



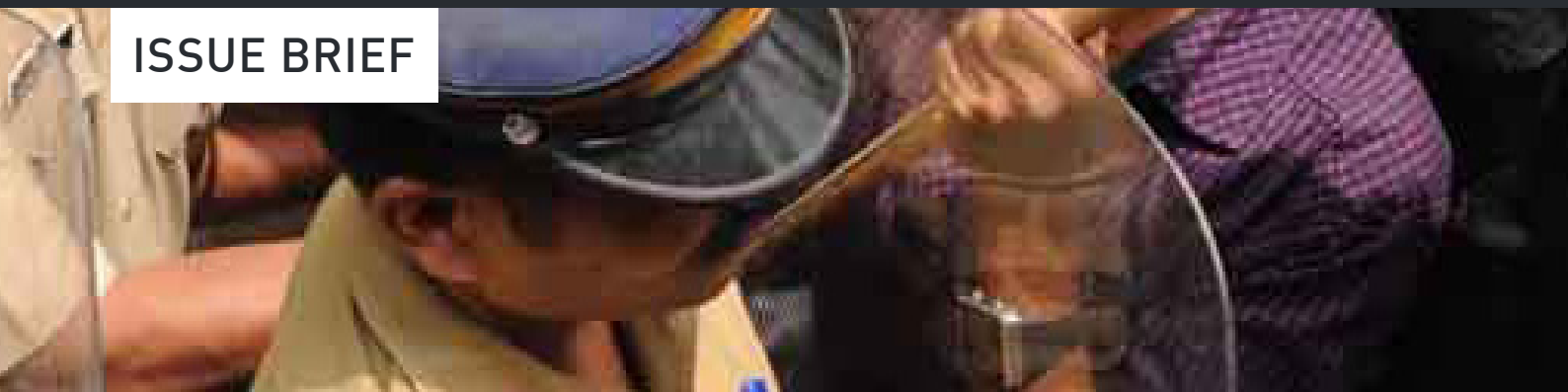
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## CUSTODIAL TORTURE AND THE NEED FOR COMPREHENSIVE POLICE REFORMS

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ISSUE BRIEF



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## I ABSTRACT

Custodial torture and deaths are rampant in India, with reports suggesting that an average of 1800 people have died in police custody each year between 2016-2018. Lack of adequate sensitisation or human rights education of police personnel, a severe lacuna of policies and laws to incriminate police officers for committing custodial violence, as well as prejudice and discrimination along lines of caste, tribe and social class are major contributors to the disease of custodial torture. This brief touches upon the severity of the situation, underscoring the need for governments at all levels to implement curative police reforms.

## I CONTEXT

According to the Status of Policing Report 2019, three out of four police personnel justify being violent towards criminals and four out of five rationalise physically assaulting suspects during investigations to extract confessions (Common Cause and CSDS 2019: 131). Given the prevalence of such a mindset, it is not surprising that custodial deaths have become institutionally normalised in India's policing system. In 2019, the National Human Rights Commission (NHRC) registered 1723 total custodial deaths as compiled and reported by the National Campaign Against Torture (NCAT) Annual Report 2019 (UNCAT 2020: 6). On documenting 125 custodial deaths, the NCAT data revealed that 74.4% died due to alleged custodial torture by the police (ibid.). Moreover, a trend analysis of available data shows that only 5% of policemen have been convicted over 16 years (2000-16) for such deaths (Saxena 2020). The NHRC's Annual Report 2017-18 categorically states,

*“Custodial violence and torture is so rampant in India that it has become almost routine... The Commission regards crimes like rape, molestation, torture, fake encounter in police custody as manifestations of a systemic failure to protect human rights of one of the most vulnerable and voiceless categories of victims”* (NHRC 2018: 44).

## GAPS IN DATA

A deeper look at the nature of available data on custodial violence reveals vast inconsistencies. The table below compares the total number of custodial deaths recorded by the National Crime Records Bureau (NCRB) and those registered by the NHRC during 2016-2018.

