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## An era of guardians becoming perpetrators-custodial deaths: An analysis between the laws of India and UK

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### Abstract

According to the data released by the Ministry of Home Affairs, the number of deaths in police custody witnessed a nearly 60% increase over the last three years and 75% over the last two years across the country. In 2020, despite Covid-19 induced pandemic, the number of deaths in custody reached an all-time high with 1,840 deaths. The recent statistics portray Gujrat as the guilty flag-bearer of the maximum number of custodial deaths. The Supreme Court, while recognizing the grave situation, has held, the violence in custody which leads to the accused's death, unacceptable according to the Indian morals. It has been categorized not only as an offense against the victim but also against humanity. Custodial Death is a clear violation of the "Right to Life" guaranteed under Article 21 of the Constitution of India.

In this paper, the author paints a picture of the gruesome crime of Custodial Death in accordance with the Indian laws. The class-divide and access to legal amenities has been discussed as one of the challenges faced by the administration in curbing the crime. Further, the pressing need of judicial inquiries is highlighted to provide recourse to the victim and its family. A parallel is drawn with the English laws, to understand the roadblocks in reduction of Custodial Death in the country. The legal jargon surrounding Custodial Deaths is simplified through the utilization of case studies and interpretation by the court of law. The paper concludes by providing a suggestive framework that decodes the methods of torture on the victim and the manner to appropriate the compensation payable to the kins of victims.

**Keywords:** Custodial death, custodial torture, human rights, India and appropriate compensation

### Introduction

*"Power tends to corrupt, and absolute power corrupts absolutely."*

-Lord Acton

Human Life has been attributed immense importance in jurisdictions around the world. A human being, not only has a right to live, but also has a right to live with dignity <sup>[1]</sup>. Basic principles of human existence, continue to govern the legal landscape as well. Thus, even when a person has been charged with a criminal activity, his right to live peacefully and with dignity continues to reside. However, the recent trend of arrests and brutal torture presents a different picture altogether. Number of people dying before the final verdict has been increasing in the past few years. Death of a person within the parlance of the police or judiciary, is termed as custodial death. Custodial death is one of the worst crimes in a civilised society governed by the Rule of Law <sup>[2]</sup>. The exponential increase in the number of custodial deaths, poses serious questions. Does a citizen forfeit their fundamental right to life upon being arrested by a policeman? Can the right to life of a citizen be temporarily suspended upon arrest? The resounding answer is a definitive No <sup>[3]</sup>.

According to Article 5 of the Universal Declaration of Human Rights (UDHR) which was adopted in 1948 to meet the urgent need for a global trend of protection and guarantee of certain basic human rights, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" <sup>[4]</sup>. Further, "Torture" is defined in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in December 1984, as any "act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or third person information or a confession" <sup>[5]</sup>.

The rules for Non-custodial Measures, also referred as the Tokyo Rules, as approved by the United Nations General Assembly (UNGA) on December 14, 1990, lay down the fundamental principles of safeguarding lives and dignity during custody <sup>[6]</sup>. They encourage the use of non-custodial procedures, as well as promote minimum safeguards for those facing alternatives to jail <sup>[7]</sup>. The two underlying principles that underpin any type of social contract between a state and its inhabitants are dignity and security <sup>[8]</sup>.

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Thus, the rules alongside the existing practical practice shall work effectively to uphold both the principles during custody. The Latin maxims *salus populi est suprema lex* which translates into the safety of the people is the supreme law, further emphasises upon the need of protection of dignity during arrest and custody. Similarly, *salus republicae est suprema lex* which translates into the safety of the State is the Supreme law, highlights upon the co-existence of safety of people and the state. Co-joint reading of the maxims, lays down the heart of the doctrine that an individual's welfare must yield to the welfare of the community<sup>[9]</sup>. The state's actions, on the other hand, must be 'right, reasonable, and fair'<sup>[10]</sup>.

The discussed maxims and provisions, paint the picture of an ideal world. However, the reality is far sadder and more gruesome. Custodial violence though condemned is excessively being practised and harming the society. Besides the looming reported cases, a large number of custodial violence incidents even go unreported<sup>[11]</sup>. The article aims to analyse the crime of Custodial Death and engage in a discussion regarding the possible ways to curb the same. The paper is divided into six parts, each catering to the development of understanding of custodial death in India. Part I: Custodial Death- What is it? The chapter provides conceptual clarity on the aspect of Custodial Death. Part II: Terminologies of Custodial Death, the section deals with the various legal jargons, that are necessary to be understood. Part III: Doomsday for an Accused in India: The Misfortune, the chapter forms the crux of the paper and details the legal and social perspective behind custodial death in the country. Part IV: Part V: Part VI.

