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# Legal Safeguards Against Custodial Violence: A Comparative Analysis of India, Pakistan & USA

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## ABSTRACT

This paper provides a comparative analysis of legal safeguards against custodial violence in India, Pakistan, and the United States. Custodial violence, including physical abuse, psychological torture, and deaths in custody, remains a pervasive human rights violation, despite constitutional protections and international treaty obligations.

The research explores each country's domestic legal framework, enforcement mechanisms, and adherence to international norms such as the UN Convention Against Torture (UNCAT). India has not ratified UNCAT and lacks enforceable anti-torture legislation, while Pakistan, though a signatory, fails in implementation due to political and military interference. The USA, despite its formal ratification, has undermined its obligations through legal reinterpretations and secret detention practices, particularly in national security contexts.

Across jurisdictions, marginalized communities—Dalits, Muslims, and Adivasis in India; ethnic and religious minorities in Pakistan; and Black and immigrant populations in the USA bear the brunt of custodial abuse. Weak oversight, evidentiary challenges, and limited access to justice reinforce systemic impunity. Surveillance mechanisms are poorly implemented, and reparative measures such as compensation and rehabilitation remain inconsistent and insufficient.

Despite differing legal traditions, the countries share common patterns: legal loopholes, political justifications, and institutional bias. The study argues for comprehensive reforms including independent oversight, enforceable anti-torture laws, victim-centric reparations, and stronger

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international accountability. Reframing custodial violence as a non-negotiable human rights violation is essential for meaningful justice and systemic change.

**Key Words:** Custodial Violence, Human Rights, Legal Safeguards, Torture, Comparative Constitutional Law, India, Pakistan, United States, UNCAT, Police Accountability, Marginalized Communities, State Impunity, Judicial Oversight, National Security Laws, Structural Discrimination

## INTRODUCTION

Custodial violence refers to the misuse or exploitation of power by the law enforcement or other authorities while a person is in custody inflicted by either police, judicial, or prison custody. This includes physical violence (torture<sup>4</sup>, beatings), psychological abuse, sexual assault, neglect, and even death, inflicted on individuals detained by the state. It is considered a grave violation of human rights<sup>5</sup>, constitutional protections, and international legal norms<sup>6</sup>. This practice is a pervasive issue, raising significant concerns about human rights violations and state accountability. This paper provides a comparative analysis of legal safeguards against custodial violence in India, Pakistan, and the USA, examining constitutional and legislative protections, international treaty obligations and enforcement mechanisms.

Each country enshrines prohibitions against torture and inhuman treatment, yet practical enforcement varies due to legal loopholes and systemic impunity. While India has ratified select international treaties, it has not ratified the UN Convention Against Torture (UNCAT), limiting compliance with global human rights norms. USA and Pakistan, despite ratification, have often circumvented obligations through executive policies and legal interpretations. Domestic legal frameworks reveal varying degrees of state control over custodial practices, often invoking national security as a justification for excessive force. Accountability mechanisms, including India's NHRC, Pakistan's limited judicial scrutiny, and USA's Internal Affairs Divisions, exhibit differing levels of effectiveness, with systemic biases hindering police accountability. Evidentiary challenges obstruct prosecutions, reinforcing impunity. National security doctrines legitimize detention laws such as

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<sup>4</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85

<sup>5</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III)

<sup>6</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171

India's AFSPA, Pakistan's counterterrorism laws, and the USA's extrajudicial practices in Guantánamo Bay. Such disproportionate impact on marginalized communities highlights structural discrimination.

Neoliberal policies exacerbate disparities, influencing law enforcement priorities and detainee treatment. Victim reparations, compensation schemes, and rehabilitation mechanisms remain inadequate, undermining long-term justice. This paper argues that despite distinct legal traditions, these countries exhibit common patterns of legal inadequacies, political justifications, and social normalization of custodial violence. A robust framework emphasizing enforceable anti-torture legislation, independent oversight, and international compliance is essential to mitigate systemic abuse.

## COMPARATIVE ANALYSIS

### CONSTITUTIONAL AND LEGISLATIVE PROTECTIONS

#### INDIA

Upholding the dignity and rights of detainees is not just a legal duty it is central to India's democratic and constitutional identity<sup>7</sup>. The Constitution safeguards against custodial torture through Article 21 that secures the right to life and personal liberty, Article 20(3) that protects against self-incrimination or the act of testifying against oneself, and Article 22 that shields against groundless arrest and incarceration. Despite this, custodial torture remains pervasive in India due to poor enforcement and systemic impunity<sup>8</sup>.

The Bharatiya Nyaya Sanhita, 2023 retains key provisions against custodial violence. Section 120 penalises actions inflicting hurt/grievous hurt to extort confessions (earlier Sections 330 and 331 IPC), while Section 126(2) addresses wrongful confinement for similar purposes. The Bharatiya Nagarik Suraksha Sanhita, 2023 complements these with procedural safeguards like magistrate inquiries into custodial deaths under section 194 and regulated arrest provisions (Sections 35–60).

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<sup>7</sup> *Munshi Singh Gautam (D) & Ors v. State of M.P.* (2004) 10 SCC 94.

<sup>8</sup> 'Custodial Torture in India: Intersection of Criminal Law and Constitutional Rights' (SCC Online, 23 March 2024) <https://www.scconline.com/blog/post/2024/03/23/custodial-torture-in-india-intersection-of-criminal-law-and-constitutional-rights/> accessed 6 April 2025.