TABLE 1: NUMBER OF CUSTODIAL DEATHS AS PER NCRB AND NHRC REPORTS DURING 2016-2017

Year	Total Custodial Deaths Recorded by NCRB	Total Custodial Deaths Registered by NHRC
2016	92	1761
2017	100	1784
2018	70	1966

SOURCE: NCRB 2016, 2017, 2018; NHRC 2017, 2018; UNCAT 2019.

Clearly, there is a high degree of discrepancy between data recorded by the two government agencies making it difficult to gauge the extent of custodial violence in the country. This also has major implications for any policy formulation on custodial violence and torture. The dismal state of data exists in consonance with the fact that there is a lack of effective legislation against custodial violence and torture.

## LEGAL PROVISIONS

The United Nations Convention Against Torture (UNCAT), which mandates a global prohibition on torture by monitoring governments and making them accountable, was signed by India in 1997, more than a decade after the Convention was adopted by the UN in 1984 (UNTC 1984). However, in the absence of a specific legislation that defines and lists punishment for torture, India is yet to ratify the convention. There are certain statutory and procedural provisions, most prominently Article 21 of the Constitution and Sections 330 and 331 of the Indian Penal Code (IPC), that address custodial violence and torture. However, these provisions have been found to be inadequate.

For instance, under the IPC 1860, an FIR can be filed against a police officer guilty of violence but the scope of this becomes limited as there is no mechanism for an independent investigation. Section 197 of the Criminal Procedure Code (CrPC) has been misused by not allowing FIRs to be filed against accused officer(s) (Kini 2019). Likewise, Section 49 of the CrPC and Section 46 of the Evidence Act 1872, among others, have proven to be insufficient as they do not address incidences of lethal torture (Roy and Shubham 2019).

In a landmark Supreme Court judgement in the case of *DK Basu V. State of West Bengal* (1996), the Court ruled in favour of the rights of the arrestee and against unauthorised arrests or detention, stating,

*“Custodial death is perhaps one of the worst crimes in a civilised society governed by the Rule of Law. The rights inherent in Articles 21 and 22(1) of the Constitution (are) required to be zealously and scrupulously protected” (Anand 1996).*

However, given the NHRC data mentioned previously and the rate of conviction of police officers involved, it seems the SC judgement hasn’t had the desired effect. What is even more concerning, is that as per the State of Policing Report 2019, one out of five police personnel opine that killing dangerous criminals is better than a legal trial (Common Cause and CSDS 2019). Such findings suggest that a sui generis law on prevention of custodial violence and torture is urgently needed in India.

## I STATUS OF SPECIFIC LEGISLATION

To address this serious lacuna, the central government introduced The Prevention of Torture Bill twice, in 2010 and again in 2017. The 2010 bill made torture by public servants (or with consent or knowledge of a public servant) a separate punishable offence defining it as “grievous hurt to any person or danger to life, limb or health (whether mental or physical) of any person” inflicted for the purpose of obtaining “information or confession”. If found guilty, the public servant could be imprisoned for upto 10 years. The Bill also criminalised torture inflicted on grounds of “religion, race, place of birth, residence, language, caste or community” (Ibid.). However, after being passed in the Lok Sabha, the Bill got stuck in the Rajya Sabha and eventually lapsed when the new government came to power in 2014 (Unny 2020).

Consequent to a writ petition filed by Dr Ashwani Kumar in 2016, to locate the status of the Bill against the backdrop of increasing custodial deaths, the 273rd Law Commission Report (2017) was released (CHRI 2018:3). The report stressed on immediate policy prioritisation to ratify the UNCAT and led to a new draft Prevention of Torture Bill (2017). Though this new Bill, with most of its provisions remaining the same as the 2010 bill, was referred to all states for inputs, only 8 states responded, reflecting reluctance on the part of governments at all levels in dealing with custodial torture (Unny 2020). A subsequent application by Dr Ashwani Kumar in the Supreme Court calling for implementation of the recommendations of the 273rd Law Commission and enactment of the 2017 Bill was dismissed by the Court stating that it cannot direct the legislature to enact a law (Ibid.).

