



Center for Asian Democracy

# Custodial Torture in India

**CAD Research Brief 22.02.01**

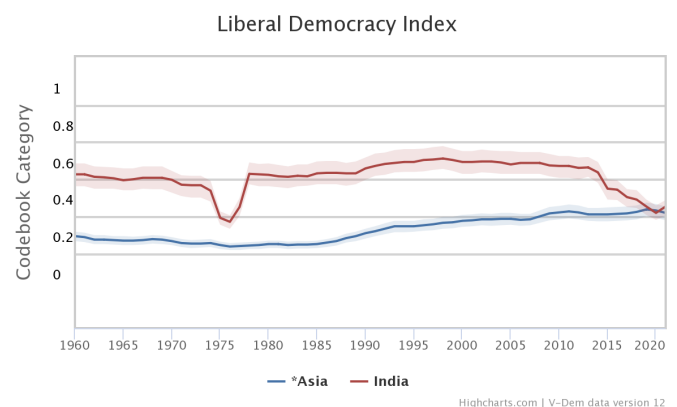
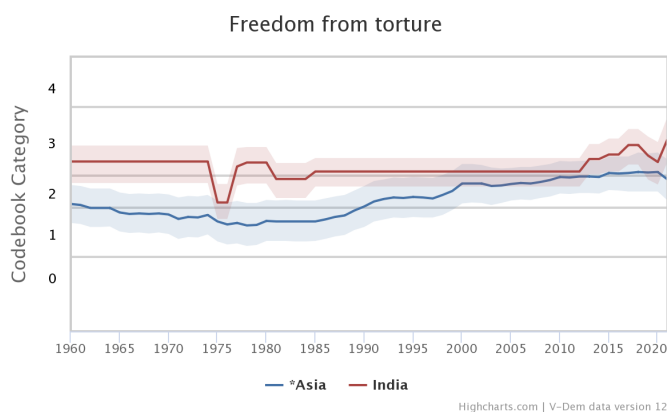
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By Anna Adams, CAD Graduate Research Assistant  
March 2022 // University of Louisville

# Summary

Policing practices present long-standing challenges in India. Allegations of police corruption and brutality are widespread, and tied to patterns that stretch to the country's colonial era. Torture in police custody ("custodial torture") presents a particular manifestation of these problems. Data below from the Varieties of Democracy Project reveals that even during a period when freedom from torture generally improved across other parts of Asia, limited change has taken place in India. Policing practices now join a broader set of challenges to liberal democracy in the country which are reflected in its declining democratic index scores in the last decade.

This report spotlights the extent to which custodial torture is a challenge to criminal justice in India, points to scholarly explanations of its roots, and discusses prospects and obstacles to reform. Throughout, the report draws on data from public opinion research, human rights monitors, and prison researchers. It concludes by highlighting organizations working for reform, and pointing to further scholarly sources on the issue.





# Introduction

In June 2020, [Indian police arrested a father and son](#) for violating COVID lockdown protocols. While in police custody, both men were allegedly tortured and subsequently died from their injuries, resulting in the suspension and possible prosecution of the officers. Such allegations occur regularly in India, although it is [less common for the offending officers to face prosecution](#). The sources of custodial torture in India are complicated. Police agencies are overseen by individual states and Union Territories, as dictated by the Indian Constitution. Indian police agencies are [underfunded and understaffed](#), while overburdened with their policing responsibilities. Additionally, [formal education and specialized police training for officers vary widely](#). Efforts by the national government to address policing failures are at times ignored by state governments. Each of these systematic failures combines to create police forces that rely on custodial violence and torture to achieve their visions of law and order.

## THE INDIAN PENAL CODE

ACT NO. 45 OF 1860<sup>1</sup>

[6th October, 1860.]

### CHAPTER I

#### INTRODUCTION

**Preamble.**—WHEREAS it is expedient to provide a general Penal Code for <sup>2</sup>[India]; It is enacted as follows:—

**1. Title and extent of operation of the Code.**—This Act shall be called the Indian Penal Code, and shall <sup>3</sup>[extend to the whole of India <sup>4</sup>[except the State of Jammu and Kashmir]].

**2. Punishment of offences committed within India.**—Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within <sup>5</sup>[India] <sup>6</sup>\*\*\*\*\*.

