



## NHRC Notice to Odisha Govt Over Custodial Death

**For Prelims:** [Article 21](#), [Article 22](#), Judgements on Custodial Violence, [NHRC](#), [Law Commission](#), International Conventions on Human Rights and Custodial Torture

**For Mains:** Ethical Concerns Associated with Custodial Deaths, Measures to prevent custodial torture and deaths.

[Source: TOI](#)

### Why in News?

Recently, the [National Human Rights Commission \(NHRC\)](#) issued a notice to the Odisha government, requiring an explanation as to why the Commission should not recommend a payment of monetary compensation to the next of kin of a person, who allegedly died in police custody.

### What is Custodial Death?

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

# CUSTODIAL DEATH

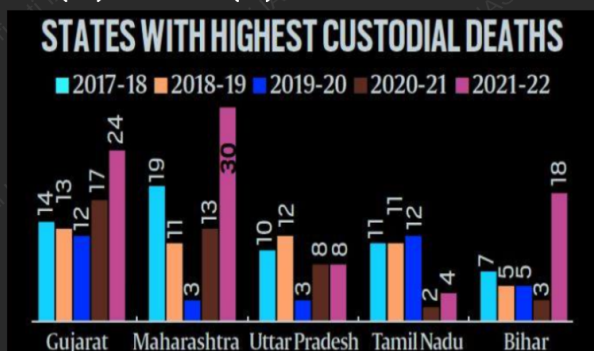
*CD is a death that occurs while a person is in the custody of law enforcement officials or in a correctional facility*

## CAUSES

- Use of excessive force, (medical) neglect, abuse by authorities etc.

## HIGHEST CDs IN INDIA (2017-18 to 2021-22)

- Uts: Delhi (29), J&K (4)
- States: Gujarat (80), Maharashtra (76), UP (41), TN (40) and Bihar (38)



## LEGAL PROVISIONS

- CrPC Section 41 - Amended in 2009; arrests and detentions for interrogation to have reasonable grounds and documented procedures
- IPC Sec 302, 304, 304A, and 306 - Include crime of custodial torture
- Sec 330, 331 - Punishment for injury inflicted for extorting confession

*Complaints of such human rights violations are received by the NHRC under Protection of Human Rights Act, 1993*

## MAJOR ISSUES REGARDING CDs

- No anti-torture legislation
- Opaque, poor prison system
- Excessive force used against marginalised/ protesters
- Lengthy, expensive judicial processes

*India signed the UN Convention against Torture (1985) in 1997 but hasn't ratified it yet*

## CD V/S FUNDAMENTAL RIGHTS

- Protection from torture (Article 21)
- Protection against arrest and detention in certain cases, Right to Counsel (Article 22)

## SOLUTIONS

- Multi-pronged strategy encompassing legal enactments, technology, accountability, training and community relations
- Taking stringent action against personnel breaching the commandments issued by the SC in *D.K. Basu v. State of West Bengal* (1997) (such as - All police personnel to wear name tags clearly indicating their name, designation)

## Judicial Pronouncements on Custodial Death:

- **Kishore Singh Vs. State of Rajasthan (1981):** The Supreme Court held that the **use of third degree** by the police is **violative of Article 21 of the Constitution** of India.
- **Nilabati Behera vs. State of Orissa (1993):** The Supreme Court held that the **state is liable to pay compensation for custodial deaths** resulting from police **negligence or brutality**, recognizing the state's responsibility for **protecting the right to life**.
- **Joginder Kumar v. State of Uttar Pradesh (1994):** The Supreme Court dealt with violation of human rights because of **indiscriminate arrests**. They referred to the recommendations made in the **Third Report of the National Police**

**Commission that police should avoid arrest provided only in heinous offence.**

- **D.K. Basu vs. State of West Bengal (1997):** The Supreme Court laid down specific guidelines to prevent custodial torture and deaths, including **requirements for arrest memos, the right to medical examination, and access to legal counsel.**

## **Note:**

### ▪ **Custodial Death Guidelines Laid Down in DK Basu Case:**

- It is the duty of the Police Officer **not to use third-degree methods while having investigation and interrogation** from the accused.
- Attention must be required in **checking the working environment, training, and orientation of the Police Officials** with the basic human values.
- The **legislature must adopt** the recommendations suggested by the **Law Commission Report by inserting Section 114-B.**
- A **balanced approach** should be used by the police to extract the information from hardened criminals.
- There must be a memo made by the Police Officer in charge at the time of arrest and at least one family member of the accused must be present when the arrest is made.
- The requirements under the Constitution under **Article 21 and 22 (1) of Constitution of India must be followed** by Police Officers.
- **Awareness must be created to the arrestee** so that he can understand his basic rights at the time of the arrest.
- Also, the Court has given certain **preventive measures** that must be followed by the Police Officer in charge at the time of the arrest of an accused.

