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COMPENSATION JURISPRUDENCE IN CUSTODIAL DEATH CASES: THE CONSTITUTIONAL TORT DOCTRINE FROM NILABATI BEHERA TO THE PRESENT

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ABSTRACT

Custodial death—the death of a person occurring while under the compulsive control of state detention authority—constitutes one of the gravest violations of the fundamental right to life guaranteed under Article 21 of the Constitution of India. This research paper presents a systematic and critical analysis of the compensation jurisprudence developed by Indian courts in response to custodial deaths, with particular focus on the landmark decision in *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746. The paper examines how the Supreme Court of India has, through a progressive line of constitutional decisions commencing with *Rudul Sah v. State of Bihar* (1983) and culminating in the doctrinal crystallisation achieved in *Nilabati Behera*, constructed a public law remedy of monetary compensation that is doctrinally distinct from, and not dependent upon, the common law action for damages in tort. The central jurisprudential contributions of *Nilabati Behera*—the rejection of sovereign immunity as a defence in proceedings under Articles 32 and 226 of the Constitution, and the affirmation that compensation constitutes a constitutionally appropriate remedy for infringement of fundamental rights by state agents—are subjected to detailed doctrinal analysis. The paper further traces the post-*Nilabati* jurisprudence, identifying doctrinal achievements and persistent limitations including quantum inconsistency, the substitution of compensation for criminal accountability, and structural access barriers. A comparative analysis of analogous frameworks under the European Convention on Human Rights, the United Kingdom's Human Rights Act 1998, and the United States Section 1983 mechanism yields lessons for reform. The paper concludes with evidence-based legislative, institutional, and doctrinal recommendations directed at strengthening the compensation framework as an instrument of accountability, deterrence, and justice.

Keywords: Custodial Death; Constitutional Tort; Public Law Remedy; Nilabati Behera; Article 21; Sovereign Immunity; Writ Jurisdiction; State Liability; Quantum of Compensation; Comparative Human Rights Law.

I. INTRODUCTION

The right to life guaranteed by Article 21 of the Constitution of India⁴⁴⁶ is the most fundamental of constitutional guarantees. Yet the most severe

violations of that right are perpetrated not by private actors but by agents of the state itself, in the course of custodial detention. When a person dies in police custody—deprived of liberty,

⁴⁴⁶INDIA CONST. art. 21. The right to life and personal liberty under Article 21 has been the foundational guarantee from which custodial death compensation jurisprudence has been derived through judicial interpretation.

isolated from family and legal counsel, entirely dependent on custodians for protection—the constitutional order confronts a challenge of the deepest significance. The death of Suman Behera in September 1987, found dead on railway tracks after being taken into police custody in Orissa, was not an isolated tragedy: it was, regrettably, representative of a systemic pattern. What distinguished it was the judicial response it elicited—a Supreme Court judgment that would reshape the constitutional law of state liability in India and establish an enforceable public law remedy for custodial death.

The landmark decision in *Nilabati Behera v. State of Orissa*⁴⁴⁷ constitutes the jurisprudential apex of India's compensation jurisprudence in custodial cases. It built upon the foundational step of *Rudul Sah v. State of Bihar*⁴⁴⁸—the first instance of monetary compensation awarded through writ jurisdiction under Article 32—and provided the principled theoretical framework that prior decisions had hinted at but not systematically articulated. Understanding *Nilabati Behera* requires situating it within the broader trajectory of Indian constitutional interpretation: the expansion of Article 21 inaugurated in *Maneka Gandhi v. Union of India*, the progressive dismantling of the colonial doctrine of sovereign immunity, and the Supreme Court's creative exercise of its writ jurisdiction under Articles 32 and 226.

This paper is structured as follows. Part II examines the constitutional and doctrinal framework—the nature of the public law remedy, the doctrine of sovereign immunity and its rejection, and the writ jurisdiction as the foundation of the compensation power. Part III analyses the pre-*Nilabati* formative phase (1982–1992). Part IV provides a detailed doctrinal analysis of *Nilabati Behera* itself. Part V surveys the post-*Nilabati* jurisprudence. Part VI critically

examines the quantum of compensation. Part VII undertakes comparative analysis of international frameworks. Part VIII presents critical assessment and reform recommendations. Part IX concludes.

