



**KAMARAJ IAS ACADEMY**  
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# Custodial death

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**Why is in news?** Flagging increasing incidents of custodial death in Gujarat as “a matter of great public concern”, the **Gujarat State Law Commission (SLC)** has recently submitted a report to the state government making several suggestions. It has also pointed out that not a single case registered against police personnel has resulted in conviction in 2021.

## Findings of the report:

The report was submitted to the government in July by the SLC chairman, Justice (retired) M B Shah.

The report titled ‘Suggestions to have proper control on the law enforcing agency for prevention of unwanted instances of custodial death’ was submitted to the state legislative and parliamentary affairs department.

**Gujarat reported the highest number of custodial deaths, 23**, for the second consecutive year in 2021. In 2020, it had recorded 15 such cases — a rise of 53 per cent.

## Suggestions of the report:

There is a **need for reforms to sensitise the police** to function within the constitutional framework,

To **promote transparency** by installation of **video-audio enabled CCTV cameras** at police stations and prisons,

To take **strict legal action** against police personnel who misuse their official position,

To conduct **regular health check-ups of prisoners** and to have **exclusive interrogation teams** specialising in the process of gathering evidence from those detained.

## About custodial death:

Custodial death refers to the **death of a person in jail resulting from violence and torture inflicted by the police** while in their custody.

When someone is **kept in protective custody**, it is because authorities fear they will pose a risk to society it is known as **custody**.

When someone is **officially brought into police custody on suspicion** of committing a crime, it is referred to as an **"arrest."** **Custody exists in every arrest, but the reverse is not true.**

## Judicial custody vs police custody:

### **Police custody:**

It is the term used to describe the process by which a suspect in a crime is taken into custody by a police officer and transported to the police station.

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Plot A P.127, AF block, 6 th street, 11th Main Rd, Shanthy Colony, Anna Nagar, Chennai, Tamil Nadu 600040

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When in police custody, the suspect is questioned by the officer in charge while being held for **no more than 24 hours in a prison** at a police station.

**Within 24 hours** of detention, police officers must **bring the accused before the judge**.

### Judicial custody:

In this, the accused is held in the **custody of the local magistrate** rather than in the actual custody of the police as in police custody.

Unlike police custody, when the suspect is kept in police custody, judicial custody involves keeping the accused in jail.

**Unless the court determines that the police officer's opinion is supported by the evidence** presented to the court, the investigating police officer is **not permitted to question the suspect** while in judicial custody.

### Custodial Deaths in India:

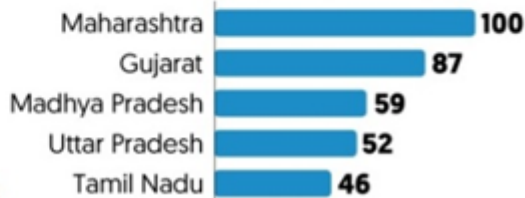
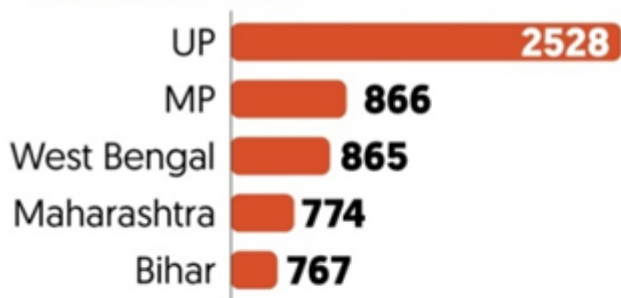
## Custodial Deaths in India



**Judicial Custody:** When an accused is in the custody of a Magistrate and lodged in prison.

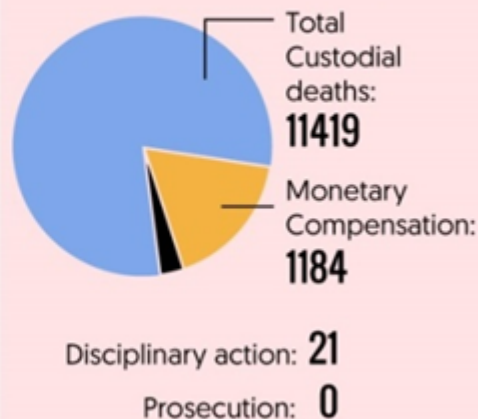
**State wise deaths in Police custody (between 2016-17 and 2021-22):**

