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**A CRITICAL EVALUATION OF THE SITUATION REGARDING DEATHS
OCCURRING IN INDIAN PRISONS**

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I. ABSTRACT

Significant guidelines/legislative mechanisms to govern custody fatalities are severely lacking in the Indian criminal justice system. After learning from a variety of situations in India, the country must establish acceptable guidelines for Custodian Deaths. While many other nations have implemented a thorough statutory provision for custodian deaths, arrestees in India are often subjected to harassment of some kind, whether mental, physical, or emotional, and are often refused basic protection.

KEYWORD: Custodial deaths, arrest, protection, remand, torture.

II. INTRODUCTION

Is it true that once someone is arrested, they no longer possess their constitutional rights? A resounding "no" is in order here; a person's basic rights are still in force even after an arrest.

It is important to address the suffering of those who have been arrested since police sometimes mistakenly assume they have the right to silence the suspect. A lasting solution is needed since those who are arrested are not provided with any kind of security, safety, or even the most fundamental protections. This study will attempt to address the significant barrier posed by fatalities that occur while in custody to the effective administration of justice.

The term "Custodial Death" is used to describe the passing of an inmate who is either awaiting trial or who has been found guilty of a crime. Such fatalities may occur for a variety of reasons, including disease, suicide, and prison riots, although police violence and torture are often to blame.

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There is no greater violation of human rights than death in custody. It's a vicious assault on the freedom and safety that the Indian Constitution protects its citizens against. The State is responsible for the safety of all suspects and convicted criminals. Without exception, those who are in police/judicial lockups, jails, or correctional facilities have the right to be safe and secure, to have a fair trial, and to be treated with dignity and respect. Unfortunately, occurrences like this are typically followed by a concerted attempt to cover them up, and the authorities often fail catastrophically in their duty to prevent or punish them. The concerned government also plays an important role in shielding the person who may be under suspicion.

Torture in prison is often regarded as one of the worst violations of human rights. Several authoritative bodies, including India's Constitution, Supreme Court, National Human Rights Commission (NHRC), and the United Nations, have declared that this practice is illegal. Nonetheless, authorities around the nation routinely ignore these laws and regulations. In order to effectively fight crime, it is necessary to find a middle ground between protecting individual liberties and serving the public good.³

Over the years, the Supreme Court of India has given a number of directives and instructions to the Union and State Governments, urging them to address the problem, find solutions to the problem of custodial deaths, and punish those responsible. Nonetheless, as the steadily increasing number of fatalities that occur in correctional facilities around the nation shows, little progress has been made on the problem.

There is an immediate need to create an independent legal framework that effectively addresses the problem of custodial fatalities in a way that takes into account the reality of the current situation in India.

III. PRE-EXISTING SYSTEM TO ENSURE THE ARRESTED PERSONS' SAFETY

In a nation like India, widely regarded as the greatest democracy in the world and a society controlled by rule of law, deaths in custody rank among the most heinous crimes imaginable. The right to life and liberty is the most adaptable and important fundamental right and is generally regarded as the crown gem of the basic rights, in India. Torture and other "third-degree" practices

³Joginder Kumar v State of Uttar Pradesh, (1994) 4 S.C.C. 260

used on imprisoned people while in police custody are a blight on our administrative and legal infrastructure.

Despite all of this, though, India does not have a comprehensive anti-torture statute, which is an intriguing fact to consider. The problem has been addressed by a well-thought-out legal framework in many other nations.

Nonetheless, the problem of fatalities that occur while in custody has been acknowledged and addressed in several agreements and treaties.

It was in 1948, in the wake of the atrocities of World War II, that the General Assembly of the United Nations included a ban on torture in the pivotal Universal Declaration of Human Rights. No one shall be subjected to torture or cruel, inhuman, or degrading treatment or punishment, as set out in Article 5 of the aforementioned proclamation.

In today's world, no country can condone torture. Several international and regional human rights accords, including the Universal Declaration of Human Rights, have been enacted to combat this egregious violation of basic human decency.

For starters, Article 7 of the International Covenant on Civil and Political Rights (1966);

Second, the 1984 Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment;

Third, the European Convention for the Protection of Human Rights and Fundamental Freedoms (1953);

Fourth, the African Charter for Human and Peoples' Rights (1979);

Fifth, the American Declaration of Human Rights (1969).

