



# **DAILY NEWSPAPER ANALYSIS**

**THE HINDU**

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**Topic: GS2 - Custodial  
Violence/Torture and Human  
Right**



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## Reality of impunity, rhetoric of human rights

### Police Custody and Torure in India:-

- That torture is 'endemic' across police stations in India is well known. For Example:
  - Recently in Sitamarhi district, Bihar, two families received the bodies of their two sons from the police. The two men were questioned at the Dumra police station for a case of theft and murder in the area. Instead, they came back dead. The ritual bathing revealed torture — tell-tale marks of nails hammered into their thighs and wrists.
- Official statistics show that last year there were 144 deaths in police custody. About 40% of complaints received every year by the NHRC are against the police — mainly for custodial violence.

### Reasons for Custodial Violence in India:-

- Though forbidden by law, the system perpetuates and incentivises torture.
- **Part of Higher Officers:** Top police officials tolerate it, turn a blind eye to it, *citing it as a 'practical tool', or go easy on the perpetrators.*
- **Part of Judiciary:** Those in the **lower judiciary**, which is the first point of check against custodial violence, are frequently not vigilant in checking if arrested persons are secure in custody, have a lawyer assigned, or have the means to speak out.

- **Part of Doctors:** Often, **pliant doctors** further weaken protections to those in custody by willingly minimising or not disclosing the nature of the harm or injuries they have sustained.
- **Part of Oversight Bodies:** **Oversight bodies** like police complaints authorities and human rights commissions are comfortable with the slow pace of accountability from state actors and do not doggedly pursue outcomes.
- **Flaw in the Legal System:** The brazenness is strengthened when legal precedents towards torture prevention are not paid heed to.
  - South Asia is among the last regions where the political executive must grant permission before public servants can be prosecuted for acts done in the course of their work.
  - Courts have repeatedly said that **torture is no part of policing and so there is no question of waiting for permission for prosecution.** Yet, the executive is still asked, decisions are delayed, and trials cannot proceed.
- **Pro Activeness of Public Defence Lawyer:** According to judicial precedent, recovery of evidence made as a result of torture cannot be used in court, but without proactive lawyers and magistrates, these important details are overlooked in the early stages of the legal process. For victims of torture, this means a harder fight in courts.

### **Is Custodial Violence Resulted in Efficient Criminal Justice System:-**

- Besides being **illegal and immoral**, torture is not even a useful tool to stop crime.
- Eliciting unreliable confessions — the bedrock of the use of torture — **destroys the process of deciding through evidence-based means** whether the accused is the real perpetrator or not.
- Moreover, whenever it goes unpunished, torture **actually supports more crime** by creating a class of criminals within law enforcement.

### **Initiative to Stop the Custodial Violence:-**

- **The Kerala Police Act** puts the onus on all police officers to report any physical torture they know of.
- **Prisons in Telangana** refuse to admit people brought into judicial custody if they appear injured; such persons are sent back to hospitals, forcing their injuries to be properly recorded.
- Courts have repeatedly said that **torture is no part of policing and so there is no question of waiting for permission for prosecution.** Yet, the executive is still asked, decisions are delayed, and trials cannot proceed.

### Conclusion:-

- However isolated innovations are not enough to stop this horror that has embedded itself in the subculture of policing.
- There is need of a comprehensive solution that will ensure that disincentives are put in place and that there is proper accountability. But this will require **political will**.
- India signed the **UN Convention against Torture in 1997**, but despite repeated domestic and international recommendations to ratify it, there has been no attempt to create a specific and comprehensive torture prevention law.
- Until we have such a law, Indians must accept that the active tolerance of torture puts punishment before the crime and judgment in the hands of the wrong agency. This **violates the rule of law** in every way.