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Custodial Death in India

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ABSTRACT

Custodial death is among the greatest crimes in a civilized society where the Rule of Law is upheld. It begs the question of whether a person loses his or her fundamental right to life when they are taken into custody by the police. Can a person's right to life be suspended after being arrested? The answer must be a categorical "No." The use of third-degree tactics on suspects during unlawful detention and police detention reflects poorly on the administration system in India, where the rule of law is implicit in all actions and the right to life and liberty is considered the fundamental right that occupies the highest position among all other essential fundamental rights. One of the most commonly acknowledged forms of abuses of human rights that are brutal in nature. The National Commission for Human Rights (NHRC), the Supreme Court, the Indian Constitution, and the United Nations all forbid it. But police officers all around the nation are disobeying these organizations. Therefore, to effectively combat crime, it is necessary to establish a balance between individual human rights and public objectives.

I. INTRODUCTION

The concept of custodial death is not new, particularly in India where it has been practiced ever since the British held the country's sovereignty. Over the past four to five years, violence and cruelty by police have increased dramatically. It reveals a lack of legal measures in our judicial system that allow us to hold law-enforcing authorities accountable when they use torture and other cruel tactics while performing their duties. Police forces should be instructed to use proportionate amounts of force to prevent such accidents, as police brutality frequently results in serious injuries to the accused. Violence in prisons and jails is also influenced by the impression that the accused has been given by the media. Custodial Death is not a new notion in countries such as India. Custodial death is a long-standing problem that was formerly carried out by Britishers, and during the last four to five years, police violence and cruelty have escalated substantially. The inability to hold law enforcement officers accountable for using harsh tactics and resorting to torture by invoking "performance of duty" as justification demonstrates a lack of legislative safeguards in our legal system. Sections 330, 331, and 348 of the IPC govern the control of the police officer's harsh and unusual punishment.

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(A) Objective of research

The working or practice of in-humiliation towards custodial detainees, i.e., "third-degree torture" to the prisoners to obtain the truth, is a blemish on the Indian Administrative System. However, it is increasingly being used by police officers to further their careers. Third-degree torture or custody torture may also be the cause of a prisoner's death, commonly known as the Custodial Death of Prisoners. The same topic will be addressed in this article as the background/history of custodial deaths in India, as well as the outcomes and major decisions delivered about Custodial Deaths. The custodial death situation is a worldwide issue, and it is regarded as the cruelest kind of violation after the terrible crime known as These occurrences exposed the absence of anti-torture legislation in India, and calls have been made for legislation to be enacted to prevent such incidents from occurring.

(B) Statement of problem

To address the issue of custodial deaths, which has increased dramatically in recent years, new, strict laws are required to tackle the increase in the number of custodial deaths in India.

(C) Hypothesis

1. India lacks anti-torture legislation and has yet to criminalize custodial brutality, while punishment against complicit officials remains elusive.
2. India also fails to implement much-needed prison reforms, and prisons continue to suffer from terrible conditions, overcrowding, acute manpower shortages, and limited safety against injury.
3. The impoverished and the disadvantaged are discouraged by courts' lengthy, expensive formal procedures.

(D) Scope of research

Due to the exponential increase in custody deaths in recent years, new, strict rules are required to address the problem. However, the Constitution contains some legal provisions that punish the crime of custodial death.

- Section 302 of the Indian Penal Code (IPC): A police officer would be prosecuted with murder and subject to punishment under Section 302 of the IPC if the suspect dies while in custody.
- Indian penal code, Section 304: The police officer may be penalized for "culpable homicide not amounting to murder" under Section 304 of the IPC. If the custodial death resulted from the negligence of another person, Section 304(A) may also be used.

- Indian Penal Code, Section 306: The sanctions for aiding suicide are covered by this section of the IPC. Police officers are prosecuted under section 306 of the IPC if it is discovered that the suspect committed suicide while they were in custody and if the cop encouraged the suicide.

According to Section 330 of the Indian Penal Code, police officials frequently use violence and torture to coerce confessions, seriously injuring the accused in the process. The IPC's Section 330 addresses the penalty for intentionally inflicting harm.

According to Section 331 of the Indian Penal Code, if police officer intentionally causes serious injury to an accused person while they are in custody, they will be punished. The National Human Rights Commission (NHRC) has lately brought attention to an alarming statistic regarding deaths in custody between 2021 and 2022. According to the NHRC, there were 155 incidents of fatalities while in police custody and 2,150 cases of fatalities while in court custody.

