

# Custodial Death

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## Context:

The Supreme Court has emphasized the necessity of adopting a “more rigorous approach” when considering bail applications from police officers charged in cases of custodial deaths.

## Background:

Observing that a police officer may wield more influence than an ordinary person the Supreme Court has set aside the bail granted to a police constable in a case of custodial death.

## Custodial Death:

1. Custodial death refers to a death that occurs while a person is in the custody of law enforcement officials or a correctional facility.
2. It can occur due to various causes such as the use of excessive force, neglect, or abuse by the authorities.
3. According to the Law Commission of India, the crime by a public servant against the arrested or the detained person who is in custody amounts to custodial violence.

## Constitutional Framework Related to Custodial Death:

1. Article 21 of the Constitution of India guarantees the right to life and personal liberty, which includes the right to be free from torture and other cruel, inhuman, or degrading treatment or punishment.
2. Article 20 grants protection against arbitrary and excessive punishment to an accused person, whether a citizen or foreigner or a legal person like a company or a corporation. It contains three provisions in that direction - No ex-post-facto law (Article 20 (1)), No double jeopardy (Article 20 (2)), and No self-incrimination (Article 20 (3)).
3. In *Selvi v. State of Karnataka*, the court observed that the state could not perform narco-analysis, polygraph, and brain-mapping tests on any individual without their consent.

## Legal Protections Associated with Custodial Death:

1. Section 24 Indian Evidence Act, of 1872 declares that all the confessions made by the accused by succumbing to the threat of investigating agencies would not be admissible in a court of law. This Section primarily works to prevent the accused from giving confessions using force against his will.
2. Sections 330 and 331 of the Indian Penal Code (IPC) criminalise voluntarily causing hurt or grievous hurt to extort confession or information from any person.
3. Section 41 of the Criminal Procedure Code (CrPC) was amended in 2009 to include safeguards so that: Arrests and detentions for interrogation have reasonable grounds and documented procedures; Arrests are made transparent to family, friends, and the public, and

there is protection through legal representation.

### **International Conventions Against Custodial Torture:**

1. International Human Rights Law of 1948 contains a provision that protects people from torture and other enforced disappearances.
2. United Nations Charter of 1945 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 International Human Rights Law contains a provision that protects people from torture and other enforced disappearances.
3. The Nelson Mandela Rules of 2015 were adopted by the United Nations General Assembly in 2015 to treat prisoners with inherent dignity and to prohibit torture and other ill-treatment.
4. United Nations Convention Against Torture (UNCAT) is an international human rights treaty under the purview of the United Nations that aims to prevent torture and other acts of cruel, inhuman, or degrading treatment or punishment around the world.

### **Way Forward to Combat Custodial Torture:**

1. Strengthening Legal Systems by enacting comprehensive legislation explicitly criminalising custodial torture like Supreme Court directives in Prakash Singh Case 2006. SC directed the separation of investigation and law and order functions to better improve policing, setting up of State Security Commissions (SSC) that would have members from civil society, and forming a National Security Commission.
2. By ensuring prompt and impartial investigations into allegations of custodial torture.
3. By enhancing police training programs to emphasise respect for human rights and dignity.
4. By promoting a culture of accountability, professionalism, and empathy within law enforcement agencies.
5. By establishing oversight mechanisms to monitor and address cases of custodial torture effectively.
6. Empowering Civil Society and Human Rights Organisations to actively advocate for victims of custodial torture. The National Human Rights Commission (NHRC) should be allowed to inquire into any matter even after one year from the date of the alleged human rights violation. Its jurisdiction should be expanded to cases of human rights violations by armed forces with appropriate measures.
7. By providing support and legal assistance to victims and their families.
8. By collaborating with international human rights bodies and organisations to seek redress and justice.