### **Custodial death - what is it?**

Custodial death is defined as the death of a person that occurs in custodial detention which can be either a police cell or prison<sup>[12]</sup>. Instances of the passing of individuals while under police custody, either prior to trial or following a criminal conviction, are notable occurrences. Custodial cruelty is an inhuman trait that emerges from a perverted desire to cause misery to an individual who is in no position to retaliate; none of the civilized laws proposes a mindless display of superiority and physical power over an overpowered individual, or collective wrath of hypocritical thinking<sup>[13]</sup>. The police officers are duty-bound to protect the fundamental rights of the common man instead, they often use violence and murder them with the state acting as an accomplice<sup>[14]</sup>.

Once a person is taken into custody during trial, instead of being protected by the wings of law, individuals are subjected to torture. The officers in charge perpetrate numerous abhorrent acts, such as rape, administering electric shocks, coercing the accused into engaging in oral sex, inserting iron rods into private areas, and utilizing methods like the application of chili powder to the eyes to extract confessions. These brutal practices frequently result in the tragic death of the individuals. Moreover, in most of the cases, the accused is not even proven guilty by the court but they were still assumed to be criminal. And therefore, the officers, while indulging the violent acts against the individuals, violate the foundational crux of criminal law, that is, 'innocent unless proven guilty'<sup>[15]</sup>.

The number of incidents of custodial torture and death have amplified over the years in numerous parts of the earth<sup>[16]</sup>. It is an indisputable reality that law enforcement often employs coercive methods to extract confessions and statements from

the accused<sup>[17]</sup>. It is often seen that the victims of custodial deaths are tortured before being detained, i.e., before being brought into custody, which gives the police a chance to argue that the injuries occurred prior to the detention and hence, are not incidences of custodial abuse<sup>[18]</sup>. The aspect that adds significant intrigue is that the police hold all crucial evidence and records, leaving minimal external evidence. This situation poses considerable challenges in identifying instances of custodial violence and the subsequent fatalities that may ensue<sup>[19]</sup>.

The rising rate of torture and deaths in detention has reached at such alarming levels that the issue is threatening the Rule of Law's credibility along with the functioning of the criminal justice system<sup>[20]</sup>. Third-degree torture and custodial fatalities have been an integral element of police investigations in recent years, and detainees have suffered horrific injuries<sup>[21]</sup>.

The victims of custodial violence generally belong to the poorest and most backward elements of society, with no political or financial ability to support them<sup>[22]</sup>. A large proportion of these persons belong to underprivileged groups that lack the economic and social resources to combat police brutality and take a stand against them. Personal animosity, social and political motives, and occasionally monetary incentives, become more important considerations for custodial fatalities than case inquiry<sup>[23]</sup>.

Thus, Custodial Death, is not only a harm on the victim and his family, but also a bane for the society. The concept and practice of Custodial Death being adopted in the legal system to curb crime, is leading to the creation of a new category of organized crime in India. Thus, it becomes imperative to recognize the methods of Custodial Death, and to suggest ways to curb the same.

### **Terminologies of Custodial Death**

Before delving into the issue of custodial death, it is necessary to understand and distinguish between certain terminologies associated with the issue. The chapter conceptualizes the legal jargon involved in decoding the burning issue of custodial death in India.

### **Police Custody versus Judicial Custody**

Deaths have been reported both under police and judicial custody. Thus, it becomes important to distinguish between the elements of both the concepts. In a police custody, "the police have physical custody of the accused"<sup>[24]</sup>. The police officer arrests a person upon receiving an information, complaint or report about a crime and brings the suspect to the police headquarters<sup>[25]</sup>. The detention should not exceed 24 hours excluding the period of necessary journey from the police headquarters to the court<sup>[26]</sup>.

In a judicial custody, "the custody of the accused is with the magistrate"<sup>[27]</sup>. The accused is confined in jail under judicial custody<sup>[28]</sup>. While in judicial custody, the accused is housed in a prison or a designated facility supervised by the judiciary. The primary goal of judicial custody is to guarantee the presence of the accused during court proceedings. Additionally, it is designed to protect the rights and well-being of the individual, with the conditions of judicial custody expected to meet legal standards.

In *State (Delhi Administration) v. Dharam Pal And Others*, the court observed that in the event of police custody, the suspect can be sent to "police custody only within first fifteen days of the presentation before the Magistrate after the arrest" whereas in case of judicial custody, "the person can be sent to

prison either within first fifteen days or even thereafter”<sup>[29]</sup>. The definition of both police and judicial custody, enunciates upon the fact, that an individual is within the direct reach and control of the officers. Therefore, opportunity of violence substantially increases in during the period.

### **Jail and Prison**

Jail and Prison are two words often confused with each other. Drawing a demarcation between the two, would assist the readers in understanding the circumstances in which the individual is kept during custody. According to Merriam-Webster, a jail is “a place of confinement for persons held in lawful custody” whereas a prison is “a place of confinement especially for lawbreakers”<sup>[30]</sup>. Thus, if a person is awaiting his trial, then he is confined in jail. However, if the accused is found guilty of a serious crime, then he is confined in prison. A jail is maintained and regulated by local law enforcement agencies whereas a prison is run by the state government<sup>[31]</sup>. A prison has comparatively more developed facilities than a jail<sup>[32]</sup>. The persons convicted of petty offences, such as theft or pickpocketing, are also kept in jail<sup>[33]</sup>.