**3. Punishment of offences committed beyond, but which by law may be tried within, India.**—Any person liable, by any <sup>7</sup>[Indian law], to be tried for an offence committed beyond <sup>8</sup>[India] shall be dealt with according to the provisions of this Code for any act committed beyond <sup>9</sup>[India] in the same manner as if such act had been committed within <sup>10</sup>[India].

**<sup>11</sup>[4. Extension of Code to extra-territorial offences.**—The provisions of this Code apply also to any offence committed by—

<sup>12</sup>(1) any citizen of India in any place without and beyond India;

(2) any person on any ship or aircraft registered in India wherever it may be.]

<sup>13</sup>(3) any person in any place without and beyond India committing offence targeting a computer resource located in India.]

<sup>14</sup>[Explanation.—In this section—

(a) the word “offence” includes every act committed outside India which, if committed in India, would be punishable under this Code;

The legal definition of torture in the country relies on the definition created in the 1860 Indian Penal Code. Since torture is loosely defined there and in subsequent Indian law, it is difficult to know the extent to which torture occurs within police custody. Local, state, and national governments all dispute the extent of custodial torture. If a case of custodial torture is brought to trial, the victim is entirely responsible to prove the crime occurred. The number of torture occurrences is extrapolated from custodial hospitalization and death reports, both of which are published by police forces. These deaths are often classified as the result of natural causes. Steps have been taken to limit the possibility of custodial torture, for instance requiring a doctor and local magistrate to note any fresh wounds on newly detained people. However, [human rights advocates question](#) the observance of these formal policies in practice.

# Public Opinion and Prison Data

Fear of police beatings is especially concentrated among those who witnessed coercive behavior.

Came across a situation where police used some kind of force, like hitting with a <i>danda</i> (stick), in order to make people follow the rules	How much did you fear police beating you?- Opinion of Common People (%)			
	A lot	Somewhat	Not much	Not at all
Very often	39	32	11	16
Sometimes	39	29	15	16
Rarely	27	23	16	31
Never	8	19	12	60

Survey and Table via Lokniti, Status of Policing (2021).

World Value Survey: "Confidence in Police"  
Selected sample: India 2012 (4078)

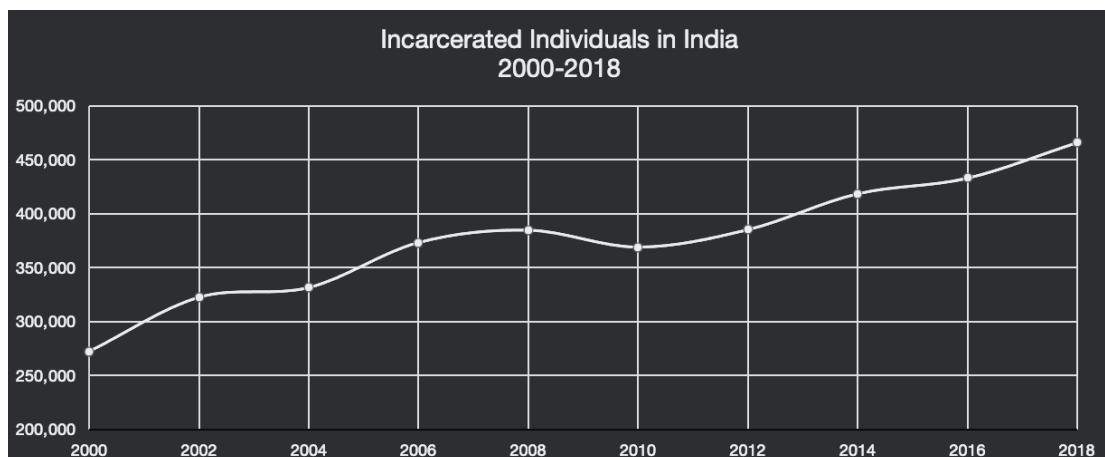
	Number of Cases	%/ Total
A great deal	947	23.2%
Quite a lot	1,058	25.9%
Not very much	1,216	29.8%
None at all	695	17.0%
Don't know	162	4.0%
(N)	(4,078)	100%

Indians are divided on the confidence they place in the police. 46% of respondents report little to no confidence and 49% report quite a lot or a great deal of confidence

Incarceration statistics show that not only is the incarcerated population increasing, but also Indian prisons are over occupancy by 18.5%

Incarceration Statistics	
Prison Population	478,600
Inc. Rate per 100,000	35
Female Prisoner Population	4.2%
Minor Prison Population	0.1%
Occupancy Level	118.5%
Official Capacity	403,739

Statistics via World Prison Bank.