The Bharatiya Sakshya Adhiniyam, 2023 continues to bar coerced confessions. However, these provisions are inadequately implemented<sup>9</sup>.

Additional national security legislations like the Unlawful Activities (Prevention) Act, 1967, and the erstwhile, Terrorist and Disruptive Activities (Prevention) Act and the new Prevention of Terrorism Act, have enabled long, pre-trial detentions and limited judicial oversight, often being misused to justify torture under the pretext of national security<sup>10</sup>. These laws undermine procedural safeguards and facilitate impunity<sup>11</sup>.

## PAKISTAN

The Constitution of Islamic Republic of Pakistan, under Article 14(2)<sup>12</sup>, explicitly “prohibits torture for the purpose of extracting evidence”, but has not been applied to its full extent. Its non-enforcement is deeply embedded in the functioning of police, who resort to torturing to force out a confession instead of investigating based on evidence available. Various reasons include poor training, pressure from superiors, media, public to show fast results. Thus, officials take shortcuts like intimidation or coercion to get a confession, as this method is believed to be quicker and effective. Moreover, despite a constitutional prohibition, the Pakistan Army runs several detention and torture cells in nearly all cities.<sup>13</sup>

The Police Order, 2002, prohibits torture in police custody<sup>14</sup>, but definition is ambiguous<sup>15</sup>. The statute imposes penalties on police officers who commit the act of torture in custody, but it does not apply to other public officials<sup>16</sup>. Code of Criminal Procedure, 1898 also fails to mention torture but punishes certain acts of torture. Anti-Terrorism Act, 1997 (ATA) prescribes long term

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<sup>9</sup> Amrita Ajmera, ‘Custodial Violence in India: An Analytical Study’ (2021) *International Journal of Legal Research* <https://ijlir.org/1-custodial-violence-in-india-an-analytical-study/> accessed 10 April 2025.

<sup>10</sup> ‘Custodial Violence in India with Reference to the Prevention of Torture Bill and International Legal Framework’ (ResearchGate, 2023) [https://www.researchgate.net/publication/373287221\\_Custodial\\_Violence\\_in\\_India\\_with\\_Reference\\_to\\_the\\_Prevention\\_of\\_Torture\\_Bill\\_and\\_International\\_Legal\\_Framework](https://www.researchgate.net/publication/373287221_Custodial_Violence_in_India_with_Reference_to_the_Prevention_of_Torture_Bill_and_International_Legal_Framework) accessed 6 April 2025.

<sup>11</sup> Varsha Torgalkar, ‘Custodial Deaths in India: A Toxic Play of Power and Class’ *DW* (19 November 2021) <https://www.dw.com/en/custodial-deaths-in-india-a-toxic-play-of-power-and-class/a-59873741> accessed 6 April 2025; ‘Custodial Violence’ (LawBhoomi, 2024) <https://lawbhoomi.com/custodial-violence/> accessed 6 April 2025

<sup>12</sup> Constitution of the Islamic Republic of Pakistan 1973, art 14(2)

<sup>13</sup> Nirmal Kanti Chakrabarti, ‘Reviewed Work: *In Custody: Law, Impunity and Prisoner Abuse in South Asia* by Nitya Ramakrishnan’ (2021) 63(1) *JILI* 117 <https://www.jstor.org/stable/27248379?seq=1> Accessed 8 April 2025

<sup>14</sup> Police Order 2002, Art 156(d)

<sup>15</sup> Office of the United Nations High Commissioner for Human Rights, ‘Committee against Torture Examines Initial Report of Pakistan’ (19 April 2017) <https://www.ohchr.org/en/press-releases/2017/04/committee-against-torture-examines-initial-report-pakistan> accessed 6 April 2025

<sup>16</sup> World Organisation Against Torture and Justice Project Pakistan, *Criminalising Torture in Pakistan: The Need for an Effective Legal Framework* (2017) <https://www.omct.org/site-resources/images/Pakistan-report.pdf> accessed 10 April 2025

detention and does not provide access to legal representation, thereby resulting in risk of abuse and allows impunity to the officials.<sup>17</sup> Torture and Custodial Death (Prevention and Punishment) Act, 2022 was somewhat a positive development, reveals ambiguities on penalties. There are no independent punishment provisions for torture in anti-torture law of Pakistan, and it relies on the Pakistan Penal Code 1860, which does not define torture as a criminal offence but interprets the punishment for 'hurt', depending on harm's degree<sup>18</sup>. The disparity between constitutional, statutory protections and current circumstances on the ground level reveals the actual application of these rights. The mere existence of safeguards is useless without any effective enforcement, rendering such safeguards hollow, just for international appeasement.

ATA and Actions in Aid of Civil Power Regulation are employed to detain suspects without judicial oversight. These enable incommunicado detention and secret prison systems, undercutting human rights safeguards. An Open Society Foundations study found that systematic torture was more common among detainees suspected of terrorist acts.<sup>19</sup> Executives promote narrative of "national interest," supported by military intelligence agencies, so that courts rarely intervene. Judicial review is frequently either superficial or completely averted through the means of military courts.<sup>20</sup> These counterterrorism laws of Pakistan are tools for politicians to silence opposition. As laws, these carve out legal spaces of exception under the guise of security, switching the environment for torture from one of punishment by way of a proper process, to one of normality and bureaucracy.