### **Encounter and Custodial Death**

Custodial Death is often confused with an encounter. Both the acts, are covered under the head of extra-judicial killings<sup>[34]</sup>. However, the elements, implications and circumstances of both are drastically different.

In an encounter, the accused is shot only when “there is an imminent danger to the life of police officers”<sup>[35]</sup>. Such an act occurs, mostly in circumstances when the individual is being transferred from one place to another. It is usually the journey, where the individual attempts to escape or becomes violent against the officers and public, which propagates the police officers to encounter the individual<sup>[36]</sup>. Encounters are protected under the premise of self-defence and necessity to absolve themselves of the liability<sup>[37]</sup>.

Contrastingly, in a custodial death the “accused is found dead in custody”<sup>[38]</sup>. The death is a result of the lapses of the criminal investigation process. Custodial Deaths are usually a result of excessive police brutality during investigations and use of physical and psychological torture to extract information<sup>[39]</sup>. Custodial deaths may also occur due to inadequate medical care, lack of supervision, or failure to address detainees’ health issues. Additionally, poor conditions in detention facilities, such as overcrowding, unsanitary environments, and insufficient healthcare, contribute to health problems and fatalities. The police cannot take the plea of self-defence to absolve themselves of their liability. To encapsulate the link between encounters and custodial deaths, it may happen that an encounter is a custodial death but not every custodial death is an encounter.

### **Dooms day for an accused in India - the misfortune**

The basic understanding about Custodial Death, would assist the readers, in developing an opinion about the custodial deaths in India, in a proper manner. The problem of Custodial Death in the country, not only strips an individual of its life, but also hampers the progress of the society. It violates the basic principles of existence and runs contrary to the rights guaranteed to an individual in the country. The current chapter deals with legal and social aspect of custodial death in the country.

The National Crime Records Bureau’s 2021 Prison Statistics of India (PSI) report revealed a total of 2,116 inmate deaths in

judicial custody for the year. This marked a 12 percent rise from the figures reported in 2020<sup>[40]</sup>. Further, the India Annual Report on Torture 2020 found that at least one person dies by suicide in the custody due to torture<sup>[41]</sup>. The period of lockdown has seen an upward bend in custodial deaths in the country<sup>[42]</sup>. The National Crime Records Bureau (NCRB) documented a minimum of 18 fatalities in prison custody attributed to torture. Additionally, there were 51 reported cases of deaths allegedly resulting from the denial of timely and appropriate medical treatment to prisoners, along with 34 instances of suicides in prisons<sup>[43]</sup>. The soaring numbers suggest a pressing problem on the Indian society.

It is rather ironic that custodial deaths repeatedly go with impunity in a country where the fundamental rights of a person are protected in every possible way by the judiciary. Custodial deaths have shaken the faith in democracy among the Indians<sup>[44]</sup>. The very idea of custody is “to prevent any kind of torture or infringement of basic human rights”<sup>[45]</sup>. However, the regular practice of custodial deaths is hampering the basic principles on which the country is based upon.

### **Social Circumstances behind Custodial Deaths**

Custodial Deaths have evolved to be the biggest curse of the Indian society. The upward streak in custodial deaths, can be attributed to a number of reasons, each of them affecting the individual and the society. It is often seen that the law enforcement agency tortures the accused persons with the intention of digging out information from them<sup>[46]</sup>. As per the 1991 survey, the police officers stated the driving force behind custodial deaths is “torture” which is employed by the police officers to make the accused confess his crimes while he is in custody<sup>[47]</sup>.

Similarly, the data of the NCRB, categorize suicide is the biggest reason behind custodial deaths in India<sup>[48]</sup>. Though, the driving force behind the suicide remains undocumented, it can easily be linked to, enhanced pressure, poor living conditions and brutal force by the authorities for confessions. A similar pattern has been observed in all the suicides under custody in other jurisdictions, thus giving rise to the inference of force in the death. The Apex court of India in the case of D.K. Basu v. The State of West Bengal, observed that, custodial deaths, including those occurring in lock-ups, take place within the confines of a police station or detention center, shielded by the perceived authority and uniformity of the law enforcement personnel. In such settings, the victims are notably vulnerable<sup>[49]</sup>. The deplorable and crowded environments prevalent in prisons or detention centres can significantly impact the health of inmates, ultimately resulting in fatalities. In addition, the absence of timely and sufficient medical care for detainees, particularly in situations demanding urgent attention, can further contribute to the occurrence of deaths in custodial settings. These issues highlight the urgent need for improvements in prison conditions and healthcare provision to ensure the well-being and safety of individuals in custody.