### ▪ **Section 114-B:** It was recommended in the **113<sup>th</sup> Report of Law Commission (however, not yet included)**. It says that in a prosecution of a police officer for causing bodily injury to a person in custody, the court may presume the injury was caused by the officer if evidence shows the injury occurred during custody. In deciding this, the court will consider:

- (a) The period of custody,
- (b) Any admissible statement by the victim about the injury,
- (c) Medical evidence,
- (d) Evidence from any magistrate who recorded or attempted to record the victim's statement.

## **What are the Ethical Concerns Associated with Custodial Deaths?**

### ▪ **Violates Human Rights and Dignity:**

- Every person possesses inherent dignity and deserves to be treated with respect and fairness. Custodial violence violates this fundamental principle by inflicting physical and psychological harm, stripping individuals of their dignity, and denying them basic human rights.

### ▪ **Undermines Rule of Law:**

- It undermines the core principles of the rule of law and due process. Law enforcement officers are tasked with upholding and enforcing the law, yet engaging in violence directly contradicts the fundamental principles of justice, equality, and the safeguarding of human rights.

### ▪ **Presumption of Guilt:**

- It undermines the foundational principle of **"innocent until proven guilty"**. Subjecting individuals to torture before they have been convicted of a crime violates their fundamental rights to a fair trial and due process.

### ▪ **Opposing Professionalism and Integrity:**

- Police officers and authorities are expected to maintain high ethical standards, which include professionalism, integrity, and a commitment to respecting human rights. Custodial violence breaches these ethical principles and stains the reputation of the profession overall.

## What Measures can be Taken to Prevent Custodial Torture?

### ▪ Strengthening Legal Systems:

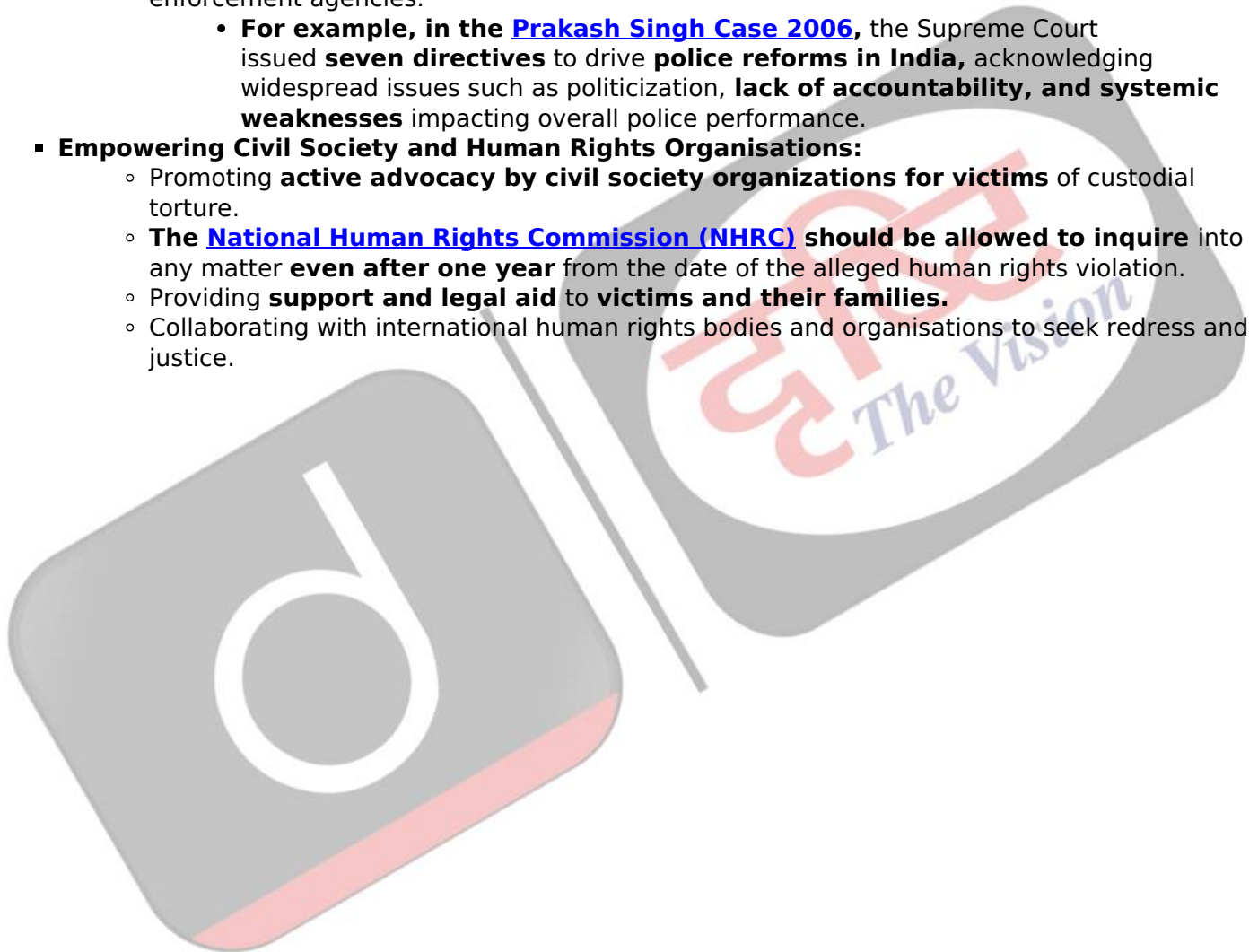
- Strengthen laws against torture and ensure that they are strictly enforced.
- Ensuring **prompt and impartial investigations into allegations** of custodial torture.
- Holding perpetrators accountable through fair and expeditious trials.