II. CONSTITUTIONAL FRAMEWORK AND THE PUBLIC LAW REMEDY

A. The Writ Jurisdiction as the Source of the Remedy

The writ jurisdiction of the Supreme Court under Article 32⁴⁴⁹ and of the High Courts under Article 226⁴⁵⁰ forms the procedural and constitutional foundation of the public law compensation remedy. Article 32 confers on the Supreme Court the power to issue directions, orders, or writs for the enforcement of fundamental rights, and is itself declared a fundamental right—the right to constitutional remedies. This jurisdictional architecture enables the Court to award compensation as an incident of its enforcement mandate: where monetary relief is the only effective remedy for a fundamental rights violation, the power to award it is necessarily implied in the power to enforce the right. A right without a remedy is no right at all; a court charged with the enforcement of rights must therefore have jurisdiction to award the remedies necessary for effective enforcement.

The doctrine of sovereign immunity—expressed in the colonial maxim that the King can do no wrong—had been applied in *Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh*⁴⁵¹ to immunise the state from civil liability for acts committed in the exercise of sovereign functions, including police arrests and detentions. This doctrine, inherited from the colonial legal order and manifestly incompatible with a republican constitutional framework premised on the rule of law, persisted as the primary doctrinal obstacle to meaningful state accountability in custodial

⁴⁴⁷*Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746 [hereinafter *Nilabati Behera*].

⁴⁴⁸*Rudul Sah v. State of Bihar*, (1983) 4 SCC 141 [hereinafter *Rudul Sah*].

⁴⁴⁹INDIA CONST. art. 32 (confers jurisdiction on the Supreme Court to issue directions or orders for enforcement of fundamental rights).

⁴⁵⁰INDIA CONST. art. 226 (confers parallel writ jurisdiction on High Courts for enforcement of fundamental rights and other legal rights).

⁴⁵¹*Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh*, AIR 1965 SC 1039. The Court upheld the sovereign immunity of the state in respect of acts committed in exercise of sovereign functions.

death cases for over two decades after independence.

B. Expansion of Article 21: The Constitutional Foundation

The transformation of Article 21 from a narrow procedural safeguard into a substantive guarantee of dignity and physical integrity was the necessary precondition for the compensation jurisprudence. In *Maneka Gandhi v. Union of India*⁴⁵², the Supreme Court overruled the narrow reading of *A.K. Gopalan* and held that the procedure restricting life and liberty must be fair, just, and reasonable. In *Francis Coralie Mullin v. Union Territory of Delhi*⁴⁵³, the Court extended the right to life to encompass protection from torture and inhuman treatment. These decisions created the constitutional space within which the right to compensation for custodial death could be located: if the right to life protects physical integrity against state-inflicted harm, then the state's failure to protect that integrity in custody must carry enforceable legal consequences.

III. THE PRE-NILABATI FORMATIVE PHASE (1982–1992)

A. Rudul Sah: The Constitutional Initiation

Rudul Sah v. State of Bihar represents the constitutional initiation of compensation jurisprudence in India—the first instance in which the Supreme Court awarded monetary compensation in the exercise of its writ jurisdiction as a remedy for the infringement of fundamental rights. *Rudul Sah* had been acquitted of murder by a competent court in 1968 but remained imprisoned in Muzaffarpur

Jail until 1982—fourteen years of unlawful detention for which no legal justification was ever offered by the State of Bihar. Chief Justice Chandrachud held, directly addressing the question of whether writ jurisdiction extended to monetary compensation, that refusing a remedial order would be failing in the Court's duty to protect rights guaranteed by the Constitution.⁴⁵⁴ The Court awarded Rs. 30,000 as interim compensation. *Rudul Sah* was foundational but left significant doctrinal ambiguities—particularly as to whether the writ remedy was independent of private law or merely a partial supplement to it.

B. Sebastian M. Hongray, Bhim Singh, and Saheli

The decisions of *Sebastian M. Hongray v. Union of India*⁴⁵⁵ (1984), *Bhim Singh v. State of Jammu and Kashmir*⁴⁵⁶ (1986), and *Saheli v. Commissioner of Police*⁴⁵⁷ (1990) progressively elaborated the compensation jurisprudence initiated in *Rudul Sah*. *Hongray* extended the compensation remedy to custodial disappearances and deaths, establishing the inferential approach to state liability—where direct evidence of cause of death has been suppressed, the court may infer custodial responsibility from the circumstances of detention and subsequent death.⁴⁵⁸ The Court awarded Rs. 1,00,000 to each of the two families whose relatives had disappeared in army custody in Nagaland, implicitly reflecting a deterrence objective beyond mere reparation.