One of the reasons behind Custodial Deaths, can also be attributed to poor financial background of the victims. The individuals, who come from economically weaker sections, under the lack of better legal recourse often succumb to the pressure and force adopted by the officers. This leads to an increased statistical death of victims that belong to the under-privileged section of the society<sup>[50]</sup>. The deplorable and crowded environments prevalent in prisons or detention

centres can significantly impact the health of inmates, ultimately resulting in fatalities. In addition, the absence of timely and sufficient medical care for detainees, particularly in situations demanding urgent attention, can further contribute to the occurrence of deaths in custodial settings. These issues highlight the urgent need for improvements in prison conditions and healthcare provision to ensure the well-being and safety of individuals in custody<sup>[51]</sup>.

The absence of accountability and transparency within law enforcement and the judicial systems fosters an environment where instances of abuse and misconduct remain unaddressed. Delays in legal proceedings, coupled with prolonged detention without trial and other deficiencies in the legal system, enhance the vulnerability of individuals in custody. Effectively tackling custodial deaths necessitates sweeping reforms in law enforcement practices, enhancements in prison conditions, and a steadfast commitment to upholding human rights and due process. Vital steps toward prevention involve advocating for police accountability, pushing for judicial reforms, and fostering increased awareness surrounding these critical issues.

### Legal Perspective

The social circumstances affecting custodial deaths, make one focus on the legal safeguards for the issue. There is no specific act or provision dealing with custodial deaths in India. However, the courts in India have relied upon various basic principles in the Indian law to provide relief to the kins of victims and to hold the police officers liable for their heinous acts. This section elaborates upon the judicial perspective regarding custodial deaths together with the legal provisions that courts have relied upon.

India provides its citizens the Right to Life under Article 21 of the Indian Constitution<sup>[52]</sup>. Therefore, the offence of custodial death violates the fundamental rights of a person in India. The Apex Court of India had expanded the scope of Article 21 in *Maneka Gandhi v. Union of India*<sup>[53]</sup>. It held that the expression 'procedure established by law' under Article 21 'right, just and fair'<sup>[54]</sup>. It must not be arbitrary or oppressive in nature<sup>[55]</sup>. Right against Torture has been explicitly accepted by the Indian judiciary in the case of *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*<sup>[56]</sup>. The court remarked that any manifestation of torture or any treatment that is cruel, inhuman, or degrading is an affront to human dignity and represents a violation of the right to life as enshrined in Article 21. From this perspective, such actions are explicitly prohibited under the provisions of Article 21<sup>[57]</sup>. Similarly, Article 20 (3) of the Indian Constitution states, "No person accused of any offence shall be compelled to be a witness against himself" thus, guaranteeing every person with the Right against self-incrimination<sup>[58]</sup>. The right was expanded in the case of *Nandini Sathpathy v. P L Dani*, to further interpret this provision to provide the Right to remain Silent during police interrogation<sup>[59]</sup>. The police have no authority to disobey the law in any circumstance. The provision assists the individuals in custody, by giving them the right not to answer the question, and still not be subjected to any force or brutality in the process.

Further, Section 49 of the Code of Criminal Procedure (CrPC) explicitly states that the use of force while detaining an individual "should not be more than it is necessary to prevent them from escaping"<sup>[60]</sup>. As per section 120(1) of *Bharatiya Nyaya Sanhita, 2023* (BNS) states that "Causing harm with

the intent to extract confession, information, or property restoration under duress is punishable by up to seven years of imprisonment and a fine<sup>[61]</sup>." Similarly, under Section 330 of Indian Penal Code (IPC), it is stated that if any public servant causes injury to any person to extort confession, he will be liable for punishment with imprisonment up to seven years<sup>[62]</sup>. Interrogation of suspects and arrested accused persons is necessary and permitted by law in the country, but it is likewise essential that no person being interviewed is subjected to abuse and that nobody dies under police custody. Also, according to Section 22 of *Bharatiya Sakshya Adhiniyam, 2023* (BSA), "a confession in a criminal proceeding is deemed irrelevant if it appears to the court that it was obtained through inducement, threat, coercion, or promise by a person in authority, leading the accused to believe they would gain advantage or avoid harm in relation to the proceedings<sup>[63]</sup>." Similarly, Section 24 of the Indian Evidence Act (IEA) states that confession by an accused under threat or inducement is inadmissible in a court of law<sup>[64]</sup>. Therefore, Section 24 shows as a counter-incentive against cruelty in custody. Hence, the law of the country does not permit the police personnel to use force illegally.

In the case of *Sunil Batra v. Delhi Administration*, the court asserted that the realm of Prison Justice and the role of judicial power as a Constitutional safeguard in a prison setting are of utmost significance in a world grappling with increasing instances of torture by State agents. In India, where this unexplored field of jurisprudence is gaining painful relevance, these considerations take on a critical importance<sup>[65]</sup>. Therefore, there is an urgent need for developing laws that deals with custodial deaths.