## U.S.A

The Constitution, through the Eighth Amendment<sup>21</sup>, prohibits "cruel and unusual punishments," a clause interpreted by the U.S. Supreme Court to forbid punishments involving torture or lingering death. Additionally, the Fifth<sup>22</sup> and Fourteenth Amendments<sup>23</sup> ensure due process rights, safeguarding individuals from abusive treatment by law enforcement and other government

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<sup>17</sup> National Commission for Human Rights (Pakistan), *Torture & Custodial Death: Report 2024* (NCHR 2024) <https://nchr.gov.pk/wp-content/uploads/2024/06/Torture-Custodial-Death.pdf> accessed 10 April 2025.

<sup>18</sup> Abira Ashfaq, 'Pakistan's Anti-Torture Law May Be a Step in the Right Direction, but There Is Still a Long Way to Go' *Dawn* (29 June 2023) <https://www.dawn.com/news/1761668/pakistans-anti-torture-law-may-be-a-step-in-the-right-direction-but-there-is-still-a-long-way-to-go> accessed 9 April 2025.

<sup>19</sup> Open Society Foundations, 'Torture in Police Custody: A Global Problem' (Open Society Foundations, 27 June 2016)

<sup>20</sup> Human Rights Watch, *Double Jeopardy: Police Abuse of Women in Pakistan* (HRW 1992) <https://www.hrw.org/reports/1992/pakistan/> accessed 10 April 2025.

<sup>21</sup> US Constitution, amend VIII

<sup>22</sup> US Constitution, amend V

<sup>23</sup> US Constitution, amend XIV

officials. However, custodial violence persists due to poor implementation, systemic biases, and lack of accountability. Victims' access to justice is restricted by procedural barriers, fear of retaliation, inadequate enforcement of legal remedies. A number of reports and case studies<sup>24</sup>, such as *Hope vs. Pelzer* (2002)<sup>25</sup>, highlight that custodial violence, abuse, and inhumane treatment continue to exist, particularly within marginalized and vulnerable communities.<sup>26</sup>

“The USA Patriot Act”<sup>27</sup>, enacted after 9/11 attack, expanded law enforcement's surveillance and detection capabilities to combat terrorism and protect national security, has been criticized for enabling custodial violence by granting unchecked surveillance and detention powers and detention without trial<sup>28</sup>. Human rights violations<sup>29</sup> frequently occur in jails as a result of its lack of oversight, which raises questions about its effectiveness in protecting individuals' rights from torture and other forms of abuse.<sup>30</sup>

## INTERNATIONAL OBLIGATIONS AND COMPLIANCE

### INDIA

India is an endorser to key international human rights instruments including the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and the Convention Against Torture. Despite signing the CAT in 1997, India has not ratified it, reflecting reluctance to impose binding international obligations<sup>31</sup>. The Prevention of Torture Bill, 2010, intended to enable ratification, lapsed in Parliament without enactment<sup>32</sup>. Repeated

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<sup>24</sup> Rachael S. Rollins, ‘Custodial Deaths and a Broken Accountability System’ *Harvard Law Review Blog* (2020) <https://blog.harvardlawreview.org/custodial-deaths-and-a-broken-accountability-system/> accessed 7 April 2025.

<sup>25</sup> *Hope vs Pelzer* [2002] 536 U.S. 730

<sup>26</sup> US Department of Justice, ‘Deaths in Custody Reporting Program’ (Bureau of Justice Statistics, 2020) <https://bjs.ojp.gov/data-collection/deaths-custody-reporting-program-dcrp> accessed 7 April 2025.

<sup>27</sup> USA PATRIOT Act, 2001, Pub L No 107-56, 115 Stat 272.

<sup>28</sup> David Cole and James X Dempsey, *Terrorism and the Constitution: Sacrificing Civil Liberties in the Name of National Security* (The New Press 2006).

<sup>29</sup> Human Rights Watch, *United States – Witness to Abuse: Human Rights Abuses under the Material Witness Law since September 11* (2005) <https://www.hrw.org/report/2005/06/26/witness-abuse/human-rights-abuses-under-material-witness-law-september-11> accessed 8 April 2025.

<sup>30</sup> Goldstein & Hilley, ‘USA PATRIOT Act and Civil Liberties’ (Goldstein & Hilley, 2023) <https://www.goldsteinhilley.com/attorney-testimonies/usa-patriot-act/> accessed 8 April 2025.

<sup>31</sup> ‘Custodial Torture and United States: An Overview’ (International Journal of Law Management & Humanities, 2023) <https://ijlmh.com/paper/custodial-torture-and-united-states-an-overview/> accessed 6 April 2025.

<sup>32</sup> Shambhavi Tewari, ‘India’s Reluctance to Ratify the UNCAT: A Legislative and Policy Analysis’ (SSRN, 2025) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4946758](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4946758) accessed 6 April 2025.

recommendations from the United Nations Human Rights Council through the Universal Periodic Review process have emphasized the need for ratification and a national anti-torture law<sup>33</sup>.

## PAKISTAN

Pakistan ratified UNCAT in 2010<sup>34</sup> but has not domesticated the Convention's provisions. This is due to apprehensions surrounding national sovereignty<sup>35</sup>, internal security, prospect of international oversight over its domestic practices. The government has worried that ratification would invite outside intervention, on issues related to counterterrorism and military activity, however, it appears that it chose to ratify the convention solely to maintain positive relations with international organisations. The convention has not been properly implemented due to weak institutional frameworks, lack of political will, powerful security agencies who pressure impede the process. Ratifying human rights treaties without translating them into domestic terms served diplomatic purposes, not human rights objectives.

