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News: Custodial Violence

- Recently, two police officers were suspended on the charges of Custodial Torture (Violence), assaulting the accused in Police custody.

Custodial Torture

- Custodial torture is the infliction of physical or mental pain or suffering on a person who is in the custody of the police or other authorities.
- It is a grave violation of human rights and dignity and often leads to custodial deaths, which are deaths that occur while a person is in custody.

Types of Custodial Death

Death in Police Custody

- Death in police custody can result from excessive force, torture, denial of medical care, or other forms of abuse.

Death in Judicial Custody

- Death in judicial custody may occur due to overcrowding, poor hygiene, lack of medical facilities, inmate violence, or suicide.

Death in the Custody of Army or Paramilitary Forces

- Can happen through torture, extrajudicial killings, encounters, or crossfire incidents.

Custodial Death in India

- According to the Ministry of Home Affairs (MHA), a total of 146 cases of death in police custody were reported during 2017-2018, 136 in 2018-2019, 112 in 2019-2020, 100 in 2020-2021 and 175 in 2021-2022.
- In the last five years, the highest number of custodial deaths (80) has been reported in Gujarat, followed by Maharashtra (76), Uttar Pradesh (41), Tamil Nadu (40) and Bihar (38).

Challenges in Preventing Custodial Torture in India

- Lack of ratification of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), which India signed in 1997 but has not yet ratified.
- This prevents India from being bound by international obligations and standards to prevent and combat custodial torture.

Constitutional and Legal Framework Related Custodial Torture

Constitutional Provisions:

- 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.
- Article 20(1) states that no person shall be convicted of any offence, except those which are in contravention of the law in power at the commission of the Act. Thus, this law prohibits punishment above what is mentioned in the law that deals with the offence.
- Article 20(3) prohibits a person to be compelled to be a witness against himself. It is an extremely instrumental law as it protects the accused from giving confessions when the accused is coerced or tortured to do so.

Legal Protections

- 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 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.

International Conventions for Human Rights

International Human Rights Law, 1948

- The International Human Rights Law contains a provision which protects people from torture and other enforced disappearances.

United Nation Charter, 1945

- The United Nations 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 Nelson Mandela 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.