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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

CUSTODIAL DEATHS—A GREAT VIOLATION OF FUNDAMENTAL RIGHTS

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ABSTRACT:

Custodial death occurs when an individual is incarcerated by the authorities, either as a convicted criminal or as a suspect in a criminal case. The existence of this most heinous crime in a civilized society is astonishing. In this case, law enforcement authorities act as offenders and violate human rights. This is the result of a power grab. It eventually leads to prejudice based on caste and religion. This type of cruelty has long been accepted and done in order to elicit confessions from suspected criminals. The majority of the times, these deaths are misrepresented as natural deaths or suicides, allowing the perpetrator to avoid prosecution. In the specifics, there is a lot of room for maneuvering. When a court hears a case involving a custodial death, a recurrent question is whether a criminal or suspect loses his right to life, which is guaranteed by the Indian constitution, after he is apprehended. And why should he be deprived of that right? He has a good chance of proving his innocence with the evidence. These harsh treatment methods are illogical. And the police officers' misconceptions about unfettered authority must be dispelled. Here in this article the researcher is trying to find out the loopholes in the criminal justice system.

KEYWORDS: *Custodial death; incarcerated; heinous; confession; innocence; power grab.*

1. AN OVERVIEW

The word "custodial death" is defined by Wikipedia as "the death of a person in the custody of the police, prison service, or other authorities." Its legality has remained a point of contention and debate, as the popular retributive-deterrent mentality has sanctioned this incarceration of barbarism. Though the authorities are legally obligated to provide enough basic facilities and safeguard the inmates' safety by providing a healthy environment with appropriate medical attention, the reality differs from what the legal implications suggest. It is also observed that those who belong to the poorer portions of society or those from downtrodden castes are the ones who are subjected to this maltreatment in prison.

Custodial death is one of the most heinous crimes that can be committed in a civilized society regulated by the rule of law. When a police officer arrests a citizen, does he relinquish his fundamental right to life? Can a citizen's right to life be suspended if he is arrested? Yes, the answer must be a resounding "No." Torture and the use of third-degree methods on suspects during illegal detention and police remand cast a smear on the very system of administration in India, where the rule of law is inherent in every action and the right to life and liberty is a prized fundamental right occupying the highest place among all the important fundamental rights. When the case of custodial death comes before the court, a number of questions arise, the most important one is whether the right to life of a criminal or suspect, guaranteed by the Indian constitution, is violated.

According to the National Crime Bureau, in every year more than 100 people are being dead in the custody. In situations of torture, it is apparent that virtually little action is taken against the responsible police officers.

There is currently no independent system for investigating accusations of police wrongdoing, despite the National Police Commission's recommendation for a separate independent body. In this sense, the National and State Human Rights Commissions that have recently been established are equally ineffective. First, political influence is used to choose senior officials, and second, they are so paralyzed that they do not provide any assistance to the complainants. When complainants complain, police harassment often intensifies since the complaint is turned around and brought to the police. No government has followed the Supreme Court's order on Police Reforms since the situation is so severe. To be specific, no political party has made it a campaign issue.

To keep in view that the custodial torture is the most heinous forms of human rights violation as prohibited by Indian Constitution, the Supreme Court, the National Human Rights Commission (NHRC), and the United Nations, the court observed in *Joginder Kumar v. State of Uttar Pradesh*, (1994) 4 SCC 260 that there must be a realistic approach to maintain the balance between individual human rights and community interests.

Custodial death is one of the most egregious violations of the Indian Constitution's Part III of Human and Fundamental Rights. Soon after India's independence, the "police state" system, which provided Sovereign Immunity to police personnel, was repealed, and the "Social

Welfare State" system was founded. As stated in Article 14 of the Indian Constitution, the welfare state encourages equality before the law and bans discriminatory treatment.

The administration is governed by checks and balances in this Welfare State. Despite this structure, police officers abuse their power and authority. According to the National Human Rights Commission's (NHRC) report, there were 1723 incarceration-related deaths in India in 2019. In the month of July 2020, there were 185 Custodial Deaths and Encounters. The officers tried to get out of the allegations against them by citing various defences, such as the occurrence of an interaction. There have been numerous complaints and reports of custodial torture, custodial gang rape, and phony encounters, among other things. Custodial deaths and tortures are reported by many other authorities who have the capacity to detain a person, not just the police and the judiciary. In 2019, the NHRC alone ordered the payment of Rs. 10,05,85,000 in compensation in 391 reported Human Rights Violation Cases. There have been reports of convicts dying in custody as a result of denial and inadequate medical treatment.

2. MAGNITUDE OF THE PROBLEM

According to National Crime Records Bureau data, the bulk (69 percent) of 1,004 deaths in police custody during the last ten years have been linked to either disease or natural causes (40 percent) or suspected suicide (29 percent). Now the question is whether the custodial deaths by sickness are due to a lengthy or sudden illness, or whether hospitalization is linked to conditions/situations in jail, or owing to violence in custody.

Over the last decade, there have been more suicides in police custody, with 36 percent reported as suicides between 2015 and 2019. A total 2,152 cases relating to deaths of persons in judicial custody and 155 relating to deaths in police custody were recorded in 2021-22 (until February 28, 2022) by the National Human Rights Commission. As per NHRC data shared by MHA, there were 1840 judicial deaths across the country in 2020-21, 1584 in 2019-20, 1797 in 2018-19, 1636 in 2017-18 and 1616 in 2016-17. Police custody death cases with NHRC stood at 100 in 2020-21, 112 in 2019-20, 136 in 2018-19, 146 in 2017-18 and 145 in 2016-17.

