

Custodial violence

Custody = guardianship and protective care,

Violence = use of force by one, over another.

Custodial Violence: Crime by a public servant against the arrested or detained person in custody amounts to custodial violence [Law Commission of India 152nd report]

Types of custodial violence:

- a) Physical: torture / beating
- b) Mental: food or sleep deprivation etc.
- c) Sexual: rape / harassment / sodomy (unnatural sexual activity)

What is the status of custodial violence in India?

- ☐ **NCRB data [between 2001 and 2018]:** 26/1727
 - ☐ Custodial deaths 1,727 (only 26 convictions)
 - ☐ Human rights violation by police: 2,000 (only 344 convictions)
- ☐ **National Campaign Against Torture (NGO):**
 - ☐ 1,731 custodial deaths in 2019 (5 daily)
 - ☐ 75% of them due to torture
- ☐ **Brutal methods of torture are used:** hammering iron nails on body, roller on legs and burning, 'Falanga'- soles are beaten, hitting private parts, electric shocks, kicking abdomen of pregnant women etc.

What constitutional and legal safeguards are available against custodial violence?

- a) **Constitution:**
 - a) **Article 21:** Right to life and liberty
 - b) **Article 22:** produce before nearest magistrate within 24 hours
- b) **Laws:**
 - a) **Indian Penal Code section 330:** up to seven years imprisonment for police officer causing hurt to extort confession.
 - b) **Indian Evidence Act 1872 Section 25:** confession before Police officer is not admissible in court of law

What has been Supreme Court's stand on cases of custodial violence:

- ☐ **DK Basu vs State of West Bengal 1987:** Against rule of law; offence under **Article 21**
- ☐ **Nilbati Behera vs State of Orissa 1993:** state is accountable; must pay compensation
- ☐ **Rama Murthy vs State of Karnataka 1996** – emphasis on prison reforms.

Why is it so difficult to stop cases of custodial violence in India?

- a) **Issues with Policing:** separate investigation and prosecution function of police
 - a) **Police Act, 1861** gives no clear provisions on **superintendence of police**, hence police is controlled by the Executive.
 - b) Absence of **'command responsibility'**. Under command responsibility, senior is responsible for crimes committed by his subordinates.
 - c) Absence of **independent complaint authority** as recommended in Prakash Singh case guidelines. Only some states have formed it, but even those are not truly independent.
- b) **Under-reporting of cases**
- c) **Weak witness protection:** Witness Protection Bill 2015 lapsed.

- d) Lack of strong legislation:
 - a) Torture is not defined in IPC
 - b) yet to criminalize custodial violence.
 - c) yet to ratify UN Convention against torture (signed in 1997)
- e) Poor condition of Prisons: overcrowded, poor sanitization, punitive violence.
- f) Weak functioning of NHRC: limited to providing compensation and other interim relief in practice; NHRC called itself a 'toothless tiger'
- g) Poor conviction rate: just 26 policemen convicted in 1,727 custodial deaths

Why steps can be taken to prevent cases of custodial violence in India?

- a) Ensure police accountability:
 - a) External: Independent Police Complaints Authorities should be formed in all states (Prakash Singh case 2006)
 - b) Internal: Professional responsibility units for surprise check of lockups. Ensure implementation of 11 points outlined in DK Basu judgement.
- b) Strong witness protection system
- c) Prevention of Torture Bill, 2017 : defines torture; 10 years imprisonment; state governments to be responsible for individuals safety.
- d) Ratify UN Convention against torture
- e) Prison reforms: CCTV camera, humane conditions, etc. SC ordered installation of CCTV
- f) Training police in scientific methods of investigation; modern non-coercive techniques should be used.
- g) Law Commission 273rd report recommendations:
 - a) Ratify UN convention against torture
 - b) In case of injury, burden of proof shall lie on police
 - c) Give compensation to victim

Conclusion :

FOLLOW MENDEZ PRINCIPLES.

Torture is not just a criminal act, but also grossly inhumane. There should be zero tolerance against it. A country aspiring to be 21st century superpower cannot allow its law enforcers mistreat its citizens.
