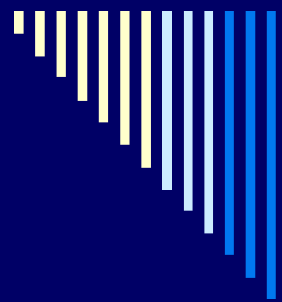


Custodial Death

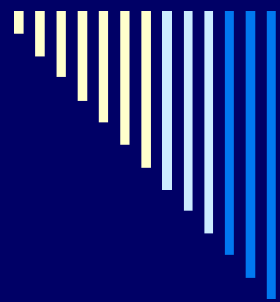
Crude Action of Human Rights

By
Dr. P.K. Pandey



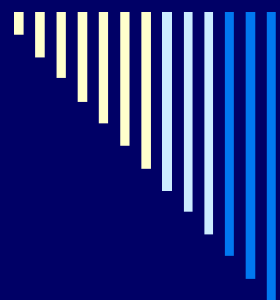
Introduction

- India, the biggest democracy, has, from ancient times, respected, safeguarded and promoted human rights of each and every human being.
 - State and its organs are expected to discharge duties as per constitutional/ statutorily mandates.
 - In criminal justice system- Judiciary, Prosecution, and Police- have different roles.
 - Custody- part of justice system-preventive measure
-



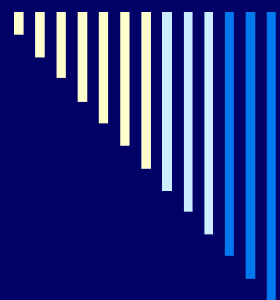
Police custody

- ❑ Custody- police custody/ judicial custody
- ❑ Police custody- after arrest, to be produced before Magistrate within 24 hours-Remand for maximum 15 days (Sec. 167 CrPC)-police station lockup
- ❑ To prevent him from committing the offensive acts
- ❑ Police has the physical custody of the accused
- ❑ When accused is produced before Magistrate-
 - ❑ either release him on bail or
 - ❑ he can either send him to judicial custody or
 - ❑ to police custody



Judicial custody

- ❑ Accused in the custody of the Magistrate
- ❑ Kept in the jail
- ❑ Maximum 90 / 60 days, if not released on bail



Custodial Death

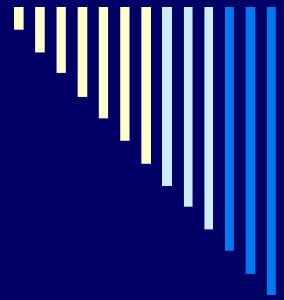
- Deaths in custody are not uncommon-
 - Natural/unnatural deaths in prisons
 - ill-treatment or inadequate conditions of detention
 - Police lock-up or death trap ?
 - Police lawlessness or rule of law ?
 - Police muscle or personal modesty ?
 - Police harassment or human rights ?
 - A matter of great concern for all civilized societies being governed by the Rule of Law
 - Poorly investigated
-



NCRB's Crime in India

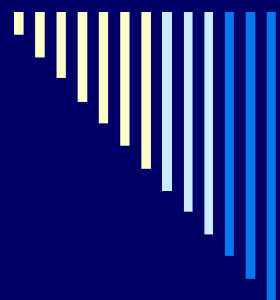
Deaths in Police Custody / Lockup

Year	Total deaths in custody	Highest in
2020	76	Gujarat (15)
2019	85	Tamil Nadu (11)
2018	70	Gujarat (14)
2017	100	Andhra Pradesh (27)



Causes

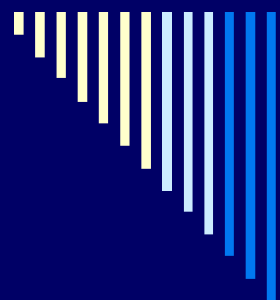
- Negligence
- To extract information
- Lack of proper medical treatment
- Enmity with authorities
- Gang war in prisons
- Escaping from Custody
- Political interference
- Misuse of power
- Suicide



Suicide

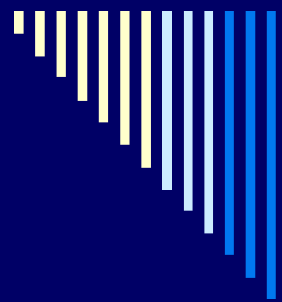
Causes of suicides (NHRC monograph *Suicide in Prison - prevention strategy and implication from human rights and legal points of view*) <https://nhrc.nic.in/sites/default/files/SUICIDE%20IN%20PRISON%202014.pdf> -

1. Authoritarian environment.
2. No apparent control over the future.
3. Isolation from family, friends and community.
4. The shame of incarceration.
5. Dehumanizing aspects of incarceration.
6. Fears.
7. Staff insensitivity to the arrest and incarceration phenomenon
8. Hostility and bullying by other inmates.
9. Lack of adequate medical and psychological counseling and treatment facility
10. Delay in deciding the parole.



