



## Death Behind Bars

This editorial is based on [“Technology is no panacea for custodial deaths”](#) which was published in The Hindu on 04/07/2022. It talks about the cases of custodial deaths, arrival of technology in the interrogation process and related issues.

**For Prelims:** Fundamental Rights, Indian Penal Code, Code of Criminal Procedure

**For Mains:** Reasons for Custodial Deaths, Reforms in Policing, Technology and Interrogation, Measures to avoid custodial deaths

India has a grim record in police brutality and [custodial violence](#). Between 2001 and 2018, 1,727 persons died in police custody, but only 26 policemen were convicted for such deaths.

Custodial deaths are common despite enormous time and money being spent on training police personnel to embrace scientific methods of investigation. This is because police personnel are humans from different backgrounds and with different perspectives.

In this context, let's understand the issues revolving around custodial deaths.

### What do We Mean by Custodial Deaths?

- Custodial deaths in India may refer to the deaths of persons in police custody and also to the deaths of persons in judicial custody while undergoing trial or serving a sentence.
  - It is not uncommon knowledge that the police, when they grow increasingly frustrated with the trajectory of their interrogation, sometimes resort to torture and violence which could lead to the death of the suspect.
  - It includes torture, death and other excesses in police custody or prison.

### What has been the Status of Custodial Deaths in India?

- According to [National Crime Records Bureau \(NCRB\)](#) data, Over the last 20 years, 1,888 custodial deaths were reported across the country, 893 cases registered against police personnel and 358 personnel charge-sheeted. But only 26 policemen were convicted in this period, official records show.
  - 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.

## What could be the Possible Reasons for Custodial Deaths?

- **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.
- **Institutional Challenges:**
  - The entire prison system is inherently opaque giving less room to transparency.
  - 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.
- **Lengthy Judicial Processes:**
  - Lengthy, expensive formal processes followed by courts dissuade the poor and the vulnerable.
- **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 fulfill the commitments.

## What are the Provisions Available Regarding Custody?

- **Constitutional Provisions:**
  - **Article 21:**
    - Article 21 states that "No person shall be deprived of his life or personal liberty except according to procedure established by law".
      - Protection from torture is a fundamental right enshrined under Article 21 (Right to Life) of the Indian constitution.
  - **Article 22:**
    - Article 22 provides "**Protection against arrest and detention in certain cases**".
      - The right to counsel is also a fundamental right under Article 22(1) of the India constitution.
- **Legal Provisions:**
  - **Criminal Procedure Code (CrPC):**
    - **Section 41 of Criminal Procedure Code (CrPC)** was amended in 2009 to include safeguards 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.
  - **Mathura Case of 1972:**
    - The Mathura rape case was an incident of custodial rape in India on 26 March 1972, wherein Mathura, a young tribal girl, was allegedly raped by two policemen on the compound of Desai Ganj Police Station in Gadchiroli district of Maharashtra.
    - This case led to Government of India to amend the rape laws in our country. In 1983, a new category was added to criminal laws dealing with rape.
      - The law mandates that a court presume a woman who says she did not consent to sexual intercourse is telling the truth.
      - Mathura's case also led to in camera rape trials being conducted as closed proceedings and to a ban on identifying victims by their real names.
      - Besides defining custodial rape, the amendment shifted the burden of proof from the accuser to the accused.
      - It also demanded that before sunrise and after the sunset, women can not be called to the police station.

## What is the Role of Technology in Custodial Interrogation?

- **Brain Fingerprint System:**
  - BFS is a type of [lie-detection technique](#) through which a person's brain waves are measured to find out if the individual is telling the truth while answering questions put to him/her.
  - The technique helps investigative agencies uncover clues in complicated cases.
- **Robots:**
  - Police departments are increasingly using [robots](#) for surveillance and bomb detection.
  - Many experts today believe that robots can meet or exceed the capabilities of the human interrogator.
    - Suspects might be more receptive to opening up to automated conversational counterparts than the police.
    - Robots equipped with AI and sensor technology can build a rapport with the suspects, utilize persuasive techniques like flattery, shame and coercion, and strategically use body language.
  - The University of Arizona has created automated interrogation technology called **The Automated Virtual Agent for Truth Assessments in RealTime (AVATAR)**.
    - The system uses visual, auditory, near-infrared and other sensors to scrutinize a suspect's eye movements, voice, and other qualities throughout an interaction.
- **Artificial Intelligence:**
  - [Artificial Intelligence \(AI\)](#) and Machine Learning (ML) are emerging as a tool of interrogations. AI can detect human emotions and predict behavior.
  - Therefore, these are also options. ML can in real time alert superiors when police are meting out inhumane treatment to suspects.
- **Related Concerns:**
  - There exists the risk of bias, the peril of automated interrogation tactics, the threat of machine learning algorithms targeting individuals and communities, and the hazard of its misuse for surveillance.
  - While the technology available to the police and law enforcement agencies is constantly improving, it is a restricted tool that can't eradicate custodial deaths.

## What should be Our Approach Moving Forward?

- **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 Shri Dilip K. 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.
- **Other Measures:**
  - Formulation of a multi pronged strategy by the decision makers encompassing legal

- enactments, technology, accountability, training and community relations.
- To keep police excesses in check, dissemination of information about the constitutional right to legal aid and availability of free legal aid services is necessary.
    - The installation of display boards and outdoor hoardings in every police station/prison is a step in this direction.
  - If India wants to remain as a society governed by the rule of law, it is imperative for the judiciary to bridge the gap of accessibility to justice between the highly privileged and the most vulnerable.
    - Accessing justice in India is not merely an aspirational goal. Judiciary needs to work hand in hand with various wings of the government to make it a practical reality.

***Drishti Mains Question***

Custodial deaths are common despite enormous efforts from training police personnel to embrace scientific methods of investigation. Comment.

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