An analysis of media stories reveals that, in certain cases, families have claimed foul play or that the suicides were caused by detention torture. Since 2014 has there been evidence of police physical aggression, and in only 6% of cases. Just 2.4% of the 85 deaths that year in police

custody were linked to police assault, according to the report. However, the NGO platform National Campaign against Torture reported that 76 percent of the 124 deaths in police custody that year were attributed to torture or foul play.

The most vulnerable groups in society are the poor and marginalized. Regretfully, the great majority of deaths and tortures that occur in police custody also reflect this. Thirteen cases of Dalit and tribal people dying while in police custody were reported by the National Commission on the Status of Dalits and Tribes (NCAT) in 2019. Among them were five Dalits and eight tribal people. NCAT recorded 124 occurrences of deaths in police custody in 2019, including the deaths of 125 individuals. 75 of them, or 60%, came from underprivileged and marginalized communities. Thirteen Dalit and tribal victims, fifteen members of the Muslim minority, 37 victims detained for minor offenses that revealed their socioeconomic status, three farmers, one laborer, one refugee, two security personnel, one rag-picker, and two drivers were among the victims.

These communities are often refused vital aid because of their poor financial status, lack of legal procedures, and illiteracy. Therefore, it is acceptable to argue that, although being portrayed as necessary for crimes in large cities, the consequences of these transgressions have a huge impact on the safety and dignity of the vulnerable. Women and children are to be kept in a separate lockup in the police station and any examination or body search must be conducted by a woman officer or doctor.

Under the general law, children under the age of 7 years cannot be accused of a crime, hence cannot be taken into police custody. However, the procedure for questioning, apprehension, custody, release and bail of children up to the age of 18 is all governed by the Juvenile Justice Care and Protection of Children Act of 2002. It states that each police station must have a juvenile police unit with specially trained officers. A child must not be kept in lockup at all, but instead must be immediately handed back to the parents on bail and assurances. If the parents are not available, or it is felt that the child is at risk of falling into bad company then the child must be sent to the local observation home till he/she is brought before the juvenile court.

It is in the best interests of the police officers themselves to make sure that all procedures relating to women are carefully followed and are recorded meticulously, as by law, if a woman

in custody complains of rape it will be accepted unequivocally, unless the police officer can prove without any doubt that it did not take place. In addition to police personnel, male inmates also frequently threaten women in police custody with rape, sexual assault, and other physical violence. This is particularly true for women from lower castes or those with poorer incomes. For instance, from July 3rd to July 7th, 2019, nine police officers at the SardarShahar police station in the Churu region of Rajasthan are accused of unlawfully arresting, torturing, and raping a 35-year-old Dalit woman while she was in police custody. The victim allegedly suffered from custody rape and abuse, including nail plucking.

As a result, the Criminal Law Act, 2013, of the Indian Penal Code (IPC) establishes a reason for punishment in cases of rape/molestation by a police official, wherever, Commits rape while serving as a police officer – Within the confines of the police station to which the officer has been assigned; or on the premises of any station house; or On a woman in the custody of such a police officer or a police officer subordinate to such a police officer; or Commits rape against a woman while in the custody of a public servant or a public servant subordinate to such a public servant; A man faces rigorous imprisonment for at least ten years, but up to life in prison, which includes imprisonment for the remainder of the person's natural life, and a fine if he commits rape and causes serious bodily harm, maims, disfigures, or puts a woman's life in danger. Because they perceive little hope or means of taking legal action against the men in uniform, women in these vulnerable situations are sometimes forced to live with the trauma and carry on with their lives despite the protections in place. These situations, particularly when the offenders are in uniform and under oath, deepen the nation's sorrow over sexual abuse of women. Unfortunately, for unreported incidents, there are no such remedies.

Because the Juvenile Justice (Care and Protection of Children) Act of 2000 is not being enforced, children are also at risk of experiencing severe torture while in detention. As a result, many teenagers are frequently unlawfully arrested and subjected to torture. The NCRB documented 3,164 instances of police causing simple and serious bodily harm to 3,467 minors in its 2018 annual report. Given that children who have not yet reached maturity have been exposed to such a horrifying and life-altering incident by the very individuals who ought to be doing all in their power to protect them for the sake of our nation's future, this is a disturbing number.

These figures, which come from media stories, civil society reports, and NCRB statistics, show how many people have died while in police custody. There is a great deal of uncertainty in motive assignment. Over the past ten years, many reports on crime in India have documented the causes in disparate ways, making comparisons challenging. Consequently, the following research mostly includes 2019 data on hospitalization and illness/suicide. The significant majority of deaths in police custody during the past ten years have been linked to "hospitalization/illness/natural deaths" (40 percent), which includes 403 out of 1,004 deaths. As mentioned before, it is unclear from the category "death due to disease" whether the illness was acute or chronic. The reasons for hospitalization are also unknown, including if they had to do with conditions or circumstances while in jail or whether an assault by the police or another inmate was the cause.

In 2019, 81 percent of the reported reasons for mortality during treatment were either suicide (39 percent) or illness/death in hospitals (42 percent). Tamil Nadu (10), Maharashtra (7), and Gujarat (5) accounted for more than 60% of the 36 deaths in police custody recorded due to illness or in hospitals in 2019. In 2014, the first recorded cause of death in police custody was physical assault by police. Crime in India says that throughout the last six years (2014 to 2019), 33 persons (6.1 percent of the 537 people who died in police custody) died from injuries they sustained while in custody as a result of police physical assault. The total may be higher if the fatalities from illness/hospitalization, reported suicides, and "others" are taken into account.