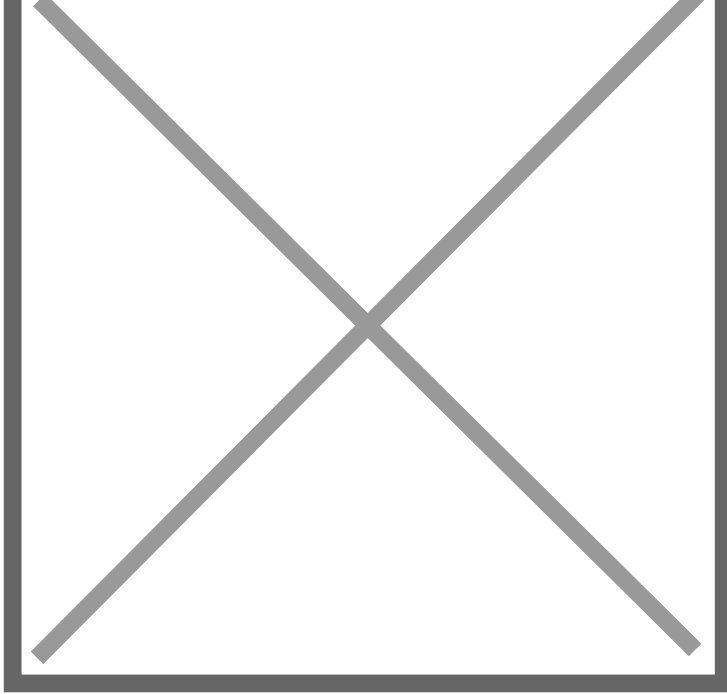
**State wise deaths in judicial custody (between 2016-17 and 2021-22):**



**Police Custody:** The police have the physical custody of the suspect to interrogate him for a crime. However, they have to be produced before a judge within 24 hours of the arrest.

### NHRC Recommendations:





The **Ministry of Home Affairs (MHA)** has reported the

following numbers of death in police custody cases in recent years: 146 cases in 2017-2018, 136 cases in 2018-2019, 112 cases in 2019-2020, 100 cases in 2020-2021, and 175 cases in 2021-2022.

**During the past five years, Gujarat has reported the highest number of custodial deaths**, with 80 cases, followed by Maharashtra with 76 cases, Uttar Pradesh with 41 cases, Tamil Nadu with 40 cases, and Bihar with 38 cases.

According to the **National Crime Records Bureau (NCRB) data, in 2019**, 85 cases of custodial deaths were reported in the year with **Tamil Nadu registering the highest number of cases**.

### **Constitutional and legal safeguards:**

**Article 20 (3):** says that no person “shall be compelled to be a witness against himself”.

**Article 21:** Provides protection of life and liberty.

**Article 39A:** Provides for NALSA and free legal aid.

**Section 24 Indian Evidence Act, 1872** declares that all the confessions made by the accused by succumbing to the **threat, promise or inducement of investigating agencies would not be admissible** in the court of law. This Section primarily works for preventing the accused to give confessions against his will.

**Section 330 and 331 of the Indian Penal Code (IPC)** criminalize voluntarily causing hurt or grievous hurt to extort confession or information from any person.

**Section 41 of the Criminal Procedure Code (CrPC)** was amended in 2009 to include safeguards under 41A, 41B, 41C and 41D, 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.

### **Cases related to custodial death:**

**D.K. Basu. State of West Bengal (1997):** This landmark judgment laid down **guidelines to prevent custodial torture and deaths**. It emphasized the importance of safeguarding the rights of arrested individuals, including the

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right to legal representation, the right to be informed about their arrest, and the right to protection against torture.

**Prakash Singh v. Union of India (2006):** This judgment highlighted the **need for police reforms and laid down several directives to ensure police accountability**, including the establishment of State Security Commissions, Police Complaints Authorities, and guidelines for police functioning and accountability.

**PUCL v. State of Maharashtra (2014):** The Supreme Court **reiterated the importance of preventing custodial torture and emphasized the need for effective investigation, prosecution, and punishment** of those responsible for such acts.

**Common Cause (A Regd. Society) v. Union of India (2016):** The Supreme Court directed the **implementation of police reforms**, including the appointment of a Director General of Police (DGP) through a transparent process, fixed tenures for DGPs, and the establishment of Police Complaints Authorities at the state and district levels.

### International Conventions:

**International Human Rights Law, 1948:** The provision of this law protects people from torture and other enforced disappearances.

**United Nation Charter, 1945:** The Charter calls for treating prisoners with dignity. The Charter clearly states that despite being prisoners, their fundamental freedoms and human rights are set out in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

**The Nelson Mandela Rules, 2015:** The Rules were adopted by the United Nations General Assembly in 2015 to treat prisoners with inherent dignity and to prohibit torture and other ill-treatment.

### Reasons for custodial death:

Absence of strong anti-torture legislation

Absence of desired prison reform

Failure of government institutional mechanism

Lengthy and costly judicial process

Poor or not adequate training and accountability

Lack of adherence to international standards

### 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.

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