Bhim Singh introduced the concept of exemplary damages into the constitutional tort lexicon. Justice Reddy held that courts can certainly compensate the petitioner as a salutary reminder that it does not pay to violate

⁴⁵²*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248. The Court overruled *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27, expanding Article 21 from a procedural safeguard into a substantive guarantee of life with dignity.

⁴⁵³*Francis Coralie Mullin v. Union Territory of Delhi*, (1981) 1 SCC 608 (holding that the right to life under Article 21 encompasses the right to live with human dignity, free from torture and inhuman treatment).

⁴⁵⁴*Rudul Sah*, (1983) 4 SCC 141, at 151 (Chandrachud, C.J.) (holding that refusing a remedial order would be acting in disregard of constitutional duties and failing to protect rights guaranteed by the Constitution).

⁴⁵⁵*Sebastian M. Hongray v. Union of India*, (1984) 3 SCC 82 [hereinafter *Hongray*] (extending the *Rudul Sah* compensation principle to custodial disappearances and deaths).

⁴⁵⁶*Bhim Singh v. State of Jammu and Kashmir*, (1986) 2 SCC 17 [hereinafter *Bhim Singh*] (introducing the concept of exemplary damages in constitutional tort proceedings).

⁴⁵⁷*Saheli, A Women's Resource Centre v. Commissioner of Police*, (1990) 1 SCC 422 [hereinafter *Saheli*] (extending compensation remedy to custodial death of a minor child and introducing partial recovery from responsible individual officers).

⁴⁵⁸*Hongray*, (1984) 3 SCC 82, at 89 (establishing that an inferential approach to state responsibility is permissible in custodial death cases where direct evidence has been suppressed or is unavailable).

fundamental rights,⁴⁵⁹ articulating the deterrence function of constitutional tort compensation in terms that would be repeatedly invoked in subsequent decisions. Saheli applied the compensation remedy to the custodial death of a nine-year-old child and introduced the principle that compensation may be partially recovered from the responsible individual officer⁴⁶⁰—a mechanism creating direct personal financial accountability alongside the systemic deterrence achieved through state liability.

Surveyed as a whole, the pre-*Nilabati* phase established several foundational principles: the writ jurisdiction includes the power to award monetary compensation for fundamental rights violations; the state is liable for custodial deaths even where the precise mechanism of death is not established; compensation serves both compensatory and deterrent functions; and the remedy is available to family members of deceased victims. What it had not established—and what *Nilabati Behera* would provide—was a clear and principled doctrinal basis for these results, an explicit rejection of the sovereign immunity defence, and a coherent framework for determining quantum.

IV. NILABATI BEHERA v. STATE OF ORISSA: A DOCTRINAL ANALYSIS

A. Factual Background and Legal Issues

Suman Behera, approximately twenty-two years of age, was taken into custody by officers of the Jagatsinghpur Police Station, Orissa, for investigative questioning on the night of 1 September 1987. The following morning, his body was found on the railway track near the police station, bearing extensive injuries consistent with a severe beating—multiple abrasions and contusions, a fractured rib, and skull injuries documented in the post-mortem report. No arrest record had been properly maintained, no contemporaneous medical examination

conducted, and the family had not been notified of the detention. Suman's mother, Nilabati Behera, a woman of limited education and no financial resources, filed a letter to the Supreme Court of India which was treated as a writ petition under Article 32. The State of Orissa denied that Suman had been in its custody. The National Human Rights Commission, in an advisory opinion sought by the Court, concluded that Suman's death had occurred in police custody.

The case raised four interconnected questions of fundamental constitutional importance: whether Article 32 jurisdiction extends to monetary compensation; whether sovereign immunity is available as a defence in constitutional proceedings; whether the public law remedy is distinct from private law tort damages; and what the nature and extent of the state's custodial duty is.

B. Justice Verma's Majority Judgment: The Key Holdings

Justice Verma's judgment of exceptional doctrinal clarity addressed each of these questions in turn. On the constitutional basis of the compensation remedy, the Court held unequivocally that an enforceable right to compensation is a necessary adjunct of the constitutional guarantee.⁴⁶¹ The purposive logic is compelling: if Article 32 confers jurisdiction to enforce fundamental rights, and if compensation is the only effective enforcement mechanism available in a given case, then the jurisdiction to award it is necessarily implied in the enforcement jurisdiction itself.

The most doctrinally innovative aspect of the judgment is the articulation of the public law/private law distinction. Justice Verma held that the claim in public law for compensation for contravention of human rights is a distinct remedy from the action for damages in civil

⁴⁵⁹Bhim Singh, (1986) 2 SCC 17, at 22 (Reddy, J.) (holding that courts can compensate the petitioner as a salutary reminder that it does not pay to violate fundamental rights).