The biggest number of judicial detention deaths (448) occurred in Uttar Pradesh.

While Maharashtra tops the list in terms of deaths (29) while in police custody, Uttar Pradesh maintains the record for the most deaths while in custody of the courts. The number of custodial deaths over the previous five years, as reported by the NHRC, was 1940, 1696, 1933, 1782, and 1761, in the corresponding calendar years 2020–21, 2019–20, 2018–19, 2017–18, and 2016–17. 9112 people have died while being held in custody during the course of the last five years.

(E) Limitations of research

According to the NHRC's records, the number of people dying while in custody has been rising steadily. The data is troubling since Article 21 of the Indian Constitution guarantees everyone the fundamental right to life, and it gets worse if a law enforcement agency fails to uphold that duty. According to the NCRB's 2018 prison report, there were 149 custodial deaths in 2018, of which some were due to circumstances that were either undetermined or unreported by some of the states. Numerous detainees committed suicide while they were in custody, but it is unclear if they were forced to do so to stop additional abuse and torture. Prisoners' psychological needs are entirely different. To put it mildly, the jail conditions are appalling. Not only are the medical services provided to the convicts subpar, but there are also several cases of deadly fighting between inmates. An inmate's thinking is significantly impacted by physical suffering, which further compounds psychological pain. To defend the fundamental right to life, the state's authorities must assure compliance with these necessities. The enormous power granted to police by the State is one of the main causes of the increase in incarceration deaths. According to Section 49 of the Code of Criminal Procedure, the detained individual shall only be subjected

to a fair degree of force and shouldn't be subjected to more restriction than is required to stop him or her from escaping. Since they are the ones investigating custodial deaths and have all the evidence, police officials frequently disregard these rules and employ excessive force. As a result, many of these death cases result in administrative cover-ups. There has been an increase in the number of custodial deaths, which can be ascribed to the lack of It is time to establish a solid precedent to prevent the legal authorities from going beyond their authority. The Supreme Court has rejected the idea of torture in detention, describing it as a flagrant insult to and violation of human dignity.

Torture committed while in custody is illegal and punishable by law, yet due to systemic flaws, this rarely happens. According to reports, the doctors performing the post-mortem are under pressure from the police authorities and are therefore unable to carry out their medical duties carefully. A post-mortem is a crucial component of the investigation process, and it can be used to gather evidence. Because the post-mortem is affected and the other evidence is with the law enforcement agencies, which look into cases involving custodial death, the offenders are not found guilty.

II. HISTORICAL BACKGROUND OF CUSTODIAL DEATHS

The minister of state for home, Nityanand Rai, stated earlier this week in parliament that 4,484 fatalities while being held in custody and 233 alleged police encounters had all been reported in India over the last two years. Custodial deaths may occur incidentally, without the involvement of the police, such as when a criminal defendant or accused individual expires from illness. A problem arises, though, when law enforcement becomes involved in someone's passing while that person is in their custody. However, it is exceedingly difficult to prove that the police were at fault due to the tactics they utilized in these circumstances were to blame.

Sometimes, the police abuse their power even before an arrest is made, giving them the chance to claim that an individual's injuries weren't caused by the violence they witnessed while they were in their care. Recent stories have referred to "fake encounters," which is another phrase for custodial deaths. When these things happen, the police hold all of the evidence and documentation about the incident, making it exceedingly difficult to prove their misconduct. It is therefore extremely challenging to demonstrate the authorities' wrongdoing and establish their innocence. The Indian Constitution guarantees everyone the right to life and liberty and forbids any form of torture used during interrogation that aims to force a confession of guilt. Although authorities like the police violate these legal rights and commit acts of detention abuse and torture, the Indian Constitution protects the security of prisoners and suspects in police and

court custody facilities. A person designated to provide protection, care, or guardianship for anything is said to be in custody. Although not all custody will be kept for an arrest, every arrest is a form of custody. For instance, the room manager and 50% of the other guests are potentially dangerous to the other guests. Then it is the person's responsibility to detain that 50% of the population. Instead of being arrested in this situation, the suspect is held in the room manager's care.