Skipping full implementation isn't merely a forgotten step, it's a purposely chosen move meant to present a facade of legality while still letting those in power keep a tight hold on detainees. Moreover, Pakistan was flagged for not putting its measures into practice, for example, truly independent investigative bodies were absent and overreach of security agencies.<sup>36</sup>

## U.S.A

The ratification of the UNCAT<sup>37</sup> in 1994 signified a commitment to eliminating torture. However, legal justifications like "Torture Memos" of 2002, which disputedly redefined torture to permit harsh interrogation methods, have undermined its implementation. These exposed significant

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<sup>33</sup> 'Custodial Violence in India with Reference to the Prevention of Torture Bill and International Legal Framework' (ResearchGate, 2023)  
[https://www.researchgate.net/publication/373287221\\_Custodial\\_Violence\\_in\\_India\\_with\\_Reference\\_to\\_the\\_Prevention\\_of\\_Torture\\_Bill\\_and\\_International\\_Legal\\_Framework](https://www.researchgate.net/publication/373287221_Custodial_Violence_in_India_with_Reference_to_the_Prevention_of_Torture_Bill_and_International_Legal_Framework) accessed 6 April 2025.

<sup>34</sup> World Organisation Against Torture and Justice Project Pakistan, *Criminalising Torture in Pakistan: The Need for an Effective Legal Framework* (2017) <https://www.omct.org/site-resources/images/Pakistan-report.pdf> accessed 10 April 2025

<sup>35</sup> Penal Reform International and Society for the Protection of the Rights of the Child, *A Review of Law and Policy to Prevent and Remedy Violence Against Children in Police and Pre-Trial Detention in Pakistan* (PRI 2013)  
<https://cdn.penalreform.org/wp-content/uploads/2013/06/A-review-of-law-and-policy-to-prevent-and-remedy-violence-against-children-in-police-and-pre-trial-detention-in-Pakistan.pdf> accessed 10 April 2025.

<sup>36</sup> UN Committee Against Torture, 'Committee Against Torture Examines Initial Report of Pakistan' (OHCHR, 19 April 2017)  
<https://www.ohchr.org/en/press-releases/2017/04/committee-against-torture-examines-initial-report-pakistan> accessed 10 April 2025.

<sup>37</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85.



shortcomings, manipulation of legal definitions to bypass UNCAT obligations, lack of accountability for officials, and insufficient legislative clarity to prevent misuse<sup>38</sup>.

Secret detention practices and lack of transparency weakened the enforcement of anti-torture standards, raising serious concerns about the United States' commitment to its international human rights obligations despite its formal commitment to the UNCAT<sup>39</sup>.

## JUDICIAL OVERSIGHT, EVIDENTIARY, PROCEDURAL CHALLENGES

### INDIA

The judiciary has been proactively addressing custodial violence<sup>40</sup>. Landmark cases like *DK Basu v. State of West Bengal*<sup>41</sup> established mandatory guidelines for arrest and detention, making procedural compliance a constitutional obligation. Yet, courts often face significant hurdles in prosecution due to the burden of proof, lack of corroborative evidence, and police non-cooperation<sup>42</sup>. S.197 CrPC (S.218 BNSS), requires prior government approval for charging and prosecuting of public servants, shielding the erring officials. Moreover, victims and witnesses often face threats or coercion, further derailing judicial processes<sup>43</sup>. The judiciary's role, while essential, remains constrained without the necessary systemic institutional support.

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<sup>38</sup> United Nations Treaty Collection, 'Chapter IV: Human Rights — 9. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (UNTC, 1994) [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-9&chapter=4](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4) accessed 10 April 2025.

<sup>39</sup> Shane S, 'U.S. Interrogation Memos Detail Harsh Methods' *The New York Times* (17 April 2009) <https://www.nytimes.com/2009/04/17/us/politics/17detain.html> accessed 10 April 2025.

<sup>40</sup> Sandra Jini Saju, 'Critical Analysis of Custodial Violence and Role of Judiciary in India' (2022) *Indian Journal of Integrated Research in Law* <https://ijirl.com/wp-content/uploads/2022/11/CRITICAL-ANALYSIS-OF-CUSTODIAL-VIOLENCE-AND-ROLE-OF-JUDICIARY-IN-INDIA.pdf> accessed 10 April 2025.

<sup>41</sup> *DK Basu v State of West Bengal* (1997) 1 SCC 416.

<sup>42</sup> 'Custodial Violence in India: Constitutional and Legal Framework' (Civil Law Journal, 2023) <https://www.civillawjournal.com/article/50/3-2-5-270.pdf> accessed 6 April 2025.

<sup>43</sup> 'LLM Notes: Custodial Violence and Legal Safeguards' (LawWeb, February 2025) <https://www.lawweb.in/2025/02/llm-notes-custodial-violence-and-legal.html> accessed 6 April 2025.

The Hon'ble Supreme Court's evolving jurisprudence from *Khatri v. State of Bihar*<sup>44</sup> to *Puttaswamy v. Union of India*<sup>45</sup> expanded the contours of privacy, dignity, and bodily autonomy. However, the judiciary alone cannot rectify structural impunity embedded in executive and policing institutions<sup>46</sup>.

## PAKISTAN

Courts have at times denounced police violence and asked for investigations, but this is usually ceremonial. The courts perform a dual function, guardian of the Constitution and a guardian of the state's interests. They often surrender to the latter in custody torture cases. Similarly, the responsibility to prove torture has shifted to victims even when the state is in control of the physical evidence.<sup>47</sup>

Medical reports are altered by police and medical staff are often threatened by police. There are no effective witness protection laws so witnesses often withdraw testimony under duress. The courts' reluctance to challenge the executive has led to a culture in which the courts protect the state from liability. The judiciary becomes a legal filter for abandonment of accountability rather than a check on state abuses.