⁴⁶⁰Saheli, (1990) 1 SCC 422, at 437 (introducing the principle that compensation may be recovered from the individual officer responsible, creating a direct personal financial disincentive for custodial violence).

⁴⁶¹Nilabati Behera, (1993) 2 SCC 746, at 763 (Verma, J.) (holding that an enforceable right to compensation is a necessary adjunct of the constitutional guarantee of Article 21).

law.⁴⁶² The consequences of this distinction are far-reaching. The public law remedy does not require the plaintiff to establish all elements of a tortious cause of action, does not require identification of the specific officer responsible, and crucially, is not subject to the sovereign immunity defence applicable in private law tort proceedings. The state's liability in public law is not vicarious in the private law sense but primary and direct: arising from the state's own constitutional obligation to protect the fundamental rights of persons in its custody.

Justice Verma's explicit rejection of sovereign immunity in constitutional proceedings was the most decisive step in the doctrinal development of the constitutional tort. The Court held that the payment of compensation is a matter of constitutional right and not grace.⁴⁶³ The state cannot rely on the sovereign/non-sovereign function distinction to defeat a constitutional remedy derived from the fundamental rights provisions of the Constitution. This holding effectively distinguished *Kasturi Lal* in the constitutional law domain: sovereign immunity may retain application in private law tort proceedings, but has no place in writ proceedings under Articles 32 and 226.

C. The State's Absolute Custodial Duty

Justice Verma characterised the state's obligation towards persons in its custody in terms of an absolute, non-delegable duty of care arising from the custody relationship itself. Justice Anand, in his concurring judgment, affirmed that the State is under an obligation to safeguard the life of a person in its custody and that this obligation is non-delegable and primary in character.⁴⁶⁴ The non-delegable character of this duty is doctrinally demanding:

⁴⁶²Id. at 768 (Verma, J.) (holding that the public law remedy is a distinct remedy from the action for damages in civil law, and the claim in public law for compensation for contravention of human rights is an acknowledged remedy for enforcement of such rights).

⁴⁶³Id. at 769 (rejecting the applicability of sovereign immunity in proceedings under Article 32, holding that the payment of compensation is a matter of constitutional right and not grace).

⁴⁶⁴Id. at 771 (Anand, J., concurring) (holding that the State is under an obligation to safeguard the life of a person in its custody, which obligation is non-delegable and primary in character).

the state cannot escape liability by demonstrating that the responsible officer acted outside the scope of authority or in violation of departmental instructions. The state's duty is owed directly to the detainee; its discharge cannot be transferred to individual officers in a manner that relieves the state of responsibility if those officers fail.

D. International Law Dimension: Justice

Anand's Concurrence

Justice Anand's concurring judgment significantly enriched the constitutional analysis by invoking the international human rights framework. He cited Article 9(5) of the International Covenant on Civil and Political Rights⁴⁶⁵—which provides that anyone who has been unlawfully arrested or detained shall have an enforceable right to compensation—and Article 14(1) of the United Nations Convention Against Torture⁴⁶⁶—which requires states parties to ensure that victims of torture obtain redress and adequate compensation—as reinforcing the constitutional remedy recognised in the judgment. This situates the *Nilabati Behera* holding within a global framework of state accountability, reinforcing its character not as mere judicial innovation but as constitutional obligation confirmed by international law.

Justice Anand also expressly affirmed that compensation is not a substitute for criminal accountability, holding that the public law compensation remedy based on strict liability for contravention of fundamental rights operates alongside, and does not displace, the obligation of the state to initiate criminal proceedings against the responsible officers.⁴⁶⁷ This holding—foundational to the integrity of the compensation framework—has been

⁴⁶⁵International Covenant on Civil and Political Rights art. 9(5), Dec. 16, 1966, 999 U.N.T.S. 171 (providing that anyone who has been unlawfully arrested or detained shall have an enforceable right to compensation).

⁴⁶⁶Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 14, Dec. 10, 1984, 1465 U.N.T.S. 85 (requiring states parties to ensure that victims of torture obtain redress and an enforceable right to fair and adequate compensation).

⁴⁶⁷*Nilabati Behera*, (1993) 2 SCC 746, at 773 (Anand, J., concurring) (holding that the award of compensation in public law proceedings is based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply).

inconsistently applied in subsequent practice, a limitation addressed in Part VIII below.