IV. JUDICIARY PLAYED A ACTIVE ROLE

Although there is no self-contained statutory framework in India for custodial fatalities, the court has been crucial in defending the rights of arrestees. The protection of those who have been arrested has been promoted by the Supreme Court and the High Courts of several states.

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In *Munshi Singh Gautam v. State of Madhya Pradesh*⁴, the Hon'ble Supreme Court ruled that:

"The dehumanising abuse, violence, and deaths in detention that have reached worrisome levels raise major concerns about the legitimacy of the rule of law and the administration of the criminal justice system... Concern expressed in the *Ragbir Singh* case more than two decades ago appears to have gone unheeded, and there is no sign of the situation changing much. *Inder Singh v. State of Punjab*, *State of MP v. Shyamsunder Trivedi*, *Bhagwan Singh v. State of Punjab*, *Pratul Kumar Sinha v. State of Bihar*, *Kewal Pati v. State of UP*, *Inder Singh v. State of Punjab*, and the now-famous ruling in the historic case of *D K Basu v. State of West Bengal*, the anguish expressed in these cases appears "not even to have caused.

The following rules have been established by the Hon'ble Supreme Court in the case of *D.K. Basu v. State of West Bengal*⁵ to protect the interests of those who have been arrested:

- (1) Accurate, visible, and unambiguous identity and name tags with their designations shall be worn by the police officers managing the arrest and the questioning of the arrestee. All such police officers who conduct the arrestee's questioning must have their information entered in a registry.
- (2) That the arresting police officer must create a note of the arrest at the time of the arrest, and that document must be attested by at least one witness. Someone could be a member of the arrested person's family or a reputable member of the community where the arrest was made. Along with the time and date of the arrest, it must also provide the arrestee's countersignature.
- (3) A person who has been detained and is being held in custody in a police station, interrogation facility, or other lock-up is entitled to have one friend, relative, or other person known to him or having an interest in his welfare informed of his arrest and detention at the specific location as soon as practicable unless the attesting witness of the memo of arrest is himself a friend or relative of the arrestee.
- (4) Within eight to twelve hours of the arrest, the police must telegraphically notify the local police station and the legal aid organisation in the district of the arrestee's time, place of arrest, and place of custody if the arrestee's closest friend or relative lives outside the district or town.

⁴*Munshi Singh Gautam v. State of Madhya Pradesh*, A.I.R. 2005 S.C. 402.

⁵*D.K. Basu v. State of West Bengal*, 1997 (1) S.C.C. 416.

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(5) As soon as a person is placed under arrest or taken into custody, they must be notified of their right to have someone informed of their arrest or detention.

(6) A note describing the arrest of the person must be recorded in the journal kept at the location of detention. This note must also include the name of the person's next friend who has been told of the arrest as well as the names and contact information of the police officers holding the arrestee.

(7) The arrestee shall be inspected at the time of the arrest if he asks it, and any significant and minor injuries, if any, must be noted at that time. The "Inspection Memo" must be signed by the person being arrested as well as the police officer making the arrest, and a copy must be given to the person being arrested.

(8) A doctor from the list of recognised physicians nominated by the Director, of Health Services of the relevant State or Union Territory shall examine the arrested person medically every 48 hours while he is being held in jail. Such a penalty should be created by the Director of Health Services for all Tehsils and Districts as well.

(9) The Magistrate should get copies of all the paperwork, including the note of arrest mentioned above, for his records.

(10) The arrested person may be allowed to speak with his or her attorney while being questioned, but not during the interview.

(11) All district and state headquarters should have a police control room where information about the arrest and the detainee's location must be communicated by the arresting officer within 12 hours of the incident. In the police control room, the information must be posted on a visible notice board.

India continues to see an increase in custody fatalities despite having several protective regulations and limited statutory remedies for such deaths.

V. REPORTS FROM THE NATIONAL CRIME RECORDS BUREAU

1. Homicides by Police Officers (Of Persons Remanded to Police Custody by Court) It is shocking to see that, between 2002 and 2011, 320 deaths were reported to have occurred in police custody/lockup (Of Persons Remanded To Police Custody By Court), but that only

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21 policemen were charged sheeted, and more shocking is the fact that none of them was convicted.⁶

2. Lockup/police-custody deaths, subheading "B" (Of Persons Not Remanded To Police Custody By Court)⁷ From 2005 to 2014, the number of fatalities that occurred while someone was in police custody or a lockup (of people who were not remanded to police custody by a court) was recorded and kept by the National Crime Record agency. The stats are even more disturbing when compared to the number of fatalities that have occurred in police custody (of those ordered to police custody by the court): 320 between 2005 and 2014. That's nearly twice the number of deaths that have occurred in police custody/lockup between 2005 and 2014. In this case, 16 police officers out of a total of 104 were found guilty.