## U.S.A

Judicial oversight has been marked by inconsistency, particularly in sensitive areas like national security<sup>48</sup>. An example is the Guantánamo Bay<sup>49</sup> detention camp, where detainees were subjected to torture, physical abuse, degrading treatment, often without access to legal representation or the judiciary<sup>50</sup>. Detainees are held without trial for an indefinite period, denied the right to challenge their detention, subjected to harsh interrogation methods like forced nudity, waterboarding, and lack of sleep<sup>51</sup>. The judiciary's limited power to intervene stemmed from executive dominance over

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<sup>44</sup> *Khatri v State of Bihar* (1981) 1 SCC 627.

<sup>45</sup> *Justice K S Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1.

<sup>46</sup> Suresh Chandra Sagar and Uday Veer Singh, 'Legislative Reforms in India and Custodial Violence: A Legal Upgradation in Present Scenario' (2024) 4(2) *International Journal of Criminal Law* 27 <https://www.criminallawjournal.org/article/108/4-2-27-436.pdf> accessed 10 April 2025.

<sup>47</sup> Areeba Iqbal, 'Custodial Torture and Impunity: A Case for Criminalising Torture in Pakistan' (2023) 2(2) *Traditional Journal of Law and Social Sciences* 59 <https://ojs.traditionaljournaloflaw.com/index.php/TJLSS/article/view/197/118> accessed 10 April 2025.

<sup>48</sup> United Nations, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Mission to the United States of America* (UN Doc A/HRC/13/39/Add.5, 5 February 2010).

<sup>49</sup> *Rasul v Bush* 542 US 466 (2004)

<sup>50</sup> Karen J Greenberg, *The Least Worst Place: Guantánamo's First 100 Days* (Oxford University Press 2009).

<sup>51</sup> Joseph Margulies, *Guantánamo and the Abuse of Presidential Power* (Simon & Schuster 2006).

national security matters and classified operations, which curtailed transparency and accountability, a prime example is 9/11<sup>52</sup>.

Here, prosecuting cases involving custodial violence faces numerous obstacles<sup>53</sup>. Evidentiary gaps arise due to secret detentions, destroyed records, lack of independent investigations. Procedural delays discourage victims from pursuing justice, as cases drag on for years without resolution. Victims often languish in detention without medical care<sup>54</sup>, legal aid, or access to judiciary. Fear of retaliation, mental trauma, and isolation deter them from reporting abuse. In addition, the victim bears the burden of proof, frequently without witnesses or evidence, which perpetuates a cycle of silence and suffering.

## **SURVEILLANCE, INFRASTRUCTURE AND BUDGETARY ASPECTS**

### **INDIA**

India's criminal justice infrastructure is marred by overcrowded prisons, understaffed police forces, and inadequate surveillance mechanisms. Many custodial facilities lack CCTV cameras or ensure selective monitoring, enabling unchecked abuse<sup>55</sup>. Budgetary allocations toward prison reforms and police training remain minimal, indicating the low policy priority given to reformation of the existing practice.

It is pertinent for the police officials enforcing law to realise and commit to their responsibility to put a stop to custodial violence and preserve the rights and dignity of the restrained individuals in custody<sup>56</sup>. Technological interventions like body cameras, biometric tracking, and centralized

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<sup>52</sup> Amnesty International, *USA: Guantánamo: A Decade of Damage to Human Rights* (2011)

<https://www.amnesty.org/en/documents/amr51/103/2011/en/> accessed 10 April 2025.

<sup>53</sup> David Cole, *Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terrorism* (The New Press 2003).

<sup>54</sup> Human Rights Watch, *Torture, Ill-Treatment, and Prolonged Detention without Trial at Guantánamo* (2004) <https://www.hrw.org/reports/2004/usa0604/> accessed 10 April 2025.

<sup>55</sup> 'Custodial Torture in India: Intersection of Criminal Law and Constitutional Rights' (SCC Online, 23 March 2024) <https://www.scconline.com/blog/post/2024/03/23/custodial-torture-in-india-intersection-of-criminal-law-and-constitutional-rights/> accessed 6 April 2025.

<sup>56</sup> *Smt. Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble and Anr.* (2003) 7 SCC 749.

detainee databases are either absent or non-operational. The lack of investment by the State worsens the lack of transparency and unaccountability of custodial processes<sup>57</sup>.

## PAKISTAN

The National Action Plan and Reports of Police Reforms Committee have suggested that CCTVs be placed inside detention centres, and their actual deployment is scarce. Only 13% of police lockups in Punjab had working surveillance.<sup>58</sup> Prison overcrowding is widespread. Budget distributions are overwhelmingly in favor of security forces, as opposed to the judiciary or human rights institutions. For FY 2022-23, law enforcement's total budget appropriation surpassed 1 trillion PKR while human rights institutions received less than 1% of that amount.<sup>59</sup>

Neoliberal policies supporting economic growth and foreign investment cut budgets for rights-based institutions and facilitate institutional neglect. Most budgets go towards militarization rather than the reform of rights-based institutions. While the condition of custodial spaces is a result of poverty and negligence, it is simultaneously a symbolic ideology. By neglecting surveillance and observation, the state gives spaces of coercion the privilege of invisibility and unaccountability.