V. POST-NILABATI COMPENSATION JURISPRUDENCE

A. D.K. Basu: Systemic Safeguards and the Preventive Dimension

The D.K. Basu v. State of West Bengal⁴⁶⁸ judgment (1997) occupies a distinctive position in the post-Nilabati jurisprudence by addressing custodial violence systemically rather than in the context of a specific victim's compensation claim. The Supreme Court, taking suo motu cognizance of the widespread pattern of custodial torture and deaths, issued eleven operational guidelines governing the conduct of police officers during arrest and detention—requirements of arrest memo, notification of family members, medical examination at the time of arrest and release, and the right to legal counsel. The relationship between D.K. Basu and the Nilabati compensation framework is one of complementarity: D.K. Basu operates preventively, creating procedural safeguards designed to make custodial violence less likely to occur and easier to detect when it does; Nilabati operates remedially, providing a compensation mechanism after a custodial death has occurred. Together, they constitute the primary judicial architecture for addressing custodial violence in India.

B. Challa Ramkrishna Reddy: Extension to Prison Custody

The Supreme Court's decision in State of Andhra Pradesh v. Challa Ramkrishna Reddy⁴⁶⁹ (2000) represents the most significant reaffirmation and doctrinal extension of Nilabati in the post-1993 jurisprudence. The case involved the custodial death of a person held in judicial

custody in a prison, raising the question of whether the Nilabati framework applied exclusively to police custody or to all forms of state-administered detention. The Court held emphatically that the state's obligation to preserve the life and physical integrity of persons in its custody applies to all forms of state detention—prisons, remand facilities, and juvenile homes—and the constitutional tort remedy is correspondingly available across all custodial settings. The Court also dismissed the State's sovereign immunity argument, holding that Nilabati Behera had definitively resolved this question and that sovereign immunity has no place in the constitutional law of fundamental rights enforcement.

C. Bagga and Sube Singh: Expanding Categories and Quantum Principles

Arvinder Singh Bagga v. State of Uttar Pradesh⁴⁷⁰ (1994) confirmed that the public law compensation remedy extends to serious custodial violations short of death, awarding Rs. 10 lakhs in compensation for custodial rape—the highest quantum award in the post-Nilabati period, reflecting an implicit recognition that severity of violation must calibrate quantum. Sube Singh v. State of Haryana⁴⁷¹ (2006) represented the most systematic judicial attempt to articulate quantum principles, identifying the nature and circumstances of the violation, gravity of injury, deterrence need, and the victim's financial position as relevant factors. While an improvement over the ad hoc approach of earlier decisions, the Sube Singh framework remains insufficiently prescriptive and continues to generate wide and unexplained variation in awards.

⁴⁶⁸D.K. Basu v. State of West Bengal, (1997) 1 SCC 416 [hereinafter D.K. Basu] (issuing eleven operational guidelines governing the conduct of police officers during arrest and detention to prevent custodial violence).

⁴⁶⁹State of Andhra Pradesh v. Challa Ramkrishna Reddy, (2000) 5 SCC 712 [hereinafter Challa Ramkrishna Reddy] (extending the Nilabati framework to prison custody and definitively rejecting the sovereign immunity defence in constitutional compensation proceedings).

⁴⁷⁰Arvinder Singh Bagga v. State of Uttar Pradesh, (1994) 6 SCC 565 (awarding Rs. 10 lakhs in compensation for custodial rape by police officers, the highest quantum award in the formative post-Nilabati period).

⁴⁷¹Sube Singh v. State of Haryana, (2006) 3 SCC 178 [hereinafter Sube Singh] (articulating the most comprehensive judicial framework for quantum determination in custodial violence cases).

D. PUCL Maharashtra and Paramvir Singh Saini

People's Union for Civil Liberties v. State of Maharashtra⁴⁷² (2014) extended the Nilabati compensation remedy to encounter killings, holding that the legal fiction of 'encounter' cannot shield the state from constitutional liability for extra-judicial executions where evidence establishes the killing was not a genuine encounter. Paramvir Singh Saini v. Baljit Singh⁴⁷³ (2020) directed universal CCTV installation in police stations, directly addressing the evidentiary asymmetry that has historically frustrated both criminal prosecution and compensation claims. The Court indicated that non-compliance with the CCTV direction will be treated as an aggravating factor in quantum assessment, linking the preventive and remedial dimensions of the custodial rights jurisprudence.

