to systemically document and reform records. With respect to India, custodial death claims shouldn't necessarily be entirely privatized, but compensation should be integrated into a systematic approach to create a record, document agency records, and make systemic failures of officials visible.[36] To that end, a system that only offers compensation on an ex gratia or discretionary basis is inadequate and ineffective.

Institutional Liability and Structural Reform

The more the United States system focuses on the structural dimension of organisations, the more relevance and significance it achieves. Organisational faults offer a more compelling reason for custodial death claims than do individual misconduct. In *Monell v. Department of Social Services of the City of New York*[37], the United States Supreme Court held that it is possible to sue local governments under Section 1983 for a constitutional violation as a result of an official policy or custom. This principle becomes more compelling and/or relevant in the context of repeated custodial death claims as opposed to singular or isolated claims. The administrative failures as well as the custodial violence and abuse of authority as an endpoint are the result of systemic structural design. A system of remedy that does not reflect this fact will grossly underestimate the true/marked extent of the injury.

City of Canton, *Ohio v. Harris*[38] determined, in principle, that deliberate indifference when it comes to training can earned of a municipality's liability. At the level of the federal courts, 34 U.S.C. § 12601[39], authorizes civil action against a governmental authority that has enacted a pattern or practice of unconstitutional policing. These tools are important, not because success

[35] *Supra* note 4 at 166.
[36] Clare Torrible, "Policing, Citizenship and the Civil Courts: How Increased Settlement of Civil Claims Has Impacted Police Accountability", 43 *Legal Studies* 603 (2023).
[37] 436 *U.S.* 658 (1978).
[38] 489 *U.S.* 378 (1989).
[39] 34 U.S.C. § 12601.

in every case is guaranteed, but because they link individual injuries to systemic change. Indian law, at the moment, does not have a statutory equivalent that can force the public administration to account for repetition of patterns of custodial deaths.

Limits of the United States Model

However, the United States system is not an unambiguous utopia either. In *Pearson v. Callahan*[40], the Supreme Court kept the option of walking back an even more expansive qualified immunity doctrine – a doctrine that provides what is, in practice, a bar to recovery, unless a right is violated that is plainly established. Garrett and Slobogin point out that United States police accountability is shaped further by fragmented constitutional provisions, local variations, and the intense relationship between the excessive use of force doctrine and control of the system at the periphery. This model, even though it is not perfect, shows the potential that custodial violence can be tackled using civil rights provides and the criminal justice system.[41]

Therefore, comparisons to the United States must be employed with restraint. It does not provide India with a solution to problems of judicial delay, weak evidence, or overcrowded prisons. Instead, it provides a variety of options for remedies, such as statutory civil action, organisational liability, fee-supported rights litigation, and pattern-based intervention. Policing and accountability in the U.S. through Dodd's analysis suggests that the democratic oversight of coercive agency cannot be achieved solely by condemnation in the aftermath of crisis, but rather, the presence of structures is needed to ensure that abuses, however frequent, can be systematized and made subject to law. India is still yet to make that transition.[42]

Comparative Assessment and Reform Options

The question is not whether India can reproduce foreign institutions word for word. It is whether credible fact-finding, family participation, public accountability, effective compensation, and structural correction can be integrated within Indian law when custodial

[40] 555 *U.S.* 223 (2009).

[41] Brandon Garrett and Christopher Slobogin, "The Law on Police Use of Force in the United States", 21 *German Law Journal* 1526 (2020).

[42] Lynda G Dodd, "The Rights Revolution in the Age of Obama and Ferguson: Policing, the Rule of Law, and the Elusive Quest for Accountability", 13 *Perspectives on Politics* 657 (2015).

death is a functional part of design and not an instance of isolated wrongdoing.[43]

Existing Points of Convergence

There are a number of existing crossovers with India and the comparators. Compensation in public law for serious breaches of rights in custody is permitted by the Constitution[44], the Bharatiya Nagarik Suraksha Sanhita, 2023, Section 196[45] mandates an inquiry into death or disappearance in custody, and the National Human Rights Commission has somewhat elaborated a post mortem and documentation protocol. There is definitely less in Indian law, and Indian law has very clearly accepted custodial death and the corrective action that must be taken, at least by the police. The problem is not denial, but rather the lack of institutionalization. The form is there but too much is dependent on the administrator and too much is variable.

Big differences emerge when comparing our legal system with that of the United Kingdom. When considering the United Kingdom courts' interpretation of Article 2 and the right to the bereaved family's participation and the right to be independent and the right to Examination of Contextual Circumstances, as matters of legality, rather than procedural as luxuries. Wicks' most recent work related to the right to life, is particularly relevant. Article 2 has come to mean the establishment of the right of public claim in relationships of State responsibility where death has occurred.[46] Although India has taken a step in the same direction, family presence within the linings of Section 196, is far less than family participation in a truly disclosure based public inquiry.

