



## Custodial Torture in India

**For Prelims:** [Scheduled Castes \(SCs\)](#), [Article 21](#), [Article 20\(1\)](#), [Article 20\(3\)](#), [Universal Declaration of Human Rights \(UDHR\)](#), [International Covenant on Civil and Political Rights](#), [International Covenant on Economic, Social and Cultural Rights](#), [UNCAT](#), [NHRC](#).

**For Mains:** Situation of custodial torture in India, Measures needed to prevent custodial torture.

[Source: TH](#)

### Why in News?

The [custodial death](#) in Tamil Nadu has once again brought the issue of **custodial torture** into the spotlight.

### What is Custodial Torture?

- **About: Custodial torture** refers to the **infliction of physical or mental suffering** on individuals held in **police or other authorities**.
  - It represents a **serious violation of human rights and dignity** and frequently results in **custodial deaths**—fatalities that occur while a person is under custody.
- **Types of Custodial Torture:**
  - **Physical Torture:** **Beatings, electric shocks, suffocation, sexual violence, forced stress positions, and denial of medical care.**
  - **Psychological Torture:** **Threats, humiliation, sleep deprivation, solitary confinement, and mock executions.**
  - **Coercing detainees** into **admitting crimes** through **extreme duress**.
- **Custodial Torture in India:**
  - **Custodial Deaths:** Between **2016 and 2022, Tamil Nadu** (highest among **southern states**) reported **490 custodial deaths**, while the **national total** stood at **11,656**. **Uttar Pradesh** recorded the **highest number** with **2,630 deaths**.
  - **Abuse of Preventive Detention Law:** In **2022, Tamil Nadu** detained **2,129 people** under **preventive laws**, accounting for **half of India's total**.
    - [Scheduled Castes \(SCs\)](#) faced **disproportionate custodial violence**, making up **38.5% of detainees** despite being only **20% of the population** in Tamil Nadu.

### What are the Constitutional and Legal Safeguards in Place Against Custodial Torture?

#### Constitutional Provisions

- **Article 14:** **Article 14** ensures **equality before the law**, affirming that **no one, including law enforcement agencies or officials, is above the law**.

- **Article 21:** [Article 21](#) guarantees the [right to life and personal liberty](#), which includes the **freedom from torture** and other **cruel, inhuman, or degrading treatment or punishment**.
- **Article 20(1):** [Article 20\(1\)](#) states that **no person can be convicted** for an act that was **not an offence under the law** at the time it was committed, thereby **prohibiting excessive or retrospective punishment**.
- **Article 20(3):** [Article 20\(3\)](#) protects an individual from being **compelled to self-incriminate**, safeguarding the accused from **coerced or forced confessions** through **torture or pressure**.

## Legal Provisions

- **Section 120 of Bharatiya Nyaya Sanhita (2023):** It penalizes those who **intentionally cause hurt or grievous hurt** to extract **confessions, information**, through **violence or coercion**.
- **Section 35 of Bharatiya Nagarik Suraksha Sanhita (BNSS, 2023):** It mandates that **arrests and detentions** follow **valid reasons, documented procedures**.
- **Section 22 of Bharatiya Sakshya Adhiniyam (2023):** It invalidates **confessions** made under **inducement, threat, coercion, or promise**.

## International Provisions

- **United Nation Charter, 1945:** It mandates that **prisoners be treated with dignity**, affirming that their **fundamental rights and freedoms** remain protected under the [International Covenant on Civil and Political Rights](#) (ICCPR-India is a signatory).
- **Universal Declaration of Human Rights (1948):** It protects individuals from **torture, cruel treatment**, and **enforced disappearances**, ensuring the **right to dignity and security**.

Click Here to Read: [UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment \(UNCAT\), 1984](#)