### Custodial deaths in UK - when the law enforcement breaks the law

#### Deaths in Custody and the 'Right to Life'

Article 2 of the European Convention on Human Rights (ECHR) states that "No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which the penalty is provided by law"<sup>[66]</sup>. As the UK is a signatory to the ECHR, it must uphold this fundamental right<sup>[67]</sup>. It may be claimed that the state took insufficient measures to watch over the life of deceased in an event of a "custodial death"<sup>[68]</sup>. To make certain that the state acts lawfully in "custodial deaths", it is essential to conduct independent and thorough investigations into the circumstances of the death<sup>[69]</sup>. Under no circumstances should a law enforcement officer "use force more than absolutely necessary" except to defend himself or any other person from illegitimate force, or to cause a legitimate detention or to thwart a lawfully detained person from escaping<sup>[70]</sup>. An officer is allowed to use force to stop a riot or insurrection<sup>[71]</sup>. While inquiring into the death of a "person in custody", the criminal angle should be taken consideration of in an investigation. During the initial stage of investigation, the death may be referred by a doctor or an authorised officer to the coroner<sup>[72]</sup>. If at any point *prima facie* it becomes apparent that a criminal activity might have led to the demise of an individual, the coroner has the authority to suspend the investigation till the period the investigation has been completed, and the CPS has made a conclusion concerning whether there ought to be a prosecution<sup>[73]</sup>.

In several cases, criminal investigations of death that occur outside police detention are committed by the police officers

whereas those deaths which occur in police station are conducted by the Independent Police Complaints Commission (IPCC) <sup>[74]</sup>. The IPCC was established in 2004 by the Police Reform Act 2002 <sup>[75]</sup>. It investigates, manages and supervises the investigations <sup>[76]</sup>. It works independent of police forces, CPS and the Government <sup>[77]</sup>.

### Police powers of detention

In England and Wales, arrest and subsequent detention in police custody are the principal entry points into the Criminal Justice System (CJS) for anyone being investigated for criminal offenses. The Police and Criminal Evidence Act 1984 (PACE) limits detention to 96 hours <sup>[78]</sup>. However, after the first 6 hours of custody, senior police officers and judges must conduct ongoing evaluations at set intervals. Notably, in some cases involving terrorist-related claims, persons may be imprisoned for up to 28 days before being prosecuted or released, according to particular terrorism laws <sup>[79]</sup>. Thus, although PACE offers a framework for detention durations, the gravity, and nature of the alleged offence, especially in situations of suspected terrorism, may dramatically lengthen the term of confinement before official legal procedures begin.

### Health concerns in police custody

According to research that looked at 274 cases of fatalities in police custody in England and Wales from 1970 to 1979, the leading causes were drug or alcohol poisoning (39%), asphyxiation/hanging (15%), and head trauma (10%) <sup>[80]</sup>. Brain haemorrhage, cardiovascular disease, and respiratory problems were other causes of death. Just over a decade later, the same trend was still visible: asphyxiation/hanging was the second leading cause of death, with drug and alcohol poisoning accounting for 40% of all fatalities in 32 cases in England and Wales in 1994. These data indicate that there were still serious safety issues around drug misuse and the danger of suicide while in police custody <sup>[81]</sup>.

Following the early investigations into fatalities in custody, there has been a greater focus on treating the overall health needs of those kept in police custody. This change in emphasis has underlined the need of recognising risks and vulnerabilities early in the custody process. By 2015, a study released by the IPCC showed a continuous drop in total fatalities in custody, including verified suicides, during the preceding 11 years <sup>[82]</sup>. However, research on health-related concerns in police custody varies in terms of technique, breadth, and rigour. While some studies have focused on particular health disorders, such as drug abuse or severe mental illness, others have taken a more holistic approach, taking into account a broader variety of health characteristics relevant to this setting.

### Role of the coroner

Whenever a suspect or a convict dies in prison or police confinement, the matter must be handed over to the coroner <sup>[83]</sup>. A coroner is an "independent judicial officer" who conducts a public hearing which is known as "inquest" <sup>[84]</sup>. This hearing establishes the person died, time and the location of death. At the culmination of the inquest, the coroner reaches a conclusion <sup>[85]</sup>. If there is insufficient evidence to reach an outcome, he may record an open verdict, which can be adjourned till the time other investigations are complete <sup>[86]</sup>.

### Role of the CPS

The investigations into allegations that a death has been caused by the police are under taken by the IPCC, and then prosecuted by the CPS <sup>[87]</sup>.

The duty of a CPS prosecutor is to consider all the available evidences given during the inquest that includes witness statements, exhibits, interviews and expert reports <sup>[88]</sup>. After analysing the same, the CPS may be asked for legal advice by the investigating officer which might include guidance on whether a criminal investigation is warranted. The investigator is not obligated to go by the opinion of the CPS. The prosecutors in Special Crime Unit deals with all the deaths in custody which are transferred to the CPS <sup>[89]</sup>. It forms a function of the Special Crime and Counter Terrorism Division <sup>[90]</sup>.

