

Custodial Violence

Custodial violence primarily refers to violence in police custody and judicial custody. Custodial violence, which includes torture, death and other excesses in police custody or prison.

Police Reforms against Custodial Violence in India is always a point of debate whenever any issue concerning the same makes the headlines or otherwise too.

In 2020, the Supreme Court asked the Government's response pertaining to the implementation of Section 176(1A) of the CrPc, which calls for mandatory judicial inquiry related to incidents of deaths, disappearance, rape, etc. in judicial custody.

Custodial Violence - Key Points

- Custodial violence is the violence that takes place in judicial and police custody where an individual who has done a crime is tortured mentally or physically
- Most of the custodial deaths were attributed to reasons other than custodial torture, which included suicide and death in hospitals during treatment
- One of the biggest issues with custodial violence is that it has put human rights at stake. This crime is an outburst against humanity and is one of the many root obstacles in a Democratic country
- Although, overcrowding, malnutrition, unhygienic conditions and lack of medical care are some of the factors of death in police and judicial custody, but custodial violence remains the common cause of deaths in prisons and lock-ups
- Many human rights activists and social workers have found that the worst violations of human rights take place during the course of an investigation when the police, with a view to securing evidence or confessions, often resort to third-degree methods including torture and techniques of arrests by either not recording them or describing the deprivation of liberty merely as "prolonged interrogations"

Types of Custodial Violence

There are different types of custodial violence. Discussed below are the same:

- 1. Physical Violence**
 - Through physical force or bashing which may lead to the exhaustion and fear of death
- 2. Psychological Violence**
 - Not providing correct information and mentally torturing them. This may also be done through humiliation and threats
- 3. Sexual Violence**
 - This may include verbal sexual abuse and humiliation of one's dignity. This may leave a long-lasting psychological impact on the victim

Custodial Violence in India

Custodial Violence in India has been a major human rights issue for decades now. It is one of the root obstacles to democracy and the development of human well being. According to National Crime Records Bureau (NCRB) data, between 2001 and 2018, only 26 policemen were convicted of custodial violence despite 1,727 such deaths being recorded in India.

Given below is the data released by the National Human Resources Commission for the month of April 2021 in regard to the complaints registered for custodial violence:

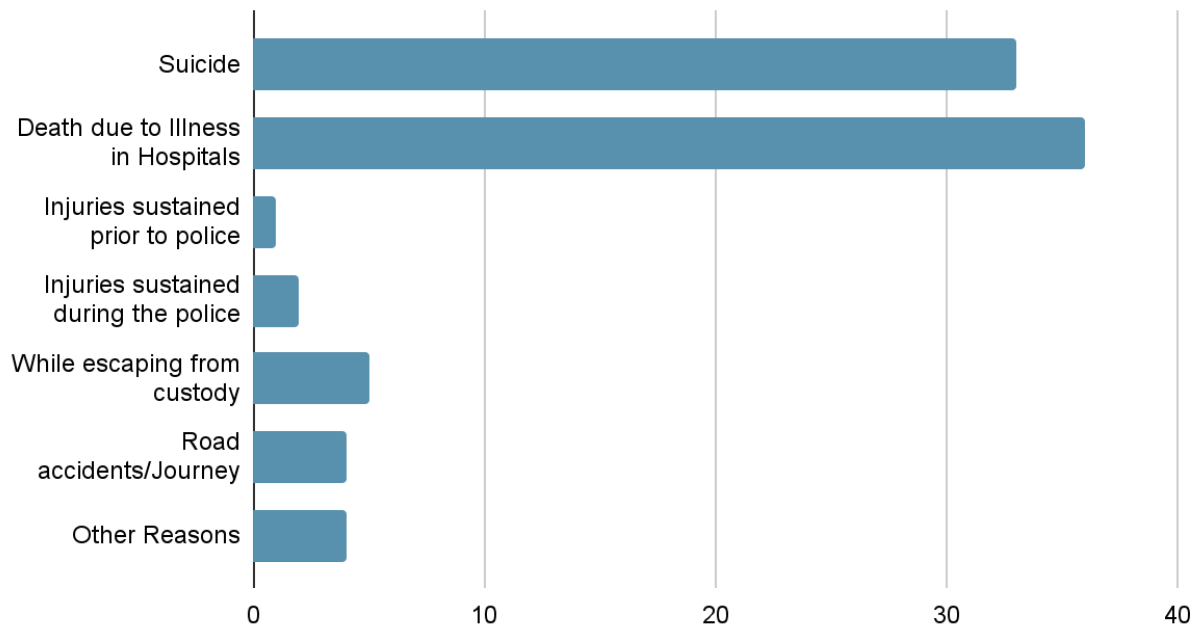
Nature of Incidents	No. of cases Registered	Disposed	Pending
CUSTODIAL DEATH (POLICE) (Inc. Code 807)	13	8	301
CUSTODIAL DEATH (JUDICIAL) (Inc. Code 301)	178	151	3029