## U.S.A

The implementation of CCTV and surveillance mechanisms in detention centres remains uneven, with rural and less developed regions lacking basic infrastructure due to budget constraints and weak political commitment<sup>60</sup>. This leaves detainees in such areas more vulnerable to abuse without accountability.<sup>61</sup>

Privately-run detention facilities have further exacerbated the issue<sup>62</sup>. These facilities, driven by profit motives, often compromise on basic human rights and living standards. Overcrowding, a

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<sup>57</sup> Rahamathulla S and M A Saleem Ahmed, 'A Study of Constitutional Protections Against Custodial Violence: A Critical Analysis' (2024) 6(6) *International Journal for Multidisciplinary Research* <https://www.ijfmr.com/papers/2024/6/30405.pdf> accessed 10 April 2025.

<sup>58</sup> National Commission for Human Rights (Pakistan), *Torture & Custodial Death: Report 2024* (NCHR 2024) <https://nchr.gov.pk/wp-content/uploads/2024/06/Torture-Custodial-Death.pdf> accessed 10 April 2025.

<sup>59</sup> Amnesty International, *Pakistan 2022* (Amnesty International, 2023) <https://www.amnesty.org/en/location/asia-and-the-pacific/south-asia/pakistan/report-pakistan/> accessed 8 April 2025.

<sup>60</sup> Human Rights Watch, *Systemic Indifference: Dangerous & Substandard Medical Care in US Immigration Detention* (HRW, 2017) <https://www.hrw.org/report/2017/05/08/systemic-indifference/dangerous-substandard-medical-care-us-immigration-detention> accessed 10 April 2025.

<sup>61</sup> Department of Homeland Security, Office of Inspector General, *Concerns about ICE Detainee Treatment and Care at Four Detention Facilities* (OIG-18-32, 2017) <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf> accessed 10 April 2025.

<sup>62</sup> American Civil Liberties Union (ACLU), *Warehoused and Forgotten: Immigrants Trapped in Our Shadow Private Prison System* (ACLU, June 2014)

lack of medical care, contaminated food and water, a lack of hygiene supplies, physical abuse, sexual harassment, and prolonged solitary confinement are all documented in reports from such facilities.

Children have been separated from parents, and detainees have suffered mental trauma due to prolonged isolation and lack of access to legal representation. Systemic issues like poor government oversight, profit-driven private prison practices, lack of transparency, and weak enforcement of human rights standards persist. Despite pledging to reduce reliance on private prisons, the Biden administration's<sup>63</sup> extension of contracts with private immigration detention centres highlights ongoing systemic failures in addressing custodial violence and ensuring the protection of detainees' fundamental rights.

## IMPACT ON MARGINALIZED COMMUNITIES

### INDIA

Custodial torture disproportionately affects individuals from Dalit, Adivasi, Muslim, and other marginalized communities. Structural inequalities, intersectional discrimination, and lack of legal awareness contribute to their vulnerability<sup>64</sup>. Reports by the National Dalit Movement for Justice and data from National Campaign on Dalit Human Rights indicate that Dalits are more likely to face custodial violence and false charges<sup>65</sup> compared to others.

These communities are often unable to access legal remedies or compensation, with language barriers, social stigma, and economic instability acting as deterrents. Gendered dimensions of custodial violence, including sexual torture of women detainees, remain underreported and inadequately addressed<sup>66</sup>.

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[https://www.aclu.org/sites/default/files/field\\_document/white\\_paper\\_warehoused\\_and\\_forgotten\\_immigrants\\_trapped\\_in\\_our\\_shadow\\_private\\_prison\\_system\\_o.pdf](https://www.aclu.org/sites/default/files/field_document/white_paper_warehoused_and_forgotten_immigrants_trapped_in_our_shadow_private_prison_system_o.pdf) accessed 10 April 2025.

<sup>63</sup> The New York Times, *Biden Administration Extends Trump-Era Private Immigration Jail Contracts* (NYT, 2022) <https://www.nytimes.com/2022/06/30/us/politics/biden-immigration-detention-private-prisons.html> accessed 10 April 2025.

<sup>64</sup> Human Rights Watch, *Broken People: Caste Violence Against India's "Untouchables"* (1999) <https://www.hrw.org/report/1999/03/01/broken-people/caste-violence-against-indias-untouchables> accessed 10 April 2025.

<sup>65</sup> National Campaign on Dalit Human Rights, *Equity Watch 2015: Access to Justice for Dalits in India* (2015) <https://idsn.org/wp-content/uploads/2015/12/Access-to-Justice-Equity-Watch-2015-report-NCDHR.pdf> accessed 10 April 2025.

<sup>66</sup> Hannah Ellis-Petersen, 'Rape, Sexual Abuse and Babies in Prison: The Women Suffering in Indian Jails' *The Guardian* (London, 23 February 2024) <https://www.theguardian.com/global-development/2024/feb/23/rape-sexual-abuse-women-babies-indian-prisons-west-bengal> accessed 10 April 2025.

Several theoretical frameworks critique custodial torture from the Marxist critique of class and state violence<sup>67</sup>, to critical race theory analyzing structural discrimination in criminal law enforcement. Legal realism, which highlights the disparity between the theoretical law in books and the actual practice of that law, is particularly relevant to India's context.