The prosecutors advise the investigators and consider every single evidence to ascertain whether there is sufficient evidence to prosecute. If it seems unlikely to bring criminal charges against the suspect, then on the suggestion of the CPS, the investigator may stop the investigation <sup>[91]</sup>. This stage of proceedings is described as "pre-charge" where a decision is yet to be rendered with reference to prosecution <sup>[92]</sup>.

It is the responsibility of the CPS, police and IPCC to keep the close relatives of the deceased informed about the untoward incident. A Family Liaison Officer (FLO) is appointed for the same function by the police, and a family liaison manager (FLM) is selected by the IPCC <sup>[93]</sup>. The prosecutor is responsible for keeping the victim's family informed and up-to-date with the case as it progresses through the courts.

### The Code for Crown Prosecutors

The Code for Crown Prosecutors was issued by the DPP (Director of Public Prosecutions) in accordance with section 10 of the Prosecution of Offences Act, 1985 <sup>[94]</sup>. While making their decision on whether to prosecute or not, the CPS prosecutors are obliged by the DPP's "Guidance on Charging", and the code above-mentioned <sup>[95]</sup>.

### Selection of charges

The Code for Crown Prosecutors guides the prosecutors on selection of appropriate charges. This includes ensuring that the charges "reflect the seriousness and extent of the offending, supported by the evidence gathered in the investigation" <sup>[96]</sup>.

The charges depend on the evidence gathered as each case of custodial death is unique. However, in each case of custodial death, it is always considered whether the defendant should face charges of gross negligence manslaughter or not <sup>[97]</sup>.

To convict a person, the jury must be sure that some elements have been proven beyond a reasonable doubt against the suspect. These elements are that the defendant owed a duty of care to the victim, and he was negligent in performing that duty or that he breached that duty <sup>[98]</sup>. It has to be proved that the breach was the reason of victim's death and but the defendant wouldn't have been negligent, the victim would be alive today. In conclusion, there must be a clear link between breach of obligation of the defendant and death of victim. The breach must be gross, or that it fell far below the expectations. The risk of death must be serious and obvious.

In the cases of fatal shooting by police, it could be considered whether the police used reasonable force for self-defence, and whether there were reasonably necessary circumstances

wherein the officer honestly believed them to be, even when that belief is mistaken. It isn't a crime to act upon a mistaken but honest belief about the threat.

### Cases in which charges are brought

If it is decided that a suspect "should be charged with a criminal offence, the case will proceed to the trial stage" [99]. A formal notice will be directed to the defendant, and he would be obliged to appear before in the court of law. The provisions relating to deaths in custody are set out in of the Mental Health Act 1983 [100]. They include detention in prison, police custody, immigration detention, transport of prisoners, detention of children and young people in secure accommodation [101].

Corporate manslaughter is a "criminal offence" in English law under the Corporate Manslaughter and Corporate Homicide Act, 2007 [102]. The statutory offence was brought in to ensure that there were "effective laws in place to prosecute organisations where they have paid scant regard to the proper management of health and safety with fatal results" [103]. The offence applies to Specified government departments and police forces can also be held liable. Its effect was to "widen the scope of the offence so that the focus can be on the overall management of the organisation's activities" rather than the actions of particular individuals [104].

It is an offence created by Section 1 of the Corporate Manslaughter and Corporate Homicide Act, 2007 [105]. The offence was created to make sure that the companies and other organisations can be made properly accountable for very serious failings resulting in death [106]. It applies only to most serious corporate failings. The threshold for liability is very high, and proof of a gross breach of the duty of care is required [107]. To convict a person, the prosecution must substantiate that the breach of duty was the reason for victim's death. This offence is indictable and the proceedings for the same could not be instituted without the consent of the DPP. The Crown Prosecutor "is entitled to give consent and it is recommended that the file is endorsed with specific reference to the consent under Section 17 of the Act" [108].

Under Section 1(2) of the Act, police force also falls under the category of organisation. It is defined under Corporate Manslaughter and Corporate Homicide Act 2007 as "the criminal liabilities of companies including large organisations where serious failures in the management of health and safety result in a fatality". A police officer could be sued for the same act. For the objectives of the Act, police officers are treated as employees of the force under sections 1(2)(c) and 13 [109]. Under the said act, the entire force is charged for the wrongdoing of a particular individual whereas in the Health and Safety at Work Act 1974 (HSWA) and the health & safety regulations, the Chief Constable is charged for an offence under section 51A.

It is pertinent for the prosecutors to consider corporate manslaughter offences where a person has died in detention and where duty of care was "owed to" him by the authorities. Under Section 2 (1) (d), the organisation or prison wherein a person is put under detention owes a duty of care to the detainee [110].