Two of the 85 (2.4 percent) deaths that occurred in police custody in 2019 were caused by police violence, according to the Crime In India report. The National Campaign Against Torture in its India: Annual Report on Torture report from 2019 found that "torture" or "foul play" were responsible for the majority (76%) of the 124 deaths that occurred while the victims were in police custody.

Although they are not always carried out, mandatory judicial investigations are crucial in determining the causes of deaths that occur while a person is in police custody, according to experts. In addition, the Crime in India reports don't say how the cause of death was determined or whose authority verified it in situations where inquiries weren't ordered, weren't ordered but weren't carried out, or weren't carried out in the same year. Up until 2005, every death in police custody had to be investigated by an executive magistrate, as mandated by Section 176 of the Code of Criminal Procedure. In addition to investigations by the police or an executive

magistrate, a 2005 change to the clause required an investigation by a judicial or metropolitan magistrate. Only the cause of death can be determined by an executive magistrate's investigation. However, a judicial magistrate's investigation can cover more ground, looking into the circumstances, the cause of death, the way the injuries were caused, and the individuals involved. 297 court and 402 executive magistrate inquiries were ordered in the 1,004 cases of deaths in police custody during the previous ten years. It's unclear if some of these inquiries were into the same deaths, or if each inquiry was related to a particular death.

Almost all (68 of 73, or 93%) of the 73 inquiries carried out in Uttar Pradesh were by executive magistrates; no judicial inquiries were made. An executive magistrate, not a judicial magistrate, conducted 25 out of 29 investigations in Punjab. Ten states: Madhya Pradesh (in 2015), Meghalaya (in 2013), Odisha (in 2015 and 2017), Rajasthan (in 2011 and 2013), Tamil Nadu (in 2014), Kerala (in 2019), Chhattisgarh (in 2013), Gujarat (in 2010), and Tripura (in 2015 and 2019) and West Bengal (in 2013) – the number of enquiries reported were higher than the number of deaths reported. No explanation has been given for this. (These enquiries could relate to deaths in previous years, but this is not stated).

2.1 Few police-related cases are reported.

Uncertainty surrounds whether the 472 custodial death charges against police officers in the

Cases Registered and Charge Sheets filed in Cases of Death in Police Custody, 2010-2019					
Year	Death in Police Custody	Cases Registered	Police personnel Arrested	Police personnel Chargesheeted	Cases Registered (as a % of Deaths)
2010	82	42	Information not provided / maintained	26	51.22
2011	123	59		14	47.97
2012	129	70		10	54.26
2013	133	71		2	53.38
2014	93	28		26	30.11
2015	97	33		28	34.02
2016	92	25		24	27.17
2017	100	62	33	27	62
2018	70	44	23	13	62.86
2019	85	38	28	16	44.71
Total	1,004	472	84	186	47.01

last ten years are related to a single death or several fatalities. Only since 2017 has NCRB data on police arrests in custodial death cases been available. Since then, 255 deaths have been reported during the same time span, but only 144 cases have been registered. 56 police officers have been charged and 84 have been arrested since 2017. Only four police officers have been found guilty in the last ten years, despite the fact that 1,004 people have died while in the custody of the police (one in 2010 and three in 2013). Additionally, it's uncertain if Crime in India data on police officer convictions relate to the same year as the death in police custody.

Source: Crime In India reports, 2010-19, National Crime Records Bureau

Numerous reports, such as the Law Commission of India's 1994 report on Custodial Crimes (152nd Report), Human Rights Watch's 2016 report *Bound by Brotherhood: India's Failure to End Killings in Police Custody*, and the National Campaign Against Torture's *India: Annual Report On Torture, 2019*, have highlighted the difficulties in getting police officers convicted in cases of custodial deaths. All make reference to, among other things, the need for prior authorization in order to charge a public worker under Section 197 CrPC, the absence of proof in detention facilities, and hostile witnesses. Five people have died in police custody every day for the past ten years, yet few convictions have been made.

At least 17,146 persons were reported to have died in judicial and police detention in the ten years prior to March 2020, which is about five deaths per day on average, according to the most recent data from the National Human Rights Commission (NHRC). 53 of the 914 fatalities in detention that the NHRC documented occurred in police custody during the seven months preceding July 2020.

According to NHRC data, 92 percent of deaths occurred in judicial detention, which can last up to 60 or 90 days, and 1,387 in police custody, which can last just 24 hours unless a judge extends it for up to 15 days. Experts told *IndiaSpend* that while illnesses or medical negligence may be the cause of some fatalities in judicial custody, violence is more likely to be the cause of deaths in police custody.

Because there are more people in custody, there are more fatalities in jails (court custody). Not all deaths in prisons are attributable to torture. NCAT coordinator Suhas Chakma told *IndiaSpend* that it can be the result of old age or medical misconduct. "There are more deaths in judicial custody as a result." The National Campaign Against Torture (NCAT), an anti-

torture platform for non-governmental organizations, reported in a June 2020 NCAT investigation on torture that 125 persons died in 124 cases in Indian police custody in 2019.

"The practice of torturing detainees in police custody to punish them or [to] gather information or elicit confessions appears to be pervasive," according to the 2019 NCAT study on the 15 common tendencies in custodial torture and impunity in India. The National Human Rights Commission (NHRC) has documented an average of 139 police detention cases and 1,576 judicial custody cases per year for the ten years leading up to 2019-20. The National Human Rights Commission (NHRC) has documented around 1,500 judicial custody deaths each year for the eight years leading up to 2019-20.

