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Custodial Deaths in Sri Lanka: Reassessing the Legal Duty to Protect Life and Ensure Accountability

ABSTRACT

Custodial death represents one of the most serious forms of State responsibility because a person deprived of liberty is placed under the direct control and protection of public authorities. In Sri Lanka, deaths occurring in police custody raise significant questions concerning the protection of life, freedom from torture and cruel, inhuman or degrading treatment, protection against arbitrary arrest and detention, and access to effective remedies. Although the Constitution of Sri Lanka does not expressly recognise a separately worded fundamental right to life, the Supreme Court has developed constitutional protection of life through the interpretation of Articles 11, 13 and 17. This article examines the legal framework governing custodial deaths in Sri Lanka, with particular attention to constitutional jurisprudence, the prohibition of torture, State responsibility and mechanisms for investigation and accountability. The landmark decision in Sriyani Silva v Iddamalgoda demonstrates the willingness of the Supreme Court to recognise the constitutional implications of custodial death and to permit appropriate remedies for the deceased person's family[1]The article also considers the Convention Against Torture Act No 22 of 1994 and the Human Rights Commission of Sri Lanka's 2025 Guidelines on preventing custodial and encounter deaths.[2]The study adopts a qualitative doctrinal legal research methodology, examining legislation, constitutional provisions, judicial decisions, international human-rights standards and institutional reports. It argues that Sri Lanka possesses an important legal framework for addressing custodial deaths, but significant challenges remain concerning independent investigations, preservation of forensic evidence, accountability of law-enforcement officials and access to effective remedies. The article concludes that preventing custodial deaths requires not only prosecution after a death occurs but also stronger preventive safeguards and institutional accountability throughout the process

[1] Sriyani Silva (wife of Jagath Kumara-deceased) v Iddamalgoda, Officer-in-Charge, Police Station, Payagala and Others (2003) 1 Sri LR 14.

[2] Human Rights Commission of Sri Lanka, General Guidelines and Recommendations No 1 of 2025 to Sri Lanka Police on Preventing Custodial and Encounter Deaths (15 May 2025).

of arrest, detention and investigation.

KEYWORDS

Custodial deaths; Right to life; Torture; Police accountability; Fundamental rights; State responsibility; Sri Lanka.

1. INTRODUCTION

The deprivation of liberty creates a heightened responsibility for the State. Once a person is arrested and placed in police custody, the State assumes practical control over that person's safety, health and physical integrity. A death occurring in such circumstances is therefore not simply a criminal-justice incident; it may engage constitutional, criminal and international human-rights obligations.

Custodial deaths in Sri Lanka have continued to attract the attention of human-rights institutions. The Human Rights Commission of Sri Lanka (HRCSL) reported 24 custodial deaths involving the Sri Lanka Police between January 2020 and August 2023, together with 13 encounter deaths[3] In response to continuing concerns, the HRCSL issued General Guidelines and Recommendations No 1 of 2025 concerning the prevention of custodial and encounter deaths.[4]

This article examines whether Sri Lanka's existing legal framework provides an adequate response to deaths occurring under police control. Particular attention is given to the constitutional protection of life, the prohibition of torture, judicial remedies and the requirement of an effective and independent investigation.

2. CONSTITUTIONAL PROTECTION OF LIFE

The Constitution does not contain an express provision stating, in direct terms, that every person has a fundamental right to life. Nevertheless, the Supreme Court has developed protection of life through constitutional interpretation.

The leading authority is *Sriyani Silva v Iddamalgoda*[5] The case concerned a detainee who had been arrested by the police, subjected to severe assault and subsequently died. The Supreme Court recognised that the deceased had been subjected to torture by police officers and considered the relationship between Articles 11 and 13(4) and the protection of life.

[3] Human Rights Commission of Sri Lanka, Draft General Guidelines and Recommendations to Sri Lanka Police on Preventing Custodial and Encounter Deaths (2023).
[4] Human Rights Commission of Sri Lanka (n 2).
[5] Sriyani Silva (n 1).

The Court adopted a purposive interpretation of the Constitution so that the death of the victim would not prevent the vindication of fundamental rights violated before death.[6]

The decision is particularly significant because a narrow interpretation of Article 126 could create an obvious injustice: where the alleged violation itself results in death, the victim would no longer be able to personally institute proceedings. The Court therefore recognised the ability of an appropriate person, including the deceased's next of kin, to pursue constitutional redress in circumstances arising from the violation.[7]

This approach has established an important principle in Sri Lankan constitutional jurisprudence: the State cannot avoid constitutional accountability merely because the victim has died as a consequence of the alleged violation.