(A) Role of NHRC

On October 12th, 1993, the National Human Rights Commission was established. The Protection of Human Rights Act of 1993 contains the NHRC's law. The NHRC supports the Paris Principles, which were established at the first international workshop on the defense and advancement of human rights in Paris in October 1991. The Commission offered certain guidelines to the law enforcement authorities after quickly realizing that wrongful death in custody is a serious issue. It is now mandatory to report deaths that occur in police and correctional facilities. The District Magistrate and Superintendent of Police must notify the Commission of any such deaths within 24 hours of the event. In addition, it became necessary to film the post-mortem by adopting preventive steps, the Commission has been instrumental in reducing some deaths that occur while a person is in custody. The Commission considers the grievances raised by the victims' families and does not just depend on the information provided in the police reports. According to a Transparency International report from 2019, the NHRC recorded 31,845 occurrences of custody deaths between 1993 and 2016. Despite the NHRC doing a good job in its function, more work still has to be done. It is necessary to make the Commission's rulings enforceable since doing so will make law enforcement agencies more cautious when using force and instill fear in them.

(B) 1945 United Nations Charter

The United Nations Charter mandates that prisoners be treated with respect. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights all explicitly mention prisoners' fundamental freedoms and human rights.

III. CASE STUDY

The troubling statistics for deaths in custody highlight India's deplorable law and order situation. It is regrettable when people lose their right to life as a result of police abuse and brutality. The fact that the police use violence and torture speaks to an even worse situation. Lack of proof against police for causing a death while in custody is a helpless situation because they are in

command of all the records and evidence, making it impossible to penalize the staff. However, some actions can be taken to stop custodial deaths.

First, the historic ²D K Basu v. State of West Bengal, 1996 ruling's eleven recommendations should be faithfully carried out. To make sure that the state governments are not putting pressure on the police, the court ordered the creation of a State Security Commission. The panel should establish some rules for the police, and the court suggested evaluating the performance of the police personnel.

The Director-General of the Police must be appointed using a merit-based system for a two-year term. The third directive stipulated that the station house officers in charge of the police station and the SP in charge of the district should each have a minimum tenure of two years.

Separating the police's investigation and law and order duties was mandated by the fourth directive. The need for a Police Establishment Board when the accused is taken into custody, the police officers are required to note the arrest.

The accused's family or acquaintances must be notified as quickly as possible that they have been arrested. If the accused's family or friends reside outside the district, they must be telegraphically informed of the arrest after 8 to 12 hours of the arrest by the local police station and a "legal aid organization" in the district. The person who has been arrested must be informed of his right to inform a third party of his arrest.

There must be a record of the arrest's entry. When an accused person is apprehended, they need to be examined. Within 48 hours of the arrestee's incarceration, a medical exam must be done on him. The magistrate in the relevant region should receive copies of all documents and memos. During the investigation, the detained person has a right to speak with his attorney. All state headquarters and districts must have a police control room and information on the arrest must be given to the control room within 12 hours of the arrest being made, according to the guidelines.

IV. STATISTICS OF CUSTODIAL DEATH IN INDIA

Some statistics about deaths while in custody were also included in the National Record Crime Bureau (NCRB) report from 2020.

There have been 1888 documented correctional fatalities nationwide between 2000 and 2020. Police personnel were accused in 893 cases involving deaths while in custody, but only 358 of

² D.K. BASU V. STATE OF WEST BENGAL, 1996

them were given formal charges, and only 26 of them were found guilty.

While only 26 police officers have been found guilty in the past 20 years, NCRB records show that 96 officers were detained between 2017 and 2020.

According to NCRB data, between 2010 and 2020, 69% of deaths in police custody were brought either by sickness (40%) or suicide (29%). Suicide and illness are regarded as natural causes of death.

The number of suicide deaths increased considerably between 2015 and 2019. In this time frame, 36% of deaths.

V. CONCLUSION

The number of deaths in custody reported by NHRC and NCRB is horrific. It needs to be altered. The state's protection of cops, even though they abuse their authority, is a significant problem. In situations where a person dies while being held in custody, police operations must be closely monitored, and any guilty police officers must face punishment. To convince the authorities that they cannot abuse their power, a precedent must be established. It is quite challenging to predict that the situation with relation to custody mortality will improve given the existing situation. Stringent legal action is required, primarily to discipline the employees who abused their authority and utilized brutal force. It is crucial to adhere to the precedent-setting rulings in *D.K. Basu v. State of Bengal* and ³*Prakash Singh v. Union of India*.

³ PRAKASH SINGH & ORS. V. UNION OF INDIA AND ORS, 2006

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