According to NHRC guidelines, custodial killings must be reported to the National Human Rights Commission within 24 hours of the incident; otherwise, "not disclosing the information right away would give rise to the presumption that there was a purpose to suppress the incidence." However, there are no legal penalties for failing to report. Chakma clarified, "The police can invent a lot of excuses for not producing a person, therefore no action is done." Although it is necessary to file a first information report in the event of a custodial death, compliance is uncommon.

In 2018, the official crime data collection agency, the National Criminal Records Bureau (NCRB), recorded 29 case registrations and 46 deaths in police custody. Tamil Nadu (12 cases) and Gujarat (13 cases) had the most cases. Nair claims that the NCRB data understates the severity of the issue since it does not gather enough information. He claimed that because NGOs mainly rely on English media sources, their statistics are likewise untrustworthy.

In jails, there are inadequate medical facilities. According to the *India Justice Report (IJR) 2019*, the conditions in jails constitute a health danger to inmates. According to the *Model Prison Manual 2016*, there should be at least one medical officer for every 300 inmates, and one doctor should always be accessible in central jails. The survey found that 12 of the 20 states and union territories (UTs) evaluated had a medical officer shortage of 50% or higher. According to 2018 prison data, India's prison occupancy rate was 117 percent. With a rate of 176.5 percent, Uttar Pradesh was the state with the highest rate. Varavara Rao, an 80-year-old Marxist poet, was recently hospitalized after contracting COVID-19 while incarcerated, and despite his advanced age, he has been denied bail. *IndiaSpend* reports that 19 states and union

territories spend less than Rs 100 a day, or between Rs 20,000 and Rs 35,000 per person annually. Money spent on salaries and overheads was excluded, but other costs such as food, clothing, bedding, water, sanitation, cleaning, and medical care were included. Indeed, [custody] deaths serve as a reliable gauge of the quality of medical care provided in jails. Vijay Raghavan, professor at the Centre for Criminology and Justice at the Tata Institute of Social Sciences and project director of *Prayas*, a criminal justice field action project, stated, "There are not enough health workers, both in terms of quantity and quality." Governance and cultural issues are at the heart of the questions.

Of the 125 deaths reported by NCAT nationwide in 2019, Uttar Pradesh had the highest number of deaths in police custody (14) followed by Tamil Nadu and Punjab, each with 11 deaths. "The issue of custodial deaths is a combination of governance [issues] and a legacy of police administration," stated N. Rama Chandran, the founder and president of the Indian Police Foundation and a former director general of police in Assam and Meghalaya.

The research claims that 60 percent of the 125 police custody deaths confirmed by the NCAT in 2019 involved members of underprivileged and marginalized communities. There were fifteen Muslims and thirteen Dalit and tribal victims. "The bulk of them are from low-income households with no political power," Nair explained, adding that victims often have little to no access to legal counsel or the capacity to monitor the progress of their cases. In the 14 years preceding 2018, no police personnel suspected of torturing detainees were found guilty, according to the NCAT research. During this period, 54 officers were charged in 500 cases of death or disappearance involving individuals remanded in police custody.

Police officers are often witnesses to torture in detention; some may be reluctant to testify against their peers, or suspects may have "support from top cops," according to Rama Chandran. He clarified, "This causes challenges in obtaining convictions." Even though technology is being used more and more, scientific research methodologies are still relatively new in India. Rama Chandran asserts that the adoption of efficient forensic technology is the sole method to lessen violence in detention.

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technology is being used more and more, scientific research methodologies are still relatively new in India. Rama Chandran asserts that the adoption of efficient forensic technology is the sole method to lessen violence in detention.

Conviction in cases of torture in custody is challenging since prosecution of public officials requires the approval of the government. No member of the armed forces or government employee who is accused of committing a crime while acting or ostensibly acting in the course of their official duties may face prosecution without the prior consent of the federal or state governments. Police, military personnel, and even civilians who help disperse crowds are protected from prosecution under Section 132 of the Criminal Procedure Code if they do so without prior authorization.

Nair of SAHRDC claims that Section 197, read with Section 132 of the Cr.PC, is a barrier. In its eighth report, the National Police Commission recommended that "the protection available to police officers under these sections should be withdrawn" so that a private complainant could file a complaint against a police official for a judicial pronouncement without having to first obtain permission from the appropriate authority. Nair cites the Law Commission's 273rd report, which calls for the abolition of impunity legislation like Section 197. "That was equally not implemented," he continued. In its 113th report, the Law Commission suggested modifying the Evidence Act by adding a new clause [114(B)] that puts the onus of proving that a person has not been tortured on the police officer rather than the victim. India has not ratified the United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (UNCAT), notwithstanding the Law Commission's proposal.

According to the NCAT report, the government has "no strategy to ratify the UNCAT or implement a national law against torture," even though the Law Commission of India submitted the draft *Prevention of Torture Bill, 2017* for parliamentary approval in October 2017. The Supreme Court has "further emboldened the Indian government not to ratify the UNCAT" by refusing to issue directions to the Center. According to the NCAT study, the NCRB reported 982 deaths in police custody between 2009 and 2018, prompting 395 magisterial inquiries and 261 judicial inquiries. Nair clarified, "Anyone can be nominated as an executive magistrate, but the challenge is that they are constantly looking for guidance from the executive leadership." "A court magistrate has more independence, at least in theory."

Within the first 24 hours of an arrest, more than 60% of deaths in police custody take place. Within the first 24 hours of an arrest, more than 60% of deaths in police custody take place.