The International Human Rights Day on 10th December annually marks the occasion of the signing of the Universal Declaration of Human Rights in 1948.

Statistics on Custodial and Judicial Violence in India

- Between 2015-2019, 36% of deaths by suicide in police custody have been reported
- 2014 onwards, physical assault by police has been recorded in only 6% of the cases
- In the last 10 years, 403 of 1,004 deaths (40%) in police custody are listed as due to “Hospitalisation/ Illness/ Natural deaths” – a majority of such deaths
- As per the Crime in Indian Report 2019 released by the National Crime Records Bureau, the following have been the major reasons for custodial deaths in 2019:

Reasons for Custodial Deaths in 2019



Legal Provisions for Custodial Violence in India

The following provisions were enacted to curb the tendency of policemen to resort to torture to extract confessions, etc.:

- Sections 330, 331 & 348 of Indian Penal Code (IPC)
- Sections 25 & 26 of the Indian Evidence Act
- Section 76 of Code of Criminal Procedure (CrPC) and Section 29 of the Police Act, 1861

Other important constitutional provisions are as follows:

- Protection from torture is a fundamental right enshrined under Article 21 (Right to Life) of the Indian constitution
- Section 41 of the Criminal Procedure Code (CrPC) was amended in 2009 to include safeguards under 41A, 41B, 41C and 41D, so that arrests and detentions for interrogation have reasonable grounds and documented procedures, arrests are made transparent to family, friends and public, and there is protection through legal representation
- Article 21 of the Indian Constitution provides that no person shall be deprived of life or personal liberty except according to the procedure established by the law

Causes of Custodial Violence in India

There are multiple reasons which have led to the increased cases of custodial and judicial violence in the country. A few of the most common causes have been discussed below:

- **Absence of Strict Laws** - It is important that strict and mandatory laws are passed in order to stop custodial violence. In India, custodial violence is yet to be criminalised and an unfair benefit of which has been taken by those in power over the past many decades
- **No Solid Prison Reforms** - The entire prison system is inherently opaque giving less room for transparency. Prisons in India continue to be affected by poor conditions, overcrowding, acute manpower shortages and minimal safety against harm in prisons
- **Work Pressure** - The police work under extreme pressure and in cases of a quick solution to complex cases, they choose violence to get evidence and confessions
- **Social Factor** - Considering the approach of “an eye for an eye”, the people in power choose to use violence to get out information from the ones accused of a crime
- **Not following International Standards** - India had signed the United Nations Convention against Torture in 1997 but its implications are yet to be mandatorily followed in the country

Limited time for interrogation, pressure from higher authorities and long working hours are few other reasons for custodial violence in the country.

Prohibition of Custodial Violence - The Way Forward

- Proper reforms must be implemented to completely prohibit custodial and judicial violence.
- India should ratify the UN Convention Against Torture as it will mandate a systematic review of the colonial, methods, practices and arrangements for the custody and treatment of persons subjected to arrest, detention or imprisonment
- The police officials must be trained under special guidelines so that any kind of violence can be prevented
- Separate rooms with CCTV cameras installed must be set up in police stations for the purpose of interrogation
- Prison conditions must be in line with human rights requirement
- Implementation of Law Commission of India’s 273rd Report that suggests that those accused of committing custodial torture – be it, policemen, military and paramilitary personnel – should be criminally prosecuted instead of facing mere administrative action establishing an effective deterrent