VI. QUANTUM OF COMPENSATION: PRINCIPLES, INCONSISTENCY, AND REFORM

A. The Quantum Problem

The determination of the quantum of compensation in custodial death cases is the most practically consequential and doctrinally underdeveloped aspect of the compensation jurisprudence. The question of how much compensation is appropriate for a custodial death goes to the heart of the remedy's effectiveness: an inadequate award fails to acknowledge the gravity of the constitutional violation and provides insufficient deterrence; an arbitrary award undermines the legitimacy of the constitutional tort framework. The existing jurisprudence displays wide and unexplained variation in awards—from Rs. 30,000 in Rudul Sah (1983) to Rs. 10,00,000 in Bagga (1994)—with no consistent methodology enabling principled prediction of where within this range a given case should fall.

⁴⁷²People's Union for Civil Liberties v. State of Maharashtra, (2014) 10 SCC 635 (extending Nilabati compensation remedy to encounter killings, holding that the legal fiction of encounter cannot shield the state from constitutional liability for extra-judicial executions).

⁴⁷³Paramvir Singh Saini v. Baljit Singh, (2020) 10 SCC 219 [hereinafter Paramvir Singh Saini] (directing universal CCTV installation in all police stations and custody facilities to address evidentiary asymmetry in custodial violence cases).

Several adverse consequences flow from the absence of a principled quantum framework. First, it undermines the fairness of the remedy: similar violations result in different awards depending on the court, the facts emphasised, and the judge's approach. Second, it weakens the deterrent effect: if the state cannot predict with reasonable confidence the financial consequences of custodial deaths, the financial incentive to prevent them is correspondingly weakened. Third, it makes quantum susceptible to factors that ought to be irrelevant—the articulateness of counsel, the social profile of the victim, and the political salience of the case. The mechanism in State of Maharashtra v. Ravi Prakash Babulal Salve⁴⁷⁴ for recovery of compensation from individual responsible officers partially addresses the deterrence dimension but cannot substitute for principled quantum determination at the primary liability level.

B. A Proposed Structured Quantum Framework

This paper proposes a three-component structured quantum framework for custodial death cases, drawing on comparative experience from the European Court of Human Rights' just satisfaction jurisprudence and Indian civil wrongful death principles. The first component—Pecuniary Compensation—is calculated by reference to the loss of dependency suffered by surviving dependants, using actuarial methodology applied in civil wrongful death cases, with a minimum floor of Rs. 15 lakhs in current terms regardless of the victim's income level, ensuring that the lives of the economically poor are not undervalued. The second component—Non-Pecuniary Solatium—covers pain, suffering, loss of companionship, and the violation of dignity, assessed through a structured tariff calibrated to the category of

⁴⁷⁴State of Maharashtra v. Ravi Prakash Babulal Salve, (2004) 9 SCC 762 (holding that while the state is primarily liable to pay compensation, it may recover the amount from the specific officer responsible for custodial violence following disciplinary or criminal proceedings).

violation and subject to upward adjustment for aggravating factors such as institutional cover-up, failure to register an FIR, and absence of CCTV coverage. The third component—Exemplary Deterrence Award—is calculated as a multiple of the preceding components and directed specifically at deterrence, with a higher multiple where aggravating factors are present, and recoverable in whole or in part from the responsible individual officers following disciplinary proceedings.

VII. COMPARATIVE ANALYSIS: INTERNATIONAL FRAMEWORKS

A. The European Court of Human Rights: Just Satisfaction

The European Court of Human Rights has developed the most sophisticated and principled framework for compensation in custodial death cases. Under Article 41 of the European Convention on Human Rights⁴⁷⁵—the just satisfaction jurisdiction—the Court awards both pecuniary and non-pecuniary compensation in cases where violations of Article 2 (right to life) or Article 3 (prohibition of torture and inhuman treatment) are established. The ECtHR's quantum methodology is considerably more structured than India's: non-pecuniary awards in Article 2 custodial death cases typically range from €25,000 to €80,000 for the victim's suffering and a further €15,000 to €30,000 for close family members, reflecting principled assessment of non-pecuniary harm rather than ad hoc judicial intuition.

The ECtHR also imposes a procedural obligation under Article 2—established in *McCann v. United Kingdom*⁴⁷⁶—requiring an effective official investigation into state-caused deaths that is independent, adequate, reasonably prompt, and public. Failure to conduct such an investigation constitutes an

independent violation of Article 2, attracting additional compensation. This two-part structure—substantive compensation for the death plus procedural compensation for investigation failure—provides a more complete recognition of the full range of harms suffered by custodial death victims' families than India's current framework provides.