Approximately half of all deaths in police custody over the past ten years have occurred in just three states: Gujarat, Andhra Pradesh, and Maharashtra. Not all of these deaths, nevertheless, are registered or reported to the NHRC. The number of such deaths in 2019 differs between NHRC and NCRB data, with the latter receiving more death reports.

According to data gathered from states and UTs, the NCRB discovered that 18 states and territories had less than ten police-related fatalities in the previous ten years. Sikkim, Chandigarh, Dadra & Nagar Haveli, Daman & Diu, and Lakshadweep had no deaths in police custody in the past ten years, while Andaman & Nicobar had just one. The following list includes India's six least populous states and union territories. In 2019, NCAT did not file any cases against any of the six.

However, in the past ten years, less than ten deaths in police custody have been recorded to the NCRB from two states with high population indices. Compared to Goa, Meghalaya, and Nagaland combined (five cases and 0.5 percent of the total, respectively), Delhi, the second most populated city in the world, has four such deaths in the past ten years (0.4 percent of India's total). However, compared to Delhi, these states had significantly fewer individuals in police custody in 2019.

The third-most populous state in India, Bihar, has seen ten fatalities in the past decade, compared to eleven in Himachal Pradesh. Bihar saw 255,797 arrests in 2019, which is more than 13 times the 18,805 recorded in Himachal Pradesh. One person died in Bihar's police custody in 2019. Three such deaths, including two in Sitamarhi in March and one in Rohtas in August, were discovered after a check of the *Press Trust of India (PTI)* archives. In July 2019, the NHRC sent a notification to the DGP of Bihar following the death of a local politician who was in police custody in Nalanda. The majority of deaths occur within 24 hours of arrest.

Every person who is arrested has the fundamental right to be taken before a magistrate within twenty-four hours, as was previously said. According to NCRB data, most deaths in the past ten years, including Kushwaha's, happened before this initial oversight could be implemented. Sixty-three percent of the 1,004 people who died in police custody during the past ten years

passed away within twenty-four hours of the police arresting them (see the chart below under "Person not remanded"). As mandated by Section 57 of the Code of Criminal Procedure (Cr.P.C.) of 1973, 633 individuals passed away before being brought before the magistrates' courts.

In Gujarat, Uttar Pradesh, Tamil Nadu, Punjab, and Maharashtra, almost three-quarters of recorded deaths in police custody happened within 24 hours after being taken into custody. Up to 87% of these deaths in Gujarat were reported within 24 hours of the arrest. In Tamil Nadu, these kinds of incidents have increased in frequency during the past ten years. In the last six years (2014-2019), 44 out of 46 (96%) people in Tamil Nadu who were reported to have died in police custody passed away within 24 hours of their arrest.

As has been the case for the past ten years, 62% of people who were reported to have died in police custody in 2019 passed away within 24 hours. In 2013, this percentage reached its greatest level in ten years, at 73 percent. Less than one-third of the cases included arrested individuals who passed away while in police custody following their appearance in court under Section 167 of the Criminal Procedure Code (Cr.PC). 66 persons lost their lives while traveling to court, attending court proceedings, or traveling as part of an investigation between 2010 and 2013. Nearly 86 percent (57) of the deaths occurred in Andhra Pradesh, Tamil Nadu, Maharashtra, Madhya Pradesh, and Uttar Pradesh.

2.2 Statistics on How Many People Die in Custody Can Be Found in NCRB Reports.

Because they occurred "during the time of production / proceedings in court / Journey Connected with Investigation," the NCRB ceased reporting deaths in police custody after 2013. The data point that indicates the number of people who pass away while being taken to court and for police investigations was eliminated as a result. If this classification hadn't been discontinued, it would have included cases like the July 10, 2020, death of Kanpur gangster Vikas Dubey while in the custody of the UP Police and the December 6, 2019 death of four rape suspects in Hyderabad while in the custody of the Telangana Police. NCRB reports include statistics on the number of deaths that occur while a person is in custody.

The NCRB simultaneously published two annual reports on October 20: "Prison Statistics India 2017" and "Crime in India 2017." The Board compiled reports on the number and kinds of deaths that take place in police and court custody. In this section, we will examine the results

of these documents. Several people have died while in judicial detention. In 2017, 1,671 prisoners passed away while in the custody of the court, according to the data. There were two categories of deaths in incarceration: natural deaths (1,494) and unnatural deaths (133). Disease (1,373) and old age (121) are examples of natural deaths.

348 individuals died of heart disease, while 164 people died of lung disease. The inmates developed TB, which was the cause of at least 85 of the natural fatalities. Unnatural deaths included suicide (109), unintentional deaths (9), murder by other prisoners (5), assault by external factors (5), and a catch-all category known as "others" (3). The number of unnatural deaths in jails has increased by 15.7% from 115 in 2015. In 2017, 386 people died in Uttar Pradesh from natural causes, the most of any state. Second and third, respectively, were Maharashtra (131) and Punjab (111).

There were 100 fatalities in police custody that year, with Andhra Pradesh accounting for the highest number at 27. The leading cause of death in 2017 was suicide (37), which was followed by hospitalization or illness-related deaths (28). According to the Times of India, 106 persons lost their lives while in Maharashtra police custody during the course of four years, from 2013 to 2017. Second and third place went to Andhra Pradesh (65), Gujarat (51), Tamil Nadu (38), and Telangana (38), in that order. In Maharashtra, a judicial or magistratal investigation was initiated in 47 out of 106 cases. Of the 106, charge sheets had been filed in 19 and cases had been documented in 14. In 2017, no deaths in police custody were reported in any of the seven union territories.