## PAKISTAN

Custodial torture is especially prevalent among low-income populations, religious minorities, and ethnic groups such as Ahmadis, Balochs, and Pashtuns. Structural inequalities are disproportionately magnified for these categories due to the abuse of power through profiling, a lack of political representation, and restricted legal representation. There is limited reporting and investigation into cases involving these communities.<sup>68</sup> Caste, class-based profiling has significant implications on how detainees are treated, and torture is uncommon among elite victims. Without anti-discrimination enforcement in place, abuse has become ritualized. State utilizes apparatus of law enforcement against populations which are already politically excluded, using torture to reinforce social hierarchies. It is not failure of a rule of law, but as a strategic deployment of violence, to sustain rule of law for the few and not all.

## U.S.A

Custodial violence affects disproportionately marginalized communities, particularly racial minorities<sup>69</sup>. Black individuals are more likely to be subjected to police use of force compared to white individuals, some examples being that of Edward Garner<sup>70</sup> who was a 15 year old black teenager who did not pose serious threat but still was shot dead by police and that of George Floyd<sup>71</sup> death which sparked nationwide protests against police brutality, racism, and systemic injustice in the U.S, under the banner of the "Black Lives Matter" movement. This disparity underscores systemic racial biases within law enforcement practices<sup>72</sup>.

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<sup>67</sup> Sumanta Banerjee, 'In Cold Blood: Culture of Custodial Killings and Rapes in India' (2015) *Liberation*, Communist Party of India (Marxist-Leninist) <https://cpiml.net/liberation/2015/05/cold-blood-culture-custodial-killings-and-rapes-india> accessed 10 April 2025.

<sup>68</sup> Asian Human Rights Commission, 'Torture in Pakistan' (AHRC, 2008) <http://www.humanrights.asia/tortures/torture-in-pakistan/> accessed 10 April 2025.

<sup>69</sup> U.S. Department of Justice, 'Investigation of the Ferguson Police Department' (2015) [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf) accessed 10 April 2025.

<sup>70</sup> *Tennessee v Garner*, 471 US 1 (1985).

<sup>71</sup> *Derek Chauvin v State of Minnesota*, Criminal Case No. 27-CR-20-12646, Hennepin County District Court (2021).

<sup>72</sup> BBC News, 'George Floyd: What happened in the final moments of his life' (BBC, 16 March 2021) <https://www.bbc.com/news/world-us-canada-52861726> accessed 10 April 2025.

# PUNISHMENTS, DETERRENCE AND SYSTEMIC IMPUNITY

## INDIA

Despite recurring instances of custodial deaths and torture over 1,888 custodial deaths recorded between 2001–2020 (National Campaign Against Torture)<sup>73</sup> convictions are rare. A systemic culture of silence and solidarity among police officials, coupled with weak prosecution mechanisms, fosters impunity<sup>74</sup>. The lack of independent investigative bodies further impairs deterrence. Although the NHRC monitors such cases, its recommendations are not binding, and enforcement is weak<sup>75</sup>. The absence of a comprehensive anti-torture legislation perpetuates this cycle of abuse and legal evasion<sup>76</sup>.

## PAKISTAN

Perpetrators of custodial torturers are almost never prosecuted. Disciplinary mechanisms from within the system have weak consequences, and victims of custodial violence face possibility of reprisals if they pursue civil remedy. The 2022 Torture Act provides punishment but has no specific implementation. The culture of police solidarity and lack of internal accountability, protection, or ramifications for perpetrators have also created an environment where administrative discipline (like suspension or transfer) is the norm, which in turn creates a culture of impunity. The inaction regarding custodial torture is not a gap in the system, it is the system of the police and military. When custodial torture is met with, at best, internal transfer or short suspensions, it suggests torture is sanctioned and institutionalized. Legal inaction around prosecution demonstrates that there is greater political willingness to act to protect police and the military than there is to act against custodial violence.

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<sup>73</sup> National Campaign Against Torture, 'India: Annual Report on Torture 2020' (2020) <https://www.uncat.org/india-annual-report-on-torture-2020/> accessed 10 April 2025.

<sup>74</sup> Praneeta Kumari and Seema Kashyap, 'Unabated Custodial Violence in India: A Critical Study' (2023) 3(2) *International Journal of Civil Law and Legal Research* 10 <https://www.civillawjournal.com/archives/2023.v3.i2.A.50> accessed 10 April 2025.

<sup>75</sup> Prisha Jain, 'Custodial Violence and Its Impact' (SSRN, 28 February 2024) <https://ssrn.com/abstract=4946758> accessed 10 April 2025.

<sup>76</sup> 'Custodial Torture in India: Intersection of Criminal Law and Constitutional Rights' (SCC Online, 23 March 2024) <https://www.scconline.com/blog/post/2024/03/23/custodial-torture-in-india-intersection-of-criminal-law-and-constitutional-rights/> accessed 6 April 2025.

## U.S.A

Custodial violence is governed by both federal and state laws, with varying penalties based on the nature of the offense and the authority involved. However, its limited scope, failure to address ongoing systemic issues like racism and police brutality, and exclusion of recent victims limit its effectiveness. Punishments for custodial violence include monetary compensation, punitive damages, court-ordered reforms, termination from service, criminal prosecution, and federal charges under 18 U.S.C § 242<sup>77</sup>. However, major obstacles to enforcement include qualified immunity<sup>78</sup>, prosecutorial reluctance, skewed internal investigations, and juries that are sympathetic to the police. Despite legal provisions, systemic impunities such as lack of independent oversight, police union protections, racial bias, and evidentiary challenges continue to shield perpetrators and hinder justice<sup>79</sup>.