B. United Kingdom and United States

The Human Rights Act 1998 (UK)⁴⁷⁷ integrates the ECtHR's just satisfaction framework into domestic law, enabling UK courts to award compensation in custodial death cases while drawing on the ECtHR's structured quantum guidance. Three lessons are instructive for India: the procedural obligation as an independent compensation head; the integration of international quantum standards into domestic law for greater consistency and predictability; and the principle of legal aid availability for rights-based compensation claims.

The United States provides a civil compensation mechanism through Section 1983 of the Civil Rights Act of 1871⁴⁷⁸—a private law civil suit requiring establishment of all elements of a tortious cause of action. The doctrine of qualified immunity, which shields individual officers from liability unless the specific constitutional violation was clearly established at the time of the conduct, frequently defeats claims even where serious violations have occurred. The US framework is instructive primarily as a cautionary example: the Indian constitutional tort remedy derived from *Nilabati Behera* is significantly more accessible to victims than the US private law mechanism, notwithstanding the higher monetary awards that successful US plaintiffs may receive.

C. Comparative Lessons for India

⁴⁷⁵European Convention for the Protection of Human Rights and Fundamental Freedoms art. 41, Nov. 4, 1950, 213 U.N.T.S. 222 (providing that the European Court of Human Rights may afford just satisfaction to the injured party where a violation of a Convention right is established).

⁴⁷⁶*McCann v. United Kingdom*, App. No. 18984/91, 21 Eur. Ct. H.R. 97 (1995) (holding that Article 2 of the ECHR imposes a procedural obligation to conduct an effective official investigation into deaths caused by state agents).

⁴⁷⁷Human Rights Act 1998, c. 42, s. 8 (UK) (providing that a court finding that a public authority has acted incompatibly with a Convention right may award damages if necessary to afford just satisfaction).

⁴⁷⁸42 U.S.C. § 1983 (2018) (providing a civil cause of action against any person acting under colour of state law who has deprived the plaintiff of a constitutional right, subject to qualified immunity doctrine).

Three principal lessons emerge from the comparative analysis. First, structured quantum methodology—combining actuarially calculated pecuniary damages with tariff-based non-pecuniary awards—produces fairer and more predictable outcomes than the ad hoc approach characterising Indian jurisprudence. Second, the procedural accountability obligation under Article 2 of the ECHR—creating an independent compensation head for investigation failures—offers a model for strengthening accountability for the systemic investigation failures that pervade the Indian custodial death context. Third, the integration of international human rights compensation standards into domestic law through the Human Rights Act 1998 demonstrates that domestic courts can effectively apply international quantum guidance, a model India could replicate through UNCAT ratification and domestic implementation of Article 14 obligations.

VIII. CRITICAL ASSESSMENT AND REFORM RECOMMENDATIONS

A. Genuine Achievements

The Indian constitutional tort framework developed through Nilabati Behera and its progeny possesses genuine and significant strengths. The rejection of sovereign immunity in constitutional proceedings—definitively achieved in Nilabati Behera—removed the most formidable obstacle to state accountability in custodial death cases and represents a settled constitutional principle of great importance. The characterisation of the public law remedy as independent of private law tort proceedings creates a more accessible pathway to compensation than a purely private law framework would allow. The affirmation that compensation serves both compensatory and deterrent functions provides a sound theoretical basis for awards that go beyond strict actuarial compensation. And the progressive extension of

the Nilabati framework—to prison custody, encounter killings, and custodial violations short of death—reflects the generative vitality of the constitutional tort doctrine across three decades.

B. Critical Limitations

Notwithstanding these achievements, the framework is characterised by five significant limitations. First, quantum inconsistency: the absence of a principled framework produces wide and unexplained variation in awards that undermines fairness, predictability, and deterrent effectiveness. Second, compensation as substitute for accountability: both Nilabati Behera and Challa Ramkrishna Reddy explicitly directed that compensation does not displace criminal accountability, yet in practice the opposite tendency prevails—state governments pay compensation as a means of closing custodial death cases without initiating criminal proceedings. The financial costs of custodial violence are thereby socialised while personal costs to responsible officers remain minimal.

Third, access barriers: the constitutional tort remedy requires access to the Supreme Court or a High Court—institutions that operate in state capitals, largely in English, and require trained legal practitioners. According to NHRC data⁴⁷⁹, while over two thousand custodial death complaints are received annually, the cases that reach the superior courts and result in compensation awards represent only a tiny fraction of the total incidents. Fourth, dependence on individual litigation: there is no automatic administrative mechanism for identifying custodial deaths and providing compensation without individual legal proceedings. Fifth, absence of statutory framework: the entire jurisprudence rests on

⁴⁷⁹National Human Rights Commission, Annual Report 2022-23 (recording 2,152 custodial death complaints received during the reporting year, reflecting the persistent and systematic character of custodial violence in India).

judge-made constitutional tort doctrine, without the anti-torture legislation recommended by the Law Commission in its 113th⁴⁸⁰ and 273rd Reports⁴⁸¹ and required by UNCAT Article 14.