Statistics via World Prison Bank.



## Reform Efforts by the State

The National Human Rights Commission (NHRC), established under the Protection of Human Rights Act in 1993, includes the prevention of custodial violence within its mission. The NHRC tracks custodial deaths across India, releasing a monthly report that is available to the public. The NHRC also provides human rights education classes to public servants, with the hope that a better understanding of human rights and those affected by human rights abuses will help public servants perform their jobs better. In 1997, building on this foundation, India signed the United Nations Convention Against Torture (UNCAT), but has since declined to ratify the measure.

With UNCAT unratified, a 2010 bill, the Prevention of Torture Bill, 2010, was introduced to the Indian legislature as a way to address the issue. This legislation laid the groundwork for criminalizing custodial torture. However, shortly after its enactment, the bill began to receive criticism, especially from NGOs like the International Commission of Jurists. Critics argued that the Prevention of Torture Bill, 2010 was too lax in its wording and provided too many loopholes for custodial torture to go unpunished. Additionally, few states [actively worked to enact its policies](#) within their police forces.



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[Still image from video.](#)

[Commonwealth Human Rights Initiative. 2021.](#)

## Reform Efforts by the State (cont.)

To address this problem, the Prevention of Torture Bill, 2017 was drafted and subsequently passed. Like its forerunner, the Prevention of Torture Bill, 2017 [encountered criticism](#). Some contend that the bill fails to [address the systematic](#) belief within police forces that torture is the best way to carry out law and order in their communities. Others [claim](#) that the definition of torture remains too loose to be effective.

In February 2019, the Supreme Court ordered each state and union territory (UT) to provide comments on the 2017 bill. After all comments were submitted, the Supreme Court ruled in September 2019 that it did not have the authority to mandate the Prevention of Torture Bill, 2017, [observing](#) "when the matter is already pending consideration and is being examined for the purpose of the legislation, it would not be appropriate for this Court to enforce its opinion, be it in the form of a direction or even a request, for it would clearly undermine and conflict with the role assigned to the judiciary under the Constitution."



[Manjunath Kiran/AFP](#)



Supreme Court of India.

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## Reform Efforts by NGOs

International and India-based NGOs have been working to raise awareness about custodial torture, find a solution, and help those most impacted. While some NGOs are trying to enact change through the government, many are focused on providing services to the individuals affected most by custodial torture. NGOs like Tata Trust and World Organisation Against Torture focus their efforts on spreading awareness of the issue and encouraging the Indian government to address the issue through law. Others work to provide legal aid and financial help for those who have experienced human rights violations (such as torture) and wish to take the matter to the judicial system. Institutes like the Lokniti Programme for Comparative Democracy approach custodial torture from an analytical perspective. These institutions have focused on annual surveys that capture public opinion from both law enforcement personnel and citizens.

Reform efforts by NGOs and government bodies have also worked to bring human rights education and training into India, often offered as a post-graduate educational opportunity for public servants. These efforts are often in keeping with the [UN General Assembly's 2011 Declaration of Human Rights Education and Training \(HRET\)](#), which is aimed at improving and spreading human rights education and promotion. The National Human Rights Commission offers training on human rights issues with the [objective](#) to "spread human rights literacy and sensitize people belonging to various sections of society on all aspects relating to human rights." The [India Institute of Human Rights](#) offers a 2-year master's course in human rights education. Such trainings are no sinecure. Dr. Rachel Wahl's interviews with Indian police officers reveal that some take trainings primarily as a means of bolstering their career prospects, and custodial torture is often understood by officers as a morally justified portion of the investigative process.

**Men, young, lower-income groups feared the police the most**

During Lockdown, how much did you fear police...	Common People's Response (%)		
	No fear	Not much fear	Fear of Police
Male	15	23	61
Female	25	25	47
18-29 years of age	15	25	58
30-39 years of age	16	24	58
40-49 years of age	20	25	54
50-59 years of age	23	21	54
60 years of age and above	36	23	39
Tier I cities	14	29	54
Tier II/III cities	21	21	56
Poor	20	20	57
Lower Class	15	25	59
Middle Class	19	25	54
Rich	29	30	41

Note: the categories of "some fear" and a lot of fear have been merged to form "fear of police"

Survey and Table via Lokniti, Status of Policing.(2021).