In any case, the 2010 Bill and its 2017 version exempt public servants from prosecution in cases of torture “inflicted in accordance with any procedure established by law”. Such an exemption has tremendous potential to be misused by the police and other government agencies in the line of duty. This becomes a more serious concern when one considers the prevalence of bias among police personnel in the country when it comes to marginalised communities.

## POLICE BIAS

The fault lines of caste and religion are ingrained in the Indian police system leading to selectivism and systematic victimisation of certain communities. While 50% of police personnel believe that Muslims are naturally prone to commit a crime, a third of them also feel the same way for Dalits and STs (Common Cause and CSDS 2019: 111). According to NCRB's Prison Statistics 2018, Muslims (19.7%), SCs (20.7%) and STs (10.8%) together accounted for 51.2% of undertrial prisoners in India (NCRB 2018:63-64). However, together they only constitute 39% of India's population as per Census 2011 indicating their overrepresentation in prisons (Tiwary 2016).

Many marginalised communities often face stereotyping and prejudice by police which furthers their vulnerabilities to custodial violence. For instance, the Pardhi and Adivasi Gondhs of MP are stigmatised as "habitual offenders", with the ambiguity of state law facilitating police persecution (Bokil and Sonavane 2020). Targeted killings have been well documented, as in the infamous Hashimpura incident of 1987, an appalling case of institutional bias that triggered the custodial deaths of 42 Muslim men in Uttar Pradesh (Basant 2017). The NHRC in 2017 reported systemic torture of 21 under-trial Muslim students in Bhopal Central Jail based on their religious identities (Panigrahi and Kaur 2018). A key factor aiding such institutional bias could be the fact that Muslims, Dalits and Tribal communities are underrepresented in the police force across most states. Lack of representation, particularly of Muslims is even more concerning in the case of states with higher incidences of custodial deaths as can be seen in table 2 below. Notably, in most states upto 50% of the reserved posts for SCs, STs and OBCs are lying vacant (Common Cause and CSDS 2019).

TABLE 2: REPRESENTATION OF MUSLIMS AND SC/STS IN THE POLICE FORCES OF TOP 5 STATES WITH REGISTERED CUSTODIAL DEATHS

State	Custodial Deaths/ Rapes registered in 2017-18 by NHRC	Percentage share of Muslims and SC/STs in Police force as per NCRB 2013 (latest year available)			Percentage share of Muslim and SC/ST population in the state as per Census 2011		
		Muslims	SCs	STs	Muslims	SCs	STs
UP	402	5.1	23.7	1.1	19.3	20.7	0.6
Maharashtra	144	3.8	12.7	8.3	11.5	11.8	9.3
West Bengal	143	8.5	20.1	5.9	27	23.5	5.8
Punjab	137	0.3	26.5	0	1.9	31.9	0
MP	121	3.3	16.1	15.6	6.6	15.6	21.1

SOURCE: NHRC 2018; NCRB 2013; CENSUS 2011

## | CONCLUSION

Torture by police does not occur in isolation, but as a result of the absence of structural reform to hold state agencies accountable and apprise them of their primary duties as public servants. While ratification to the UNCAT and bringing in a new legislation for torture is a serious need, a lot more is required to address custodial violence comprehensively.

Police personnel in India lack adequate sensitisation in terms of human rights and key demographic realities of society. In fact, 12% of police personnel have never received any training in human rights or modern concepts of justice prevailing in the Indian context [ibid]. Thus, there is a need for an independent mechanism that can identify personnel requiring behaviour change interventions and reorient them to sensitivity training at an early stage. The Supreme Court directives for establishment of the Police Complaint Authority under Prakash Singh V. Union of India (2006) have not been fully complied by any state (Suparna and Gupta n.d.). The dismal working conditions of police – long working hours, low wages, physical and mental stress, and political pressure – may be contributing factors to police excesses. Prevention of custodial torture will become possible only when governments at all levels implement curative police reforms to uphold safety, security and a life of dignity for all citizens as promised by the Constitution of India.

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