### ▪ Police Reforms and Sensitisation:

- Improving police training programs to uphold **human rights and dignity**. Oversight mechanisms to **effectively monitor and address cases** of custodial torture.
- Promoting a culture of accountability, professionalism, and empathy within law enforcement agencies.
  - **For example, in the [Prakash Singh Case 2006](#)**, the Supreme Court issued **seven directives** to drive **police reforms in India**, acknowledging widespread issues such as politicization, **lack of accountability, and systemic weaknesses** impacting overall police performance.

### ▪ Empowering Civil Society and Human Rights Organisations:

- Promoting **active advocacy by civil society organizations 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.
- Providing **support and legal aid to victims and their families**.
- Collaborating with international human rights bodies and organisations to seek redress and justice.





# NATIONAL HUMAN Rights COMMISSION (NHRC)

According to NHRC, Human Rights are the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India

- Watchdog of Human Rights in India
- **Estd:** 1993 (in conformity with Universal Declaration of Human Rights)
- **Act:** Protection of Human Rights Act (PHRA), 1993

## State Human Rights Commissions

- Also constituted under the PHR Act, 1993
- **Appointment of Members:** by Governor
- **Removal of Members:** by President

## Human Rights Day: 10 December

### Functions

- ⌚ Investigates Complaints of human rights violations
- ⌚ *Suo Moto* cognizance of cases
- ⌚ Reviews and recommends human rights implementation
- ⌚ Spreading human rights awareness
- ⌚ Conduct studies, publish reports on human rights issues

### Powers

- ⌚ Summon individuals, examine witnesses, and receive evidences
- ⌚ Inspect prisons and other institutions to ensure conditions are humane
- ⌚ Intervene in court proceedings relating to human rights

## Members of NHRC

### Composition

- ⌚ 5 full-time members and 7 deemed members
- ⌚ **Chairperson:** Retired CJI/Judges of the SC
- ⌚ **Administrative Head:** Secretary-General

### Appointment

- ⌚ All members appointed by **President** on recommendations of a **6-member** committee (PM, Speaker of LS, Deputy Chairman of RS, Union Home Minister and Leaders of Opposition of both Houses of Parliament)

### Global Alliance of National Human Rights Institutions (GANHRI) Status

- NHRC has been accredited '**A**' Status since 1999
- **Retained 'A' Status:** 2006, 2011 and 2017
- **Suspension of 'A' Status:** 2023 and 2024

### Tenure

- ⌚ 3 years / till age 70 (whichever is earlier)

### Removal

- ⌚ President can remove the chairman or any member
- ⌚ **Ground:** Charges of proved misbehaviour or incapacity



Drishti IAS

## Note:

- **International Conventions on Human Rights and Custodial Torture to which India is a Signatory:**
  - [United Nations Convention Against Torture \(UNCAT\)](#)
  - [Universal Declaration of Human Rights \(UDHR\)](#)
  - [The International Covenant on Civil and Political Rights \(ICCPR\)](#)

- [The international convention on the elimination of all forms of racial discrimination.](#)
- [The convention on the elimination of all forms of discrimination against women \(CEDAW\)](#)
- [The convention on the rights of the child](#)
- [Convention on the Rights of Persons with Disabilities](#)
- [The International Covenant on Economic Social and Cultural Rights \(ICESCR\)](#)

**Drishti Mains Question:**

Q. What are the Ethical concerns associated with Custodial Deaths? Discuss the measures that can be taken to prevent them.

**UPSC Civil Services Examination, Previous Year Question (PYQ)**

**Prelims:**

**Q. Consider the following: (2011)**

1. Right to education
2. Right to equal access to public service
3. Right to food.

**Which of the above is/are Human Right/Human Rights under “Universal Declaration of Human Rights”?**

- (a)** 1 only
- (b)** 1 and 2 only
- (c)** 3 only
- (d)** 1, 2 and 3

**Ans: (d)**

**Mains:**

**Q.** Though the Human Rights Commissions have contributed immensely to the protection of human rights in India, yet they have failed to assert themselves against the mighty and powerful. Analysing their structural and practical limitations, suggest remedial measures. **(2021)**