C. Reform Recommendations

This paper advances eight principal recommendations. First, Parliament should enact a Custodial Accountability and Compensation Act establishing: a statutory presumption that death in custody was caused by custodial violence, rebuttable only by clear and cogent evidence; an enforceable statutory right to compensation calculated under the structured three-component framework proposed in Part VI; and a Custodial Death Compensation Tribunal in each state for expeditious inquisitorial proceedings free of the procedural barriers of ordinary courts. Second, a national Custodial Death Compensation Fund should be established by mandatory contributions from Union and state governments, enabling interim compensation within thirty days of a custodial death pending final Tribunal determination—eliminating procedural delay as a tool for denying relief. Third, the Supreme Court should issue comprehensive practice directions on quantum methodology, adopting the three-component framework and mandating periodic inflation-linked revision.

Fourth, the framework must institutionally decouple compensation from criminal accountability: automatic FIR registration upon any custodial death, a standing prosecution unit independent of the regular prosecution service, and mandatory reporting to the Director of Public Prosecutions in every compensation case. Fifth, India should ratify UNCAT without delay, with the Custodial Accountability and Compensation Act drafted in express compliance with Article 14. Sixth, the Protection of Human Rights Act 1993 should be amended to transform the NHRC's recommendatory powers

into binding orders enforceable through contempt jurisdiction. Seventh, mandatory automatic legal aid assignment should be provided to every custodial death family from the moment of the death, with a dedicated panel of constitutional tort practitioners maintained by state legal aid authorities. Eighth, building on Saheli and Salve, statutory provision for recovery of compensation from individual responsible officers should be made explicit, correcting the moral hazard created when custodial violence costs are borne exclusively by the public treasury.

IX. CONCLUSION

The compensation jurisprudence developed by the Supreme Court of India in custodial death cases—from the tentative first step of Rudul Sah (1983) through the doctrinal crystallisation of Nilabati Behera (1993) to the extensive post-*Nilabati* body of authority—represents one of the most significant achievements of Indian constitutional adjudication in the domain of state accountability. The core holding of *Nilabati Behera*: that the state bears an absolute, non-delegable constitutional duty of care towards persons in its custody; that this duty cannot be insulated from enforcement by the doctrine of sovereign immunity; and that the writ jurisdiction includes the power to award compensation as a constitutionally appropriate remedy for the infringement of the right to life—is a principled, courageous, and constitutionally sound judicial contribution that has materially advanced the protection available to victims of custodial death in India.

The comparative analysis of the ECtHR's structured quantum methodology and the UK's integration of procedural accountability obligations reveals that the limitations of India's framework are not inherent features of a constitutional tort approach but contingent institutional and doctrinal choices that can be

⁴⁸⁰Law Commission of India, 113th Report on Injuries in Police Custody (1985) (recommending legislative reform to address the inadequacy of existing legal remedies for victims of custodial violence).

⁴⁸¹Law Commission of India, 273rd Report on Implementation of the United Nations Convention Against Torture (2017) (recommending India's ratification of UNCAT and enactment of dedicated anti-torture legislation).

addressed through reform. The scholarly analysis by Muralidhar on the doctrinal inconsistencies of the compensation framework and the sociological insights of Baxi on the structural conditions of public interest litigation together illuminate the dual challenge confronting any programme of reform: strengthening the doctrine while simultaneously improving the institutional conditions for its realisation.

The recommendations advanced in this paper—a dedicated Custodial Accountability and Compensation Act, a statutory compensation fund, structured quantum methodology, mandatory legal aid, binding NHRC orders, and recovery from responsible officers—represent a credible and implementable programme for realising the full potential of the Nilabati framework. Custodial death is not an episodic failure but a systemic one; the legal response must be correspondingly systemic, not confined to the case-by-case constitutional litigation that has been both the strength and the limitation of the compensation jurisprudence to date. Until the law is willing to match the scale of the problem with the scale of the institutional response, the most that can be said of India's compensation jurisprudence is that it constitutes a genuine and important beginning—not the full realisation of the constitutional promise it embodies.





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