



Custodial Violence

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Why in News

The recent death of a father-son duo from Tamil Nadu, allegedly **due to custodial violence**, has sparked anger across India.

Custodial violence primarily refers to violence in police and judicial custody. It includes death, rape and torture.

Key Points

- **Data Related to Violence in Custody:**
 - 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.
 - Only 4.3% of the 70 deaths in 2018 were attributed to injuries during custody due to physical assault by police.
 - Except in Uttar Pradesh, Madhya Pradesh, Chhattisgarh and Odisha, no policeman was convicted for such deaths across the country.
 - Apart from custodial deaths, **more than 2,000 human rights violation cases were also recorded** against the police between 2000 and 2018. And only 344 policemen were convicted in those cases.
- **Reasons for Low Conviction:** Most of custodial deaths were attributed to reasons other than custodial torture, which included suicide and death in hospitals during treatment.

- **Reasons Behind Custodial Violence:**

- **Absence of Strong Legislation:** India does not have an anti-torture legislation and is yet to criminalise custodial violence, while action against culpable officials remains illusory.
 - The Indian state either denies the existence of torture in the country or defends its resistance to enact a law by claiming there are sufficient provisions in the domestic legal framework to prohibit and penalise torture.
 - These claims however remain superficial and without any such protections.
- **Institutional Challenges:** The entire prison system is inherently opaque giving less room to transparency.
 - Prison access is not provided without prior permission such as depositing “Rs. 1 lakh in the name of the superintendent of the concerned jail” before entry.
 - Excessive scrutiny is done of all recorded or documented material in the prison.
 - India also fails in bringing the much **desired Prison Reforms** and prisons continue to be affected by poor conditions, overcrowding, acute manpower shortages and minimal safety against harm in prisons.
- **Excessive Force:** The use of excessive force including torture to target marginalised communities and control people participating in movements or propagating ideologies which the state perceives as opposed to its stature.
- **Not Adhering to International Standard:** Although India has signed the **United Nations Convention against Torture** in 1997 its ratification still remains.

While Signing only indicates the country’s intention to meet the obligations set out in the treaty, Ratification, on the other hand, entails bringing in laws and mechanisms to fulfil the commitments.

- **Constitutional and Legal Provisions:**

- **Protection from torture** is a fundamental right enshrined under Article 21 (Right to Life) of the Indian constitution.
- The **right to counsel** is also a fundamental right under Article 22(1) of the India constitution.
- Section 41 of **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.

- **India should ratify the UN Convention Against Torture:** It will mandate a systematic review of colonial rules, methods, practices and arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment.

It will also mean that exclusive mechanisms of redress and compensation will be set up for the victim besides institutions such as the Board of Visitors.

- **Police Reforms: Guidelines should also be formulated** on educating and training officials involved in the cases involving deprivation of liberty because torture cannot be effectively prevented till the senior police wisely anticipate the gravity of such issues and clear reorientation is devised from present practices.
- **Access to Prison:** Unrestricted and regular access to independent and qualified persons to places of detention for inspection should also be allowed.
 - CCTV cameras should be installed in police stations including in the interrogation rooms.
 - Surprise inspections by Non-Official Visitors (NOVs) should also be made mandatory which would act as a preventive measures against custodial torture which has also been suggested by Supreme Court **in its landmark judgment in the *DK Basu Case* in 2015.**
- **Implementation of Law Commission of India's 273rd Report:** The report recommends 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.

Source: TH