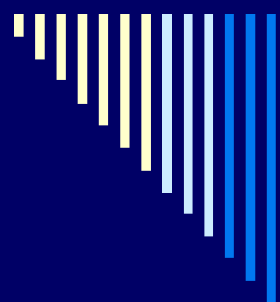
Nelson Mandela Rules

- UN General Assembly adopted the Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) adopted on 17th December, 2015
https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf
- Internationally accepted guidelines for implementation by prison administrations across the country.
- Rule 71 is related with custodial deaths



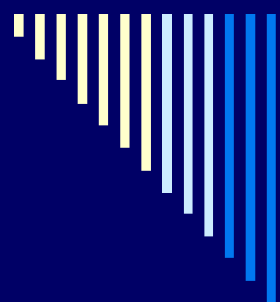
International Committee of the Red Cross

- *Guidelines on Investigating Deaths in Custody* issued by the International Committee of the Red Cross
- Guidance to detaining authorities, investigating authorities, humanitarian agencies and others on preventing deaths in custody.
- SC in *Re-Inhuman Conditions In 1382 Prisons*, (2017) directed Union of India through the Ministry of Home Affairs to ensure circulation of, *inter alia*, above Guidelines.



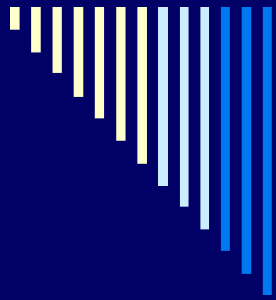
Protective Measures by NHRC

- visits and contact with the family and relatives
- constructive occupation in prison
- instilling hopes and plans for the future
- support from staff



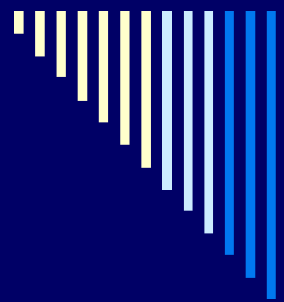
Role of NHRC

- Extremely important whenever there is an unnatural death in a prison.
- *Re-Inhuman Conditions In 1382 Prisons*, on 15 September, 2017 SC-Hon'ble Madan B. Lokur, J.
 - Although the NHRC has issued detailed instructions from time to time, it does appear however that these instructions are not being taken seriously but are being followed more in the breach.



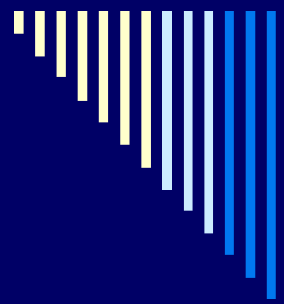
NHRC's instructions to be followed while sending *post-mortem* reports in cases of custodial death-

1. The post-mortem report along with the videograph and the magisterial enquiry report must be sent to the NHRC within two months of the incident.
2. The post-mortem report should be sent in the proforma attached to the letter dated 27th March, 1997.
3. The magisterial enquiry into a custodial death should be completed as soon as possible but within a period of two months.



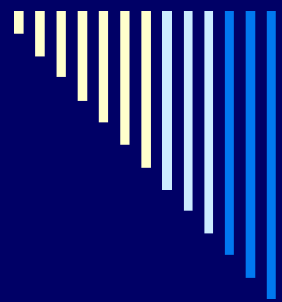
D.K. Basu v. State of W.B., (1997) 1 SCC 416

- Custodial violence, including torture and death in the lock ups, strikes a **blow at the Rule of Law**, which demands that the powers of the executive should not only be derived from law but also that the same should be **limited by law**. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be the **protectors of the citizens**. It is committed under the **shield of uniform and authority** in the four walls of a police station or lock-up, the victim being **totally helpless**.



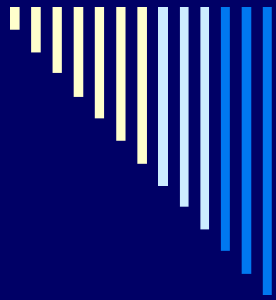
Nilabati Behera v. State Of Orissa, 1993 SCR (2) 581

- Suman Behera died as a result of the multiple injuries in police custody
- Letter by deceased's mother to SC
- A custodial death is perhaps one of the worst crimes in a civilised society governed by the Rule of Law.
- Awarded compensation
- Many cases- relief- compensation

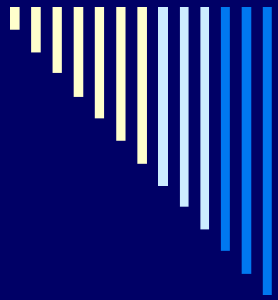


Re-Inhuman Conditions In 1382 Prisons, (2017)

- All efforts should be made to reduce and possibly eliminate unnatural deaths in prisons and to document each and every death in prisons – both natural and unnatural.
- To conduct training and sensitization programmes for senior police officials of all prisons on their functions, duties and responsibilities as also the rights and duties of prisoners.
- The services of counselors and support persons can be utilized to counsel and advice prisoners who might be facing some crisis situation or might have some violent or suicidal tendencies.



- Visits to prison by the family of a prisoner should be encouraged
- Explore the possibility of using phones and video conferencing for communications not only between a prisoner and family members of that prisoner, but also between a prisoner and the lawyer, whether appointed through the State Legal Services Authority or otherwise.
- The right to health is undoubtedly a human right and all State Governments should concentrate on making this a reality for all, including prisoners.



THANK YOU