Persistent Points of Divergence

The most significant difference when comparing our legal system with that of the United States is in the design of remedies. While Indian courts and tribunals do in fact award damages, the right to obtain damages is more a matter of judicial grace, and less a matter of the legally enforceable right, and is more of a legally weak cause. There is no comprehensive legislation creating a general civil right of action whereby the family of a victim of State detention can sue and claim compensation for a violation of Constitution, no equivalent doctrinal

---

43 *Supra* note 22 at 145.
44 The Constitution of India, art. 21.
45 *Supra* note 2.
46 Elizabeth Wicks, "The Role of the Right to Life in Respect of Deaths Caused by Negligence in the Healthcare Context", 32 *Medical Law Review* 81 (2024).

jurisprudence of municipal custom, and no action or process or practice remedy that is specifically directed to the endemic and systemic custodial torture. In order to understand how far we have come; it is to Rowe and modern Police Accountability we shall now turn. Rowe emphasises that in a democracy, control is not faith in one mechanism or one control, but a multiplicity of the same.[47]

A reform agenda should balance two extremes. The first is believing new procedural statutes address every shortcoming. The second is the fatalistic belief that custodial death cannot address structural inadequacies. Conaghan's work on the accountability of the State's control on the information barriers.[48] Hence, it matters what the designs of the procedural and accountability laws are. In the context of custodial deaths, procedural law is equal in the contextual hierarchy of substantive law.

A Principled Reform Agenda

The most rational choice for India is to take one small step and then consolidate the gains. The inquiries under Section 196 of the Bharatiya Nagarik Suraksha Sanhita, 2023 should include a rule of compelled disclosure, routine timelines, and publication of the findings whereby the digitally stored medical and video records would automatically get transferred to a repository of the laws and would remain unalterable to create a legal framework for compensation commensurate to the culpability and the institutional failure. These would not turn the inquiries of a magistrate into a full-scale British inquiry system, nor would they turn it into a full-scale Section 1983 of the American system. However, they would bring the Indian law closer to the standards of those comparative legal systems.[49]

Conclusion

The comparison shows India is not coming from zero. Their Constitution has a remedy. Their law has a duty to inquire. Their policy has a Guideline. But when it comes to foreign standards, it is not simply a matter of how much more rhetoric you add, but how much more you can substantially redesign investigative acts, inclusive participatory mechanisms, and effective

[47] *Supra* note 22 at 75.
[48] Joanne Conaghan, "Investigating Rape: Human Rights and Police Accountability", 37 *Legal Studies* 54 (2017).
[49] *Supra* note 23 at 104.

redress.[50]

India can only meet the United Kingdom's Article 2 obligation if the inquiry into custodial deaths becomes more independent, wider, and more comprehensible to the families of the deceased. While Section 196 of the Bharatiya Nagarik Suraksha Sanhita[51] is a substantive provision, as it recognizes disappearance, custodial rape and death as issues that require judicially controlled scrutiny, there is promise, but that promise is lost when the evidence is not properly maintained, the conclusions are not evaluated and disclosed, and the relatives leap from the process, rather than actively participating in the process and challenging the party's claims.

India can avoid adopting U.S. doctrinal complexities while still learning from the U.S. system. For example, the U.S. system illustrates that criminal law cannot bear the full weight of accountability. Any legal system that takes custodial deaths seriously should link investigation to compensation and institutional reform.[52] Indian law is incomplete on this measure. It is more readily reactive to legal protection after deaths than it is pre-emptive to legal protection in order to prevent such deaths from happening repeatedly. It is therefore justifiable to argue that India is able to get close to the best practices in comparison, but only within the limits of converting the relatively protective legal statutes in India to more enforceable, participatory, and transparent institutional accountability and collective accountability.

Suggestions

The following are suggested measures to enhance the focus on investigation, enhance the reliability of evidence, and improve public accountability as well as the coherence and satisfaction of remedies in cases of deaths and disappearance of persons in custody.

1. Create an independent custodial death investigation unit: Every custodial death and disappearance must be automatically assigned to a distinct unit, functionally and occupationally segregated from the police and prison system in relation to the custodial event. Statutorily, it should have a guarantee of autonomy from the system, forensic independence, and mandatory reporting to the jurisdictional court.

[50] *Supra* note 5 at 293.
[51] *Supra* note 2.
[52] *Supra* note 4 at 201.

2. Codify disclosure rights for families: next of kin should have a bounded right of access of the autopsy report, video footage, and inquest documentation and medicine records, and status updates of the investigation. Unjustifiable security pretences should be met with written justifications and expeditious court review of the redactions.

3. Standardise Section 196 inquiry procedure: Bharatiya Nagarik Suraksha Sanhita should standardize timelines, phases of hearing, witness notification, stages of digital evidence, instruction for the final report, and handling of digital evidence. This would reduce the variability in the district and state inquiry quality.