According to the statistics, fatalities in police custody increase when suspects are not subject to judicial remand. The apparent heart of the matter is that without judicial supervision of those who have been arrested, the police seem to assume they may do anything they want to them.

VI. RELIABLE INFORMATION IS HIDDEN BEHIND DISCREPANCIES

According to the National Crime Records Bureau, between 2005 and 2018, 1,373 people died or vanished while in police custody. According to the National Crime Records Bureau's (NCRB) annual report, there were 85 people killed while in police custody in 2019.

According to the National Crime Records Bureau, of the 1,004 people who have died while in police custody over the last decade, the vast majority (69%) have died from disease or natural causes, while another 29% are believed to have committed suicide.

There is a lack of clarity on the specifics and causes of these deaths, such as whether hospitalisation and illness are linked to the circumstances that the arrestees had to face in custody, whether they are the result of police brutality and assault in custody, or whether they are the result of a prolonged or sudden illness. The yearly Crime in India reports published by the NCRB, the primary central government database, do not provide these specifics.

⁶Deaths in Police Custody/Lockup (Of Persons Remanded To Police Custody By Court), (Sept. 15, 2021, 3:07 PM), <https://ncrb.gov.in/en/crime-in-india-table-additional-table-and-chapter-contents?page=18>.

⁷ Deaths In Police Custody / Lockup During 2013 (Of Persons Not Remanded To Police Custody By Court), (Sept. 19, 2021, 2:30 PM), <https://ncrb.gov.in/en/crime-in-india-table-additional-table-and-chapter-contents?page=18>.

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In just 6% of incidents investigated since 2014 have police been found to have used physical force. Out of the total of 85 people who died while in police custody in 2019, just 2.4% were found to have died as a result of police brutality.

VII. DOUBT IN ATTRIBUTING CAUSES

Since the causes of crime in India have been documented differently by several studies published over the previous decade, a comprehensive comparison of the data is challenging. In light of this, the study that follows focuses mostly on data from 2019 and data relating to suicide and illness/hospitalization throughout time.

For the last decade, "Hospitalisation/ Illness/ Natural deaths" has been stated as the cause of death for 403 of 1,004 people who passed away while in police custody.

As we've already shown, the category "death due to sickness" doesn't differentiate between the duration of the disease and the manner in which death occurred. Whether hospitalisation was the result of an attack by police or another inmate, or because of conditions or circumstances while in detention, we have no idea.

VIII. STATEMENT ON THE RISE IN SUICIDE RATES

Over the previous decade, Crime in India studies has shown an increase in suicides among detainees. Three-sixtieths (159/444) of the 444 fatalities in police custody documented in the recent five years (2015-2019) have been attributed to suicide, up from 24% (136/560) in the previous five years (2010-2014).

Suicide accounted for 39% of these fatalities in 2019, while illness-related deaths accounted for 46% of these deaths while receiving medical care. More than 60% of the 36 fatalities in police custody this year were the result of sickness or hospitalisation, and the states of Tamil Nadu (10), Maharashtra (7), and Gujarat (5) were the most heavily represented.

IX. THE FINAL SAY AND SUGGESTIONS

There has been a rise in the number of fatalities that have occurred while in police custody in India, and the country must address this significant and pressing issue immediately. India should make an effort to draught new, comprehensive laws on custodial fatalities and anti-torture since

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the current framework is manifestly inadequate to deal with the problem. The United Nations Convention against Torture is another international treaty that India should sign.

Further, it is crucial that the police force be trained to approach these suspects with empathy and understanding rather than a presumption of guilt.

Also, the study suggests there is a lack of complete or accurate data about the causes of fatalities while in custody and the results of investigations into such deaths. The following adjustments will make a difference:

- In India, reports must include precise and accurate information on the number of custodial fatalities and the ultimate cause of death as established by the appropriate investigation.
- In addition to data on fatalities by state, information on deaths by district and police station would be useful in identifying problem areas and formulating strategies for addressing them.
- The NCRB might be more transparent and accountable if it collected data on the current state of ongoing proceedings against police officers, regardless of the year in which the decedent died while in police custody.

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