## Federalism and Reform

Despite reform efforts, custodial torture and police abuse remain a challenge for India. Scholars point to the impact of [India's colonial history](#) as a constraint to reform efforts. Per the Indian constitution, states have sole authority over their police forces, meaning that any efforts from the national government or Supreme Court to address policing issues intersect with the authority of state legislatures. In 2006, the Indian Supreme Court ordered that states begin the process of reforming their police forces, but [human rights advocates argue](#) that follow-up has been limited. Given the centrality of federalism to Indian political institutions, reform efforts are likely to continue needing to focus on translating national policy into state-level implementation.

## Conclusion

Recent Indian history shows that ending custodial torture requires more than constitutional amendments or laws. Reform efforts today grapple with the reality that, as Wahl describes from police officer interviews, custodial torture is often viewed not as moral wrongdoing but instead as a means of demonstrating police resolve to address crime. Systematic change would blend attention to India's unique institutional structure with efforts to address perceptions of what good policing means.

Significant state variation in support for extra-judicial punishment over a legal trial:

States	Police Punishing a Criminal	Legal Trial
Overall	44	54
Andhra Pradesh	43	57
Assam	35	62
Bihar	60	39
Gujarat	42	58
Haryana	54	46
Himachal Pradesh	36	64
Karnataka	57	42
Kerala	49	51
Madhya Pradesh	36	64
Maharashtra	48	52
Nagaland	78	19
Odisha	21	79
Punjab	28	72
Rajasthan	42	58
Uttar Pradesh	54	46
West Bengal	44	52
Delhi	36	64
Jharkhand	57	43
Chhattisgarh	59	30
Uttarakhand	40	60
Telangana	36	64

All figures are in percentages. Rest did not Answer. (Lokniti 2019)



## Organizations Working to Reduce Custodial Torture

### Asian Human Rights Commission (NGO)

AHRC is an organization that focuses on addressing human rights issues, like torture, in Asia through education, financial assistance, and advocacy. AHRC releases a yearly human rights report, where they focus on specific countries and the most pressing human rights issues in those countries.

### Commonwealth Human Rights Initiative (NGO)

CHRI is an international organization focused on South Asia. The goal of this organization is to increase access to information and access to justice through prison and policing reforms. CHRI monitors judicial courts, police practices, and offers legal aid to those in need in India.

### Tata Trusts (NGO)

Tata Trusts is an organization that is dedicated to promoting the well-being of Indian citizens through programs aimed at improving the education, criminal justice, and healthcare systems. Tata Trust releases a report each year evaluating the criminal justice system in India and what measures can be taken to improve it.

### World Organisation Against Torture (NGO)

World Organisation Against Torture is focused on reducing the occurrence of torture through legislative change. The organization works closely with the UN and uses ground-level information to help cultivate effective legislative change.

### National Human Rights Commission India (Gov't Organization)

NHRC is a government-created organization that is focused on tracking and reducing the human rights violations that occur within India. This includes training for government servants, human rights violation tracking, and serving as a mediator between COMPLAINANTS and THE government.

### Lokniti (NGO)

Lokniti is the research program for the Programme for Comparative Democracy. Lokniti focuses on the issue of torture in India through a research lens, publishing a yearly report on the state of torture within India.



## Scholarly Resources

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## About the Center for Asian Democracy

The mission of the Center for Asian Democracy, established at the University of Louisville in 2006, is to promote research and teaching about democracy and the prospects for democratization in Central, South, Southeast, and East Asia. Through publications, conferences, workshops, visiting scholars programs, colloquia, and research projects in Asian countries, the Center creates a forum for studying political dynamics in this vital region. The Center is currently led by Interim Director, Dr. David Buckley, Paul Weber Chair of Politics, Science and Religion, and Associate Professor of Political Science at the University of Louisville.

### About the Author

The substantive research of this report was conducted by CAD Graduate Assistant, Anna Adams, under the supervision of Dr. David Buckley. Anna is currently a second-year political science MA student, with research interests in criminal justice and public opinion. Anna is a UofL undergraduate alumna, where she earned a B.A. in Asian Studies.

### Acknowledgments

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