



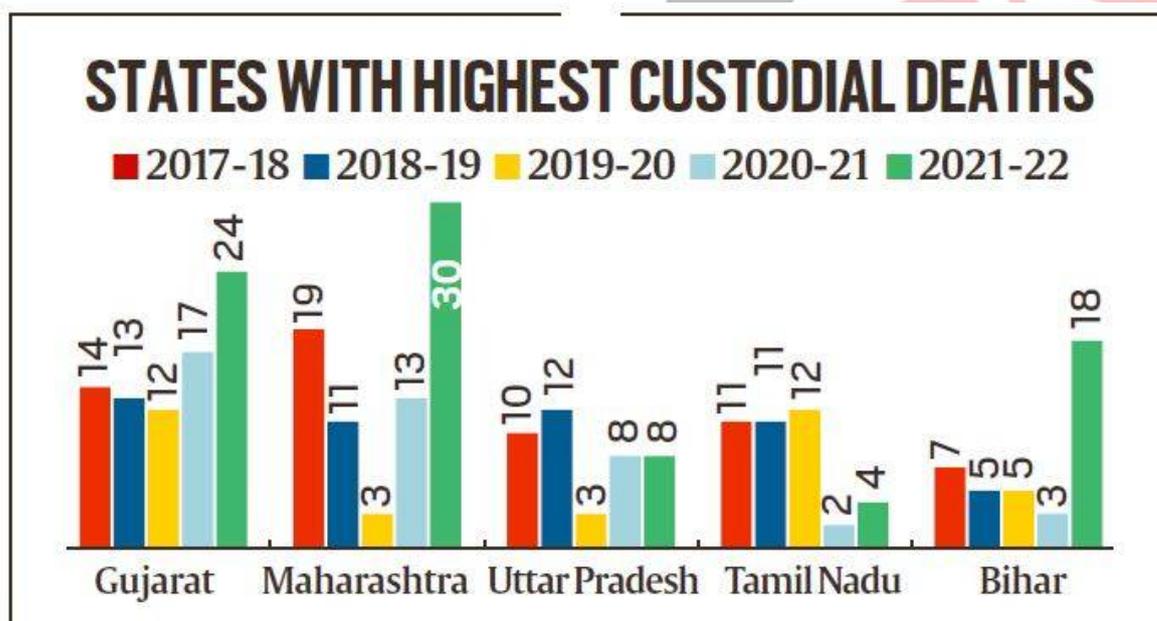
Custodial Death

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

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

Why in News?

According to the **Ministry of Home Affairs (MHA)** in the last five years, the highest number of custodial deaths have been reported in Gujarat at 80.



What is Custodial Death?

▪ About:

- Custodial death is a **death that occurs while a person is in the custody of law enforcement officials or in a correctional facility**. It can occur due to **various causes such as use of excessive force, neglect, or abuse** by the authorities.
- According to the [Law Commission of India](#), the crime by a public servant against the arrested or the detained person who is in custody amounts to [custodial violence](#).

▪ Custodial Death in India:

- A total of **146 cases of death in police custody were reported** during 2017-2018,
 - 136 in 2018-2019,
 - 112 in 2019-2020,
 - 100 in 2020-2021,

- 175 in 2021-2022.
- In the last five years, the highest number of custodial deaths (80) has been reported in Gujarat, followed by Maharashtra (76), Uttar Pradesh (41), Tamil Nadu (40) and Bihar (38).
- [National Human Rights Commission \(NHRC\)](#) has recommended monetary relief in 201 cases, and disciplinary action in one case.

What are 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 fulfil the commitments.
- **Other Factors:**
 - **Medical neglect** or lack of medical attention, and even suicide.
 - **Poor training or lack of accountability** among law enforcement officials.
 - **Inadequate or substandard conditions** in detention centers.
 - **Underlying health conditions or pre-existing medical conditions** that are not adequately addressed or treated while in custody.

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.
- **Role of State Government:**
 - Police and public order are **State subjects as per the [Seventh Schedule](#)** of the Constitution of India.
 - It is primarily the responsibility of the state government concerned to ensure the protection of human rights.
- **Role of Central Government:**
 - The Central Government issues advisories from time to time and also has enacted the Protection of Human Rights Act (PHR), 1993.
 - It stipulates establishment of the NHRC and State Human Rights Commissions to look into alleged human rights violations by public servants.
- **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.
- **Indian Penal Code:**
 - Sec 330 & 331 of the Indian Penal Code 1860 provides punishment for injury inflicted for extorting confession.
 - Crime of custodial torture against prisoners can be brought under Sec 302, 304, 304A, and 306 of IPC.
- **Protection under Indian Evidence Act, 1872:**
 - Section 25 of the Act provides that a **confession made to the police cannot be admitted** in Court.
 - Section 26 of the Act provides that a confession made to the police by the person cannot be **proved against such person unless it is made before the Magistrate.**
- **Indian Police Act, 1861:**
 - Sections 7 & 29 of the Police Act, 1861 **provide for dismissal, penalty or suspension of police officers** who are negligent in the discharge of their duties or unfit to perform the same.

Way Forward

- Ensuring **strict adherence to human rights laws and regulations**, including the prevention of torture and cruel, inhuman, or degrading treatment or punishment.
- Implementing comprehensive and effective training programs for law enforcement officials on the **proper use of force and non-lethal methods** of controlling suspects.
- Establishing independent and **impartial investigations into all custodial deaths to determine the cause of death** and hold responsible parties accountable.

UPSC Civil Services Examination, Previous Year Question (PYQ)

Q.1 Instances of the President's delay in commuting death sentences has come under public debate as denial of justice. Should there be a time specified for the President to accept/reject such petitions? Analyse. **(2014)**

Q.2 National Human Rights Commission (NHRC) in India can be most effective when its tasks are adequately supported by other mechanisms that ensure the accountability of a government. In light of above observation assess the role of NHRC as an effective complement to the judiciary and other institutions in promoting and protecting human rights standards. **(2014)**

[Source: IE](#)