## What are the Challenges in Curbing Custodial Torture?

- **Lack of Specific Anti-Torture Legislation:** India signed the **UN Convention Against Torture (UNCAT)** in **1997** but has **not yet ratified** it.
  - While **torture** is indirectly addressed in laws like the **Protection of Human Rights Act, 1993**, there is **no standalone law criminalizing it**, making existing provisions **vague, inadequate**, and lacking **stringent penalties**.
- **Weak Enforcement & Impunity:** Between **2017 and 2022**, out of **345 judicial inquiries** into **custodial deaths**, there were **123 arrests** and **79 chargesheets**, but **zero convictions**.
  - In **74 human rights violation cases** involving **illegal detention, torture, or deaths**, only **3 convictions** were recorded against the police.
- **Overburdened Institutions:** **Human Rights Commissions (NHRC/SHRCs)** lack **binding powers** and depend on **government funding**, limiting their effectiveness.
  - **Prison overcrowding** (at **130% capacity**) and **lack of independent oversight**—with no effective **police complaints authority** in many states—create conditions that facilitate **abuse** and **inhuman treatment**.
- **Fear of Reprisal Among Victims:** **Victims** often refrain from reporting **torture** due to **fear of retaliation, lack of legal aid**, and **threats** when filing complaints.
  - **Marginalized groups** (Dalits, minorities, tribals) are especially **vulnerable** due to inadequate **victim protection** and **compensation mechanisms**.
- **Judicial and Systemic Failures:** Lengthy judicial proceedings, **compounded by overburdened courts**, witness intimidation, and inadequate fast-track courts, delay justice in custodial death cases.
  - Additionally, poor compliance with the **D.K. Basu Guidelines (1996)**—mandating **arrest memos, medical exams, and legal access**, along with **ineffective magisterial inquiries**, reflects a systemic failure and a lack of political will to enforce accountability or

reform policing practices.

## Key Recommendations to Prevent Custodial Torture

- **Law Commission of India:** In its **273rd Report (2017)**, the **Law Commission of India** recommended ratification of **UNCAT 1984**, and enact a **specific law** to implement its provisions, highlighting the urgent need to **criminalize torture**.
  - The Commission also submitted a **draft Prevention of Torture Bill, 2017** for the government's consideration.
- **Judicial Ruling:**
  - **DK Basu vs State of West Bengal Case, 1997:** It laid down **guidelines to prevent custodial torture** and promote **transparency in arrests and detentions**.
    - It affirmed that while **police have the right to investigate**, they are **prohibited from using third-degree methods**, and in cases of **custodial violence by public servants**, the **State is also held accountable**.
  - **State of Uttar Pradesh vs Ram Sagar Yadav Case, 1985:** In incidents of **custodial torture**, the **responsibility to prove innocence rests** with the concerned **police officer**.
  - **Nambi Narayanan Case, 2018:** It emphasized the **severe psychological impact** resulting from **wrongful prosecution** and **custodial abuse**.
- **National Human Rights Commission (NHRC):** The **NHRC** recommended that **District Magistrates** and **Superintendents of Police** must **report any incidents of custodial torture** to the **Secretary General** within **24 hours**.
  - Failure to comply may be viewed as an **attempt to conceal or suppress the incident**.

## What Measures can be taken to Address Custodial Torture in India?

- **Strengthen Legal Framework:** Enact a **comprehensive Prevention of Torture law** with clear **punitive provisions** and **victim compensation**, in alignment with **UNCAT standards**.
  - India should also **ratify UNCAT** to reinforce its international commitment to ending torture.
- **Ensure Institutional Accountability:** Take **swift and transparent action** against police personnel involved in custodial torture. Set up **specialized district-level units** to handle cases involving **police custody and sensitive interrogations**.
- **Reform Policing Structure:** Separate the functions of **law enforcement and investigation** within the police to reduce **conflicts of interest** and minimize instances of **custodial abuse**.
  - Introduce **human rights training** for police on **lawful interrogation methods** and the consequences of torture. Equip **judicial magistrates** with training on **fair remand practices** and **natural justice principles**.
- **Independent Oversight:** Mandate **judicial magistrates** to supervise custodial procedures and investigations. Establish **independent investigative bodies** to handle complaints of **custodial torture and deaths**, ensuring unbiased accountability.

## Conclusion

**Custodial torture** remains a **grave human rights violation** in India, exacerbated by **legal gaps, institutional impunity, and systemic failures**. Strengthening **laws (BNS/BNSS reforms, UNCAT ratification)**, ensuring **independent oversight**, and **police accountability** are critical to ending this menace. Without **urgent action**, **custodial deaths and torture** will persist **unchecked**.

**Drishti Mains Question:**

"Despite constitutional safeguards, custodial torture persists in India due to institutional impunity." Critically analyze this statement and suggest reforms.

## UPSC Civil Services Examination, Previous Year Question (PYQ)

### **Mains**

**Q.** Though the Human Rights Commissions have contributed immensely to the protection of human rights in India, yet they have failed to assert themselves against the mighty and powerful. Analysing their structural and practical limitations, suggest remedial measures. (2021)

**Q.** 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 the 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)

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