3. TORTURE AND UNLAWFUL DETENTION

Article 11 of the Constitution provides strong protection against torture and cruel, inhuman or degrading treatment or punishment. Article 13 provides further safeguards relating to arrest and detention. These protections become particularly important in custodial-death cases because unlawful detention and custodial violence may operate together.

Sri Lanka is also a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention requires States to take effective legislative, administrative and judicial measures to prevent torture.[8]Sri Lanka subsequently enacted the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act No 22 of 1994, creating a domestic criminal framework addressing torture committed by public officials.

However, legal prohibition alone cannot guarantee protection. Custodial environments create a significant evidentiary imbalance. Police officers and other authorities may control detention records, CCTV footage, medical information and other evidence relevant to determining the circumstances of death. The deceased person is, of course, unable to provide evidence.

[6] Sriyani Silva (wife of Jagath Kumara-deceased) v Iddamalgoda, Officer-in-Charge, Police Station, Payagala and Others (2003) 2 Sri LR 63.
[7] ibid
[8] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, art 2(1).

Consequently, the State's obligation must extend beyond preventing unlawful conduct. It must also ensure that any death occurring in custody is investigated through a process capable of establishing the truth and identifying individual as well as institutional responsibility.

4. INVESTIGATION AND ACCOUNTABILITY

The HRCSL's 2025 Guidelines are an important development in addressing this problem. They recommend that a custodial or encounter death should initially be treated as a crime scene, regardless of the apparent cause of death. The Guidelines emphasise immediate medical examination, preservation of evidence and maintenance of the chain of custody.[9]

They further recommend an independent investigative mechanism involving relevant expertise, including police, forensic medical and legal professionals. The investigation should be prompt, effective, comprehensive, impartial and transparent.[10] Importantly, the investigation should consider not merely whether an individual officer caused the death but also whether supervisory failures or systemic deficiencies contributed to it.

The jurisprudence in Sriyani Silva is relevant in this respect. The Supreme Court's reasoning demonstrates that accountability may extend beyond the individual who directly inflicted physical harm. Supervisory responsibility and failures to exercise proper control over subordinate officers can also become legally significant.[11]

This broader approach is necessary because custodial death may result from several forms of State failure, including excessive use of force, torture, denial of medical assistance, inadequate supervision or failure to comply with established detention procedures.

5. THE GAP BETWEEN LAW AND PRACTICE

Sri Lanka therefore possesses several important legal safeguards. However, the existence of legislation and judicial principles does not necessarily mean that those protections operate effectively in practice.

The issuance of dedicated HRCSL Guidelines in 2025 itself demonstrates the continuing need for clearer preventive and investigative mechanisms. Independent investigation is particularly important. Where officers belonging to the same institution responsible for detention play

[9] Human Rights Commission of Sri Lanka (n 2).
[10] ibid
[11] Sriyani Silva (n 6).

a substantial role in investigating a death, concerns may arise regarding institutional independence and public confidence.

Another difficulty concerns access to constitutional remedies. Article 126(2) generally requires a fundamental-rights application to be filed within one month of the alleged infringement.[12] Although the Supreme Court has developed important jurisprudence protecting the interests of deceased victims, families may still experience difficulty obtaining legal advice, medical evidence and information within such a limited period.

The State should therefore ensure that families are promptly informed of the circumstances of a custodial death and of their legal rights. Access to independent legal representation and relevant evidence should form part of an effective remedial framework.

6. CONCLUSION

Custodial deaths represent a particularly serious challenge to the rule of law because the victim dies while under the control of the State. Sri Lankan constitutional jurisprudence, particularly *Sriyani Silva v Iddamalgoda*, has made an important contribution by recognising constitutional protection of life and allowing the deceased person's rights to be vindicated through appropriate proceedings.

The prohibition of torture under Article 11, protections relating to arrest and detention under Article 13, the 1994 anti-torture legislation and the HRCSL's 2025 Guidelines together provide a substantial legal foundation for preventing and responding to custodial deaths.

The central challenge, however, remains implementation. Independent investigations, prompt forensic examination, preservation of evidence, effective prosecution and meaningful remedies must operate in practice. Accountability should also extend beyond individual perpetrators to supervisory and institutional failures.

Ultimately, custodial deaths should not be addressed only after a person has lost his or her life. A rights-based approach requires preventive safeguards at every stage of arrest, detention, interrogation and medical care. The fundamental principle should remain clear: deprivation of liberty must never become a justification for deprivation of life.