In addition to providing statistics on complaints made against police personnel, the study classified certain occurrences as human rights violations. Examples of these include encounter killings, deaths in custody, unlawful detention, torture, extortion, and "others." No state police personnel were convicted of any known deaths while in custody in 2017. Of the 56 documented instances of police violations of human rights in 2017, just half were prosecuted. Of those, just a fifth were found guilty (3), and only half were thoroughly examined (14). Consequently, the likelihood that a registered case would result in a conviction was 1 in 18.

After then, the case was transferred to the CBI, which on September 27, 2020, issued a chargesheet, claiming that the two had endured unimaginable torture at the hands of the police. According to the investigation, the accused police officers also restrained the victims' hands

and legs so they couldn't protect themselves. The National Crime Records Bureau (NCRB) said that 281 cases involving the deaths of 500 individuals on remand were registered in its records between 2005 and 2018. During that time, 54 officers were charged, but none of them were found guilty. Additionally, 312 cases were recorded, 132 people were charged, and just seven of the 700 persons who passed away while on remand were found guilty. Before the offender is taken before a magistrate, deaths on remand take place during the first twenty-four hours after an arrest.

In the seven months preceding July 2020, the National Human Rights Commission of India (NHRC) recorded 914 jail deaths, 53 of which occurred while the inmate was in police custody. Records show that between 2013–14 and 2017–18, 714 persons were recorded to have died while in police custody. These numbers exclude deaths in police encounters, which made up 837 cases within the same time period.

According to an annual study, these deaths also include those brought on by "sudden medical complications" such as cardiac arrest, convulsions, or other medical problems, as defined by the United Nations Convention against Torture (UNCAT). There is frequently no information available regarding the specific causes of these deaths. In 2019, 125 people died in 124 cases while in police custody nationwide, according to data from the National Centre for Missing and Exploited Children (NCAT). According to family members and local residents, 93 people (74.4%) died while in police custody as a result of torture or foul behavior, and 24 people (19.2%) died under dubious circumstances.

2.3 Deaths in India's prisons

According to data, 1,727 people died in police custody (including those on judicial remand) and those who were arrested but not yet brought before a court between 2001 and 2018. Every year, on average, 96 people die in jail. According to the India Annual Report on Torture 2019, there were 1,731 deaths in India's detention facilities. There were 1,606 people killed in judicial custody and 125 people killed in police custody. This equates to about five such deaths per day. Electric shock, hammering nails in the body, delivering chilly power to various regions of the body, branding with a hot iron, inserting rods into various parts of the body, pulling the legs apart, hanging upside down, and merciless beatings are among the most common forms of torture highlighted in the report. These are only a few of the heinous treatments that a person

who dies in captivity is subjected to. The majority of these people are from underprivileged groups that lack the economic and social resources to combat police brutality.

According to the research, Uttar Pradesh has the terrible distinction of having the highest number of custodial deaths, with 14 out of 125 instances, followed by Tamil Nadu and Punjab, both with 11 deaths. What's more alarming is that almost 75% of the 125 deaths were allegedly caused by torture or foul play, with the other 20% dying in dubious circumstances that authorities attributed to suicide. In India, there is worrisome data on incarcerated deaths.

2.4 The statistics on in-custody mortality in India are worrisome, as shown below.

Between April 1, 2017, and February 28, 2018, there were an average of 5 in-custody deaths per day in India. According to the National Crime Records Bureau (NCRB), 1,727 people died in police detention between 2001 and 2018. However, just 810 cases were recorded, 334 charges were filed, and only 26 officers were found guilty. According to the NCRB report, 58 people died in custody in 2017 who had never been brought before a court of law.

The data on deaths in court and police custody was revealed in a report by the Asian Centre for Human Rights (ACHR). Between April 1, 2017, and February 28, 2018, there were 1,530 deaths in the former and 144 deaths in the latter. The National Campaign against Torture produced a study detailing the data on custodial deaths in 2019, revealing that 93 of the 125 deaths (3 out of 4) were caused by police torture or misconduct. As a result, this data is adequate in and of itself to demonstrate the seriousness of the issue of custodial fatalities in India.

3. THE REASONS OR CAUSES FOR CUSTODIAL DEATH

The police department has been given the legal authority to use force exclusively to make arrests of criminals and to disperse unlawful assemblies. No other law enforcement agency allows the use of force in any other situation. Everybody knows that police employ force while questioning a suspect or accused of a crime, and that sometimes death occurs during interrogation, which not only tarnishes the department, but also leads to the arrest of the officers involved if a case of causing death in police custody is filed.

There have been cases where police personnel have been found guilty of causing death in custody and sentenced to life in prison. Death in police custody is a stain on all members of the

force, as the police have no legal authority to take someone's life during an interrogation. With the exception of section 300 of the Indian Penal Code, it is stated that if a public worker abuses his right to use force and causes the death of another person, he is guilty of culpable homicide not amounting to murder. Furthermore, section 330 of the Indian Penal Code states that any public official who causes bodily harm to another person in order to extort a confession is subject to punishment of up to seven years in prison. The law in the country forbids police officers from using excessive force.

The use of force isn't the lone cause of death in custody; there are a number of other elements to consider. Every police officer must be aware of all the causes of incarceration death in order to take precautions and prevent incarceration death. The reasons for custodial death are detailed below.