## REPARATIONS AND VICTIM SUPPORT

### INDIA

Compensation mechanisms exist through NHRC recommendations and Supreme Court directives, as in *Nilabati Behera v. State of Orissa*<sup>80</sup>, yet they remain inconsistent. Rehabilitation services, psychological support, and long-term care for survivors of torture are nearly non-existent. The Victim Compensation Scheme under Section 357A CrPC lacks uniformity and adequate outreach. Judicial remedies are limited by procedural delays and lack of victim-centric approaches. Survivors often face retraumatization during litigation without holistic support frameworks<sup>81</sup>. A centralized, time-bound reparations mechanism with socio-legal support must be institutionalized. The future strategy must center decolonial, intersectional, and rights-based approaches, ensuring the custodial system aligns with India's constitutional morality and international commitments. Without systemic reform, judicial interventions will remain reactive and piecemeal.

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<sup>77</sup> 18 U.S. Code § 242 — Deprivation of rights under color of law

United States Code, Title 18 § 242 (1996).

<sup>78</sup> Civil Rights Litigation: Qualified Immunity

Alexandra Natapoff, 'Qualified Immunity and the Legal System's Failure to Hold Police Accountable' (2020) 74(2) Vanderbilt Law Review 387.

<sup>79</sup> Challenges in Police Accountability

Rachel Harmon, 'The Problem of Policing' (2015) 110 Michigan Law Review 761.

<sup>80</sup> *Nilabati Behera v State of Orissa* (1993) 2 SCC 746.

<sup>81</sup> *S Nambi Narayanan v Siby Mathews & Others* (2018) 10 SCC 804



## PAKISTAN

Pakistan does not have a systemic protocol for reparation in custodial violence cases. Monetary compensation hardly occurs, there is no rehabilitation policy, and judicial remedies fail because of systemic impunity and institutional favoritism. Justice for torture victims will be determined by legal reform, independent oversight, and victim support; all of which remain purely perfunctory. The processes for judicial remedies also take so long, any act of custodial torture leaves the victim with post-traumatic stress or life-long trauma and little to no institutional support.

## U.S.A

Victims can seek remedies under 42 U.S. Code of 1983<sup>82</sup> for constitutional rights violations like denial of due process or cruel and unusual punishment. The 2015 Chicago Police Torture Reparations Ordinance<sup>83</sup>, which provided financial compensation, educational benefits, counselling, and a public apology, was a significant initiative that addressed police torture. As demonstrated in the George Floyd case<sup>84</sup>, where his family received \$27 million in addition to legal and emotional support, victim support mechanisms frequently include counselling and financial settlements.

Under §1983, payouts are case-specific and frequently originate from municipalities rather than officers and a lot of them are resolved out of court. Many claims are, however, barred by stringent legal requirements and qualified immunity. It was challenging to obtain systemic accountability and a financial remedy in *Monell v. Department of Social Services*<sup>85</sup> because municipal liability was restricted to official policies.

## CONCLUSION AND SUGGESTIONS

Custodial violence is driven by systemic gaps, institutional indifference, and lack of enforcement of legal protections. Although all three countries have different socio-political contexts and legal frameworks, what they share is a serious limitation on public accountability systems. In India and

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<sup>82</sup> 42 U.S. Code § 1983 — Civil action for deprivation of rights

United States Code, Title 42 § 1983 (1996).

<sup>83</sup> Chicago Police Torture Reparations Ordinance (2015)

City of Chicago, 'Reparations for Burge Torture Survivors Ordinance' (6 May 2015)  
[https://www.chicago.gov/city/en/depts/dcd/supp\\_info/burge-reparations.html](https://www.chicago.gov/city/en/depts/dcd/supp_info/burge-reparations.html) accessed 10 April 2025.

<sup>84</sup> George Floyd Case Settlement

Neil Vigdor, 'George Floyd's Family Settles Suit Against Minneapolis for \$27 Million' The New York Times (New York, 12 March 2021) <https://www.nytimes.com/2021/03/12/us/george-floyd-settlement.html> accessed 10 April 2025.

<sup>85</sup> *Monell v Department of Social Services of the City of New York* [1978] 436 US 658.

Pakistan, often egregious cases have become sensationalized and created outrage in the media but achieving structural reform is rare. In the USA, media narratives typically reinforce a political narrative that is justified around aggressive policing, especially against racial minorities, with continual impunity that is worked into law, rather than with meaning for reform.

In India, the judiciary often steps into the void created by legislatures and executives, as seen with social action litigation and creeping jurisdiction. In contrast, Pakistan has taken a formal approach toward the law with a number of initiatives, but political will and enforcement is weak. The USA, irrespective of its robust system of oversight, also witnesses systemic neglect with respect to protection against custodial violence such as institutionalised racial bias police immunity.

The coordinated way forward must also be a form of judicial confidence, have the media serve a genuine fourth pillar as opposed to sensationalized journalism, and instil a culture of accountability. At the global outset, dialogues around human rights reporting can serve as a catalyst to reframe existing perceptions of custodial violence as a normal practice into a human rights crisis.

Judicial activism has pushed boundaries, but lasting change requires comprehensive reforms, namely: ratifying the UNCAT, enacting dedicated legislation, ensuring independent oversight (probable creation of an Independent Police Complaints Authority), mandatory installation of CCTVs with tamper-proof data storage, regular judicial audits of detention facilities, Inclusion of custodial rights in police training curricula, victim-oriented reparative justice models, emphasizing rehabilitation and reintegration of the victims. Only through enforceable legal responsibility, empowered judiciaries, and international cooperation can custodial violence be dismantled as a systemic abuse and redefined as a non-negotiable human rights violation.

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