Whenever a "death occurs in a custody", and there's a doubt regarding police influence, then it must be referred to the Special Crime and Counter-Terrorism Division (SCCTD) [111]. The police should not be given any sort of advice or guidance than necessary. It is essential to examine all the circumstances related to death when it occurs in custody. There has to be

thorough and independent investigation that can help the prosecutor to direct to the identification and penalty for any person that could have been criminally responsible for causing death [112].

Section 76 of the Criminal Justice and Immigration Act 2008 "provides clarification on the operation of the existing common law in relation to self-defence, and the defence provided by s 3(1) of the Criminal Law Act 1967 (use of force in the prevention of crime or making arrest)". Prosecutors are referred to "the CPS legal guidance on Self-Defence and the Prevention of Crime for a more detailed analysis of the law as it relates to self-defence and use of reasonable force" [113]. However, both the IPCC and the CPS have been seriously criticised in the past time.

Leon Briggs, a man aged 39 years died in hospital after he was restrained and detained by the police officers in 2013 [114]. Police arrested him under section 136 of the Mental Health Act, 1983 which enables police to restrain a person in custody who they think have mental health issues and requires immediate "care or control", to be taken to a "place of safety" which may be a home, hospital or police station. He lost consciousness and declared dead at the hospital. He died due to the omissions and failures by Bedfordshire Police and East of England Service. Leon was not provided with basic medical attention which ultimately led to his death. There was gross negligence by the police officers for not taking Leon Briggs to the nearest hospital instead they restrained him for over 13 minutes.

### Legal Procedure against Custodial Death - An Analysis between India and the UK

In both the countries, custodial deaths have faced immense protest by public in the recently. In UK, there is a well-established procedure after a person dies under police confinement. On the other hand, in India, there is no procedure which is strictly abided by the authorities. During an informal detention, the detainees are generally exposed to mistreatment, which also results in death in a number of situations. Subsequent to the death, the deceased's body is disposed of surreptitiously or thrown at a public place making out a case of suicide or accident. Records are often manipulated to defend the police officers who subjected the deceased to brutal torture [115].

In UK, the examining officer is required to write a report about the "post-mortem examination". The medical personnel performing the post-mortem must provide the investigating authorities with a report indicating the reason and the method of death. It is likewise necessary to make attributions, such as linking injuries to external trauma, therapeutic efforts, post-mortem change, or any other causes. The proper handling of the body is an important component of the investigation since it aids in the collection of evidence at the crime scene and the creation of ideal conditions for post-mortem examinations [116].

In India, right against custodial death is an element of "fundamental rights". But there is lack of specific legislation in our Constitution to safeguard the rights of prisoners against torture. Even after two decades of signing the 'Convention against Torture', there is still no specific law to ratify the same. Also, not one step has been taken by the parliament to pass the "prohibition of torture" laws.

The Indian Constitution does not provide any provisions against "torture in police" custody. However, the SC has stated that every citizen has "right to life" and he should live

it with human dignity, which implies that “no person should be tortured which violates his right to live with dignity”.

The European Convention on Human Rights prohibits both torture and harsh or humiliating treatment in equal proportion, and the UK is a signatory to it. Furthermore, torture is illegal everywhere under section 134 of the Criminal Justice Act <sup>[117]</sup>. “A public official or someone acting in an official capacity may conduct the offence, or someone else acting at the suggestion of or with the consent or acquiescence of a public official or someone acting in an official capacity may commit the offence” under the said act <sup>[118]</sup>. As a result, helping, abetting, counselling, or soliciting torture, including plotting to do so, are all crimes under British law.

Dalits, including those arrested for minor offences, are frequently detained for extended period of time, sometimes in remote and isolated locations to avoid public scrutiny <sup>[119]</sup>, wherein they are frequently denied basic needs like meals and liquid, subjected to verbal abuse and humiliation, severe “beatings, sexual perversities, and demeaning acts” <sup>[120]</sup>. In several situations, the injuries inflicted are deadly <sup>[121]</sup>. To hide the truth that someone died in custody, authorities frequently claim that the person was killed while attempting to flee or that he or she died of natural causes <sup>[122]</sup>. Dalits who survive the treatment are frequently chronically crippled, socially isolated, and suffer psychological and emotional damage <sup>[123]</sup>.

People from black and minority ethnic backgrounds made up about a tenth of those killed in police custody. This is founded on data from the charity Inquest, which has identified 1563 deaths in England and Wales during or after police contact since 1990. In the UK, black people are twice as likely as people of other ethnicities to die in police custody <sup>[124]</sup>.

“The disproportionality in the use of force against Black people adds to the irrefutable evidence of structural racism embedded in policing practices.” Remarkd Deborah Coles, Director of Inquest.