No thorough search of an arrested person is conducted prior to his arrival at the police station's lock-up, and arrested people have committed suicide in the lock-up by severing their nerves, hanging, poisoning, or burning themselves. Other than the use of force, no other mode of interrogation is used. No preparation for interrogation is made ahead of time. Involvement of police officers from the same or another police station in questioning who are not concerned with the arrest of the accused person and who, because they are not involved in interrogation in writing, inflict more harm on the accused people.

Due to the police officers' slackness, no medical treatment is given or a quick assessment of the injured accused person is undertaken, and the accused person dies in police custody. Police officers' lack of patience due to their need for an immediate confession from the accused. If the accused person refuses to accept guilt, they will employ force immediately. The high-level cops did not supervise the interrogation. Officers used to show up at the police station following a death in custody.

The police department's traditional propensity for employing force is still prevalent, as seen by the fact that officers have used force not only with hardened criminals, but even with people who had no prior criminal record and died while in police custody. Suicide by the accused in police custody as a result of police personnel's mistreatment of the detained individual while in custody. A lack of respect for the law and other people's human rights, as well as an

overabundance of desire to succeed by employing ineffective tactics of force that result in death in custody.

3.1 The following are additional reasons for death in custody:

The Police Act of 1861 (41), which was enacted by the British to manage British India, governs the Police Department. The police's primary goal was to protect and safeguard the Englishmen while also ensuring that the Indians were kept under control. Despite the fact that each state has its own State Police Act, they all follow the same ancient model as the 1861 Police Act [22][42].

Reforms should be implemented in order to improve the quality of police administration. Because police personnel in India do not realize or comprehend the genuine significance of being a part of the department, these reforms should be focused on revamping the process of training and education of police officers. These jobs are exaggeratedly praised in the media, giving the impression that being a cop is a bad thing. So, before entering the police force, it is critical that a candidate has sufficient knowledge of the role for which they are being educated. The quality of training must be improved and never jeopardized, and candidates should also be put through a moral test.

The police, as a State subject under the Indian Constitution's 7th Schedule List-II, are governed by the State Legislative. Politicians have supervisory authority over the police, and it is well known that the former can abuse their influence by utilizing the latter to further their own agenda.

The Police Act of 1861 [44] does not shield police officers from external pressure and they are obligated to carry out the executive's directives. The police are under pressure from higher officials and political oversight to find the accused in a short period of time. Few people hired police officers to kill their opponents, in the case of *Prakash Kadam V. Ramprasad Viswanath Gupta* [45].

While it is critical to discover the perpetrators as soon as possible so that the victims of a crime can receive justice, it is a well-known fact that India's investigation system is inefficient. Most of the time, the evidence gathered by the police during the investigation is insufficient to locate the accused. An excellent inquiry adheres to both ethical and legal requirements.

This will be secured in our country through the solutions discussed later in this chapter. The criminals' use of advanced technology has made it even more difficult for the police to investigate and hunt down the perpetrators. Technology that allows criminals to remain anonymous, particularly in the sphere of cybercrime, makes it practically impossible for authorities to investigate them.

4. CONCLUSION

As we advance and develop, the police are the protectors that maintain society's morals and foundations intact and operating. They are an unquestionable requirement for maintaining social order, but when such outfits of justice fail to protect the public's fundamental rights, the authority granted to promote such justice is revoked.

Even when it comes to arrests and incarcerations, the concept of custody is one of protection or guardianship. The law is a constant and ubiquitous process and system that is both permanent and ever-changing in response to society's demands and growth. As a result, law enforcement officials must be held accountable for their actions, and additional training and sensitization must be offered based on science and strong morals in order to promote legal values among our officers and the general public.

The state's responsibility includes not only protecting citizens' rights, but also compensating victims and punishing lawbreakers. In today's situation, the general public is opposed to the slowness with which the courts provide justice. The clearest example is the Nirbhaya case, in which justice was served in the year 2020, eight years after a horrible rape had occurred. People are outraged at how quickly the sentence was carried out, and they support and idolize police officers. Certain mercy petitions, which are mentioned in Articles 72 and 161 of the Indian Constitution, actually postpone the provision of justice. These are loopholes that allow such defendants to avoid being penalised or released quickly, forcing police officers to take drastic measures. To avoid torture, incarceration deaths, and phoney encounters, punishments should be carried out as soon as possible following conviction. Encounters appear to be a form of speedy justice, but they are simply a steady deconstruction of democracy.

India is a signatory to the UN Convention Against Torture (UNCAT), but has yet to ratify it. The reason for this is that India has not passed the Prevention of Torture Bill since 2010, despite

the fact that it was reintroduced in Parliament in 2017. This bill addresses the penalty for torture, which will be no less than three years and may be increased to ten years with a fine. As a result, stronger regulations and sanctions should be enforced on law enforcers who abuse their power and fail to fulfil their responsibilities.

5. RECOMMENDATION

Interrogation of suspects and arrested accused persons is necessary and legal in the country, but it is also critical that no one being interviewed is abused and that no one dies in police custody. Before and throughout the interrogation of any person, police officers engaged in interrogation operations must keep the following points in mind.

❖ **Preparation for interrogation must be done ahead of time in order to conduct a proper and thorough interrogation:**

To avoid death in police custody, the officer in charge must follow the guidelines outlined below before conducting any interviews.

- He must be familiar with minor facts of the incident in order to ask required questions to the person being interrogated; otherwise, he will simply be on the receiving end of the questioning.
- He should be aware of the individual under interrogation's prior criminal past so that he can inform the accused of the truth if the latter conceals any facts.
- He must create a questionnaire so that the questions can be asked one after the other during the questioning because it will be impossible to prepare questions during the interrogation.