4. Mandate secure digital evidence preservation: Preservation of CCTV, station diaries, lock-up registers, and escort logs, and preservation of hospital referral records should become standard protocol that must be safeguarded in the event of custodial death, a disappearance, or allegations of serious mistreatment. Unexplained gaps and unexplained preservation of gaps and deletion should be given adverse evidentiary consequences.

5. Link compensation to structured findings: Compensation maybe dependent on public law discretion after case by case assessment following constitutional litigation, but this should never be the case. Delayed reporting, unlawful force, medical neglect, evidence suppression, and non-compliance should all be incorporated into a statutory framework for compensation.

6. Introduce institutional liability for recurring violations: When there are repeated deaths in custody, the same institutional failures should allow the law to permit a finding against the institution, rather than, or in addition to, the individual members. Focusing on the institutional side of systemic failures should help to facilitate the legal accountability for systemic failures.

7. Publish anonymised inquiry outcomes: Reasoned inquiry reports, anonymized where required, should be in a public searchable database. Publishing the reports will increase uniformity, allow academic review, and help reduce the chance of similar errors going administratively overlooked.

8. Strengthen prison medical accountability: Since almost all custodian deaths take place

in remand custody, prison health systems should be seen as a main site of accountability, not as a side issue or a peripheral concern. There should be no gaps in diagnosis, consultation, posed medication, supervision, and emergency response. Mandatory mortality review panels should be set up to review the circumstances of every death in custody.

9. Create a pattern-based civil enforcement mechanism: A law should allow a proper agency to initiate a civil lawsuit in case a specific pattern or practice of custodial abuse, cover-up or medically negligent custody takes place. Structural reforms should be complemented with demands for training, monitoring, and revision of protocols together with regular compliance reviews.

10. Integrate judicial training and monitoring: Judges leading custody-death investigations must obtain consistent funding of training in forensic appreciation, digital evidence, trauma-informed family engagement, and report writing. High Courts should ensure compliance by conducting regular reviews of timelines, disclosure practices, and the quality of inquiry outcomes.

Bibliography

Books:

- David Harris, Michael O'Boyle, et.al., Harris, O'Boyle and Warbrick: Law of the European Convention on Human Rights 219 (Oxford University Press, Oxford, 5th edn., 2023).
- M P Jain, Indian Constitutional Law 120 (LexisNexis, Gurgaon, 9th edn., 2025).
- R V Kelkar, Lectures on Criminal Procedure: Based on Bharatiya Nagarik Suraksha Sanhita, 2023 143 (Eastern Book Company, Lucknow, 7th edn., 2025).

Statutes:

- The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act No. 46 of 2023)
- The Civil Rights Act of 1871 (17 Stat. 13)
- The Code of Criminal Procedure, 1973 (Act No. 2 of 1974)
- The Constitution of India, 1950
- The Coroners and Justice Act 2009 (c. 25)
- The European Convention on Human Rights, 1950
- The Human Rights Act 1998 (c. 42)
- The Prisons Act, 1894 (Act No. 9 of 1894)
- The Protection of Human Rights Act, 1993 (Act No. 10 of 1994)
- The Violent Crime Control and Law Enforcement Act of 1994 (Public Law No. 103-322)

Reports:

- 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).

- Ministry of Home Affairs, Government of India, "Lok Sabha Unstarred Question No. 3019 on Custodial Deaths" (Ministry of Home Affairs, March, 2022).
- Ministry of Home Affairs, Government of India, "NHRC Selected Letters and Guidelines on Deaths in Custody" (April, 2019).
- National Crime Records Bureau, "Prison Statistics India 2022" (Ministry of Home Affairs, 2023).
- National Crime Records Bureau, "Prison Statistics India 2023" (Ministry of Home Affairs, 2025).

Articles:

- Brandon Garrett and Christopher Slobogin, "The Law on Police Use of Force in the United States", 21 German Law Journal 1526 (2020).
- Clare Torrible, "Policing, Citizenship and the Civil Courts: How Increased Settlement of Civil Claims Has Impacted Police Accountability", 43 Legal Studies 603 (2023).
- Elizabeth Wicks, "The Role of the Right to Life in Respect of Deaths Caused by Negligence in the Healthcare Context", 32 Medical Law Review 81 (2024).
- Joanne Conaghan, "Investigating Rape: Human Rights and Police Accountability", 37 Legal Studies 54 (2017).
- Lynda G Dodd, "The Rights Revolution in the Age of Obama and Ferguson: Policing, the Rule of Law, and the Elusive Quest for Accountability", 13 Perspectives on Politics 657 (2015).
- National Human Rights Commission, "Review of Guidelines Regarding Conducting of Magisterial Enquiry in Cases of Death in Custody or in the Course of Police Action" (May, 2024).

- Rebecca Scott Bray and Greg Martin, "Introduction: Frontiers in Coronial Justice: Ushering in a New Era of Coronial Research", 12 International Journal of Law in Context 103 (2016).

Websites:

- https://www.judiciary.uk/guidance-and-resources/chapter-20-the-Article-2-inquest/