Truth might not be accessible in a legal sense by means of truth machines (lie detectors, brain scans, and narcoanalysis), but examination of these techniques can expose the subtleties of detention questioning. As a result, the pragmatic logic of third-degree interrogation articulates the internal structural conditions that influence police aggression. One of the driving forces for resorting to third-degree interrogation, according to police reports, is the length of detention <sup>[125]</sup>.

### **Suggestive Framework**

Custodial Deaths have not gone unnoticed by the Indian judiciary. The pressing problem has been recognized by the judiciary, and the courts have come up with constant interventions to curb the same. To reduce the rate of custodial deaths in India, the Apex Court suggested establishing a State Security Commission in Prakash Singh v. Union of India <sup>[126]</sup>. It should be established for monitoring the function of state police <sup>[127]</sup>. It would further act as a forum of appeal for disputes related to promotion and illegal orders <sup>[128]</sup>. In Joginder Kumar v. State of U.P., the court directed, the prudence of a police officer to avoid arrest without attaining a reasonable satisfaction through a thorough investigation regarding the authenticity and good faith of a complaint, and without a reasonable belief in both the individual’s involvement and the necessity for their arrest <sup>[129]</sup>. However, these guidelines have not been executed yet. Thus, what India needs at this instance is a proper implementation of the existing guidelines.

The courts at various instances have relied on various foreign judgements to emphasise on the need for laws to prevent custodial deaths. It has given certain guidelines to be adhered to by the police while arresting or restraining a person. These measures encompass a range of actions, such as the identification of all officials involved, the creation of an arrest memo duly attested by the accused person’s kin, documentation of any injuries upon the request of the accused, upkeep of a daily diary at the police station, and ensuring a medical examination of the arrestee every 28 hours following the arrest, among other protocols <sup>[130]</sup>. To ensure a safe and secure living space for victims in prisons, it is imperative for the executive to devise ways of implementing the guidelines.

Another lacuna of development is focussed on the premise of international conventions preventing torture. It is also embarrassing to mention that India has still not signed the UN Convention against torture <sup>[131]</sup>. It is high time that India ratifies the same. Furthermore, there is similarly a need for a change in the vigorous mindset of the civilization. The society should understand that a person does not deserve torture while in custody.

With regards to compensation in cases of custodial deaths, the courts have been delayed in action but at the end protected the rights. In Smt. Nilabati Behera Alias Lalit Behera v. State of Orissa, the court granted compensation to the kin of the departed who died in custody <sup>[132]</sup>. It was further remarked that the police officers are duty bound to guard the life of an individual under custody. In Shri D.K. Basu, Ashok K. Johri v. State of West Bengal, State of Uttar Pradesh, the court reiterated the need for laws regulating custodial deaths in India <sup>[133]</sup>.

The current legislative framework for prevention of custodial deaths, is embedded in judicial interpretation. Though scattered, the idea continues to govern the Indian society. The country needs proper implementation of the existing guidelines to curb the growing numbers and to portray a functioning society for the individuals kept in custody.

### **Conclusion**

“Darkness cannot drive out Darkness, only light can do that” said Martin Luther King Junior.

India has a high rate of incarcerated deaths. It is the most heinous crimes committed against our society since it is perpetrated by our saviour, whom we trust and rely on for our safety. It’s hard to admit the fact that the individual who has been entrusted with our safety and well-being has deceived us, that the individual we entrusted with our care and protection has used torture on suspects who have yet to be proven guilty. The reality that the police officials use “rape, hitting in the private parts, peeing in the mouth, forced oral sex, and other forms of torture” is even more disappointing and demonstrates the seriousness of the situation <sup>[134]</sup>.

CCTV cameras must be put inside the lock-ups to avert custodial deaths, and they should be regularly monitored by an experienced police official or duty officer <sup>[135]</sup>. Under Article 51 (c) of the Constitution of India, the Government has a duty to honour the internationally recognized rules and treaties, such as “International Covenant on Civil and Political Rights, 1966 (ICCPR) and Universal Declaration of Human Rights, 1948 (UDHR)” <sup>[136]</sup>. Article 7 of the ICCPR <sup>[137]</sup> and Article 5 of UDHR <sup>[138]</sup> combinedly, specifies that “no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment”.

No one should be put through torture, inhuman treatment, or arbitrary punishment, according to the ICCPR <sup>[139]</sup> and the UDHR. As a consequence, these laws are consistent with fundamental rights and in line with their spirit, and they should be followed to the letter <sup>[140]</sup>. It is critical that people raise their voices collectively against such atrocities so as to abolish the social evil of “custodial death.”

We the “people, the media, the government, and the judiciary” must band together to ensure that the police department recognises that “they are the saviour, not the slayer.” The UNCAT is a human rights pact that is now being reviewed by the UN. It attempts to increase awareness against torture and inhumane treatment, but India is yet to ratify it. As a consequence, India is one of the 25 countries in the world that has yet to sign this pact <sup>[141]</sup>.

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