❖ **The location of the interrogation must be chosen:**

To conduct deep and thorough questioning, the interrogation must be performed in a location where no one else is present save the members of the interrogation team and the accused. Interrogation should not take place at a police station where a large number of people are expected to arrive with complaints, as this may disrupt the process. The task of interrogation necessitates a high level of concentration.

❖ **The interrogation should be conducted in a continuous manner:**

The questioning must be performed in a continuous manner so that the person being interrogated does not have the opportunity to alter his opinions in order to hide the truth. It could be ensured by interrogation team officers who could keep the interrogations going, one after the other.

The questioning should not be converted to writing by the interrogating officer himself; instead, a constable should be delegated to do it. The questioning should be repeated after it is completed, and it should also be reduced to writing. After completing the second questioning, the written interrogations should be compared, and if any discrepancies are discovered, the accused person should be asked to explain the discrepancy in order to determine the truth.

❖ **Each person suspected of a crime should be questioned separately:**

If there are two or more accused people, they should be interrogated individually so that they do not hear the other co-accused person's statement. Otherwise, if the accused learn that their partner has refused to participate in the crime, their minds may be changed.

❖ **No police officer who was not part of the arrest party should be involved in the interrogation team.**

It is critical to select the interrogation team, and no police officer who has not participated in the arrest of that person should be included in that team, as such officers may cause fatal injuries to the suspect or accused, and the responsibility will fall on the officers who arrested that person.

❖ **During interrogation, interrogating officers should exercise patience:**

It is a well-known fact that practically all accused or suspected people refuse to accept guilt at the outset of interrogation and attempt to conceal the facts of a crime commission, but after a long period of interrogation, the majority of them break down and reveal the truth. The questioning officer should bear this in mind and not ask the accused about the crime right away; instead, he should inquire about the accused's family, occupation, and monthly income. When the accused person begins to give responses, the question of crime should be posed.

❖ **The interrogation must be tailored to the accused person's age, sex, and nature:**

Criminals fall into several types, and interrogations must be handled in a variety of ways. If the police officer interrogating him shows sympathy, a person who has committed murder due to grave and immediate provocation may easily break down. A youngster or a lady may also come out with the truth if they are taken into confidence, but a hardened criminal will only confess his culpability if the police officer conducting the questioning discloses his criminal background and the names of his associates.

❖ **Before an apprehended person is placed in the police station's lock-up, the officers should conduct a thorough search of him:**

If an arrested person is to be held in the police station's lock-up, the law requires that he be searched and that everything, except the necessary wearing clothes, be taken into safe custody by the police, so that no dangerous item may be taken by the accused person in the lock-up that could endanger his own life.

❖ **Keeping a close eye on criminals' activities while they're locked up in the police station:**

Then the police should maintain a tight eye on the activities of the prisoner in the lock-up until he is taken into custody by the police and ensure that no harm is done to him by anyone. In one case, an apprehended person was not thoroughly searched, and he died in a jail after ingesting poison. On another occasion, a family member of a prisoner arrived to deliver food, and a little instrument for cutting the jail bars was hidden in the food, and the iron bars of the prison were later broken down to escape captivity. The food was not adequately inspected by the police in this case.

❖ **To examine and treat injured arrested people as soon as possible, the following procedures should be followed:**

Custodial deaths can occur as a result of police negligence. If the detained individual is injured or ill, it is the police's first and most important obligation to send him to a doctor for medical assessment and treatment so that he does not die while in police custody. Custodial death has been shown to occur not only as a result of the use of force, but also as a result of police negligence, which should be avoided.

❖ **There should be no misbehavior by anyone who is being interrogated:**

The purpose of an interrogation is to determine whether or not the arrested person was involved in the crime. The goal of an investigation is to learn particular facts from a person accused or suspected of committing a crime through interrogation, and then to present the subject to a court for trial after gathering evidence. There have been cases where a suspect or accused individual has committed suicide in the police station's lock-up as a result of police misconduct.

❖ **During interrogation, there will be no use of force:**

The police force has been denied the power to use force during interrogation, and such usage has been ruled illegal and criminal by the country's laws. It is the responsibility of law enforcement authorities to follow the letter of the law. Otherwise, the law of the country will not distinguish between a criminal and a law-breaking police officer. In several cases, police personnel have been found guilty of employing excessive force against criminals, resulting in deaths. It would be prudent to rise to the occasion and

abandon the illegal practice of using force on detainees and inflicting death in custody.

❖ **During the inquiry, scientific procedures were used:**

Instead of using criminal means, police personnel should employ scientific procedures to solve the issue. Compared to other evidence, scientific procedures may lessen the likelihood of utilising force, and evidence obtained through forensic laboratories is more valuable and more durable. Physical evidence acquired by the investigating officer from the scene of the crime and from the accused person can be sent to a forensic laboratory for scientific testing and evaluation. Sending the following objects to F.S.L. for matching and opinion, for example, can obtain a scientific opinion from an expert.

- Fingerprints found at the crime site are compared to the fingerprints of any suspect involved in the crime.
- Matching empty cartridges discovered at the crime site with the firearm used by the accused or suspected individual in a violent crime.
- In any case of kidnapping for ransom, match the recorded voice of any criminal with the voice of any suspected individual.
- In a rape case, DNA matches.
- In any case of forgery, match the handwriting of the suspected accused person.
- Electronic surveillance is the process of linking a person to a crime based on the call details of his mobile phone.
- A comparison of the blood found at the scene with the blood found on the accused's clothing.

As a result, it can be concluded that every police officer conducting an inquiry should keep the above-mentioned issue in mind in order to avoid a custodial death.

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