

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIAL TEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

CUSTODIAL VIOLENCE – ADVERSARY OR COMPANION OF JUSTICE?

AUTHORED BY - AYUSH KUMAR SINHA

INTRODUCTION

The Custodial Violence refers to the violence done on an individual or group of persons by authority (i.e. police officials or judicial authority) in their custody. It means that the harm or injury done by the police authority or judiciary on the arrested person. Custody means the condition in which an individual or group of persons were arrested or imprisoned by the authorities. It includes the torturing of the individual or inflicting pain done on the arrested person. This violence can led to the death of the victim or a permanent trauma for the victim.

According to Law Commission of India, ‘crime by a public servant against the arrested or a detained person who is in custody amounts to the custodial violence’¹ Although, there is not a single definition of custodial violence in any statute in India. It includes a list of things that can be –

- Illegal detention,
- Wrongful arrest,
- Humiliating suspects,
- Extorting information under pressure, and
- Physical, mental and sexual violence.

BACKGROUND

With the passage of time, the abuse of power by the police has emerged a major issue which is clearly against human rights and acts as a root obstacle to democracy and human development in the present day. The practice of the custodial violence and its emergence has increased in the democracies like India and it is proving to be a more complex challenge than any other for the country. A divergence from the law by an individual is not that much sufficient for increasing amount of the cases of police brutality than the systematic and time taking procedure

¹ Sambit Rath, Custodial Violence (June 23, 2022), https://blog.ipleaders.in/custodial-violence/#Causes_of_custodial_violence_in_India

for convicting the individual guaranteed by the statutes.

In the recent years the custodial violence had gained its attention from public media, legislature, judiciary and even Human Rights Commission. All these authorities are trying their best and giving a lot of time and efforts to reduce the incidents of custodial violence in India.

Custodial Deaths Reported by the State Governments to the NHRC (1993-2001)

Year	Police Custody	Judicial Custody	Others	Total
1993-1994	No Available	Not Available	Not Available	34
1994-1995	111	51	9	171
1995-1996	136	308	0	444
1996-1997	188	700	0	888
1997-1998	191	807	0	998
1998-1999	180	1106	0	1286
1999-2000	177	916	0	1093
2000-2001	127	910	2	1039
2001-2002	165	1140	2	1307

Source: National Human Rights Commission, Annual Report 2001-2002, Annexure 7, pp.360-61²

This table is showing the gradual increase in the cases of custodial violence.

TYPES OF CUSTODIAL VIOLENCE

There are many types of custodial violence, but basically, they are categorized mainly in three types mentioned below –

1. Physical Violence – The violence doing a physical harm to the detained or arrested person is known as physical violence. Example of this can be hitting the victim with

² Manmeet Singh, Custodial Violence in India , <https://www.legalservicesindia.com/article/1893/Custodial-Violence-in-India.html>

- any weapon, or making victim feeling of immediate danger, or torturing, etc.
2. Mental Violence- These violences are aimed to affect the mental condition of the victim. Example can be deprivation of basic needs like food and water, threats made to the victim or his family or friends, etc.
 3. Sexual Violence – The violence done by coercion or sexual humiliation on the victims are sexual violence. Rape and sodomy fit in this type.
 4. These are the main types of custodial violence.

CAUSES OF CUSTODIAL VIOLENCE

There are many factors which contributes in emergences of these cases but those are mainly headed under these –

1. Stressful Management – police authorities are often under immense stress because of managing several numbers of cases simultaneously and have specific timeframe for some cases. The Procedure to prove the accused individual is lengthy which requires collection of evidences, investigation, recording confessions of the witnesses. The failure of this can result in disciplinary action against the authorities. This fear, sometimes, become a cause for custodial violence to fasten the procedure.
2. Lack of Training – Many police authorities lack proper training and very good knowledge of scientific crime and investigation techniques or proper interrogation methods. This also results in inappropriate use of force against accused individual.
3. Punitive and Tough Action by Police – Some police authorities believes that stern punishment is the only solution to deter criminals from committing more crimes. They believe the use of arbitrary power and endorse use of aggression, especially in the cases of serious offences like murder and rape.
4. Lack of Awareness among people – The lack of knowledge of their rights among people plays a very important role in the increasing amount of these cases. When the victim is not conscious of their rights, it provides a confidence to police authorities for continuation of violative measures.

These were the main factors or causes contributing in the increments of the cases of custodial violence.

STATUTES PROVIDING PROTECTION AGAINST THE CUSTODIAL VIOLENCE

The legal framework is not deprived from the protection for accused person in the custody. There are several laws under which the protection is guaranteed. Let's dive into these laws to know more about them-

A. CONSTITUTION OF INDIA

Constitution of India protects the accused with the provisions mentioned under the following articles-

- Article 20(1) clearly states that, 'no person shall be convicted of any offence except for the violation of law in force at the time of the commission of offence.'³ It shows that laws are not retrospective in nature and a person shall not be convicted for an act which was later declared as an offence by the law.
- Article 20(2) provides that 'no person shall be prosecuted and punished for the same offence more than once.'³ It is a doctrine of double jeopardy.
- Article 20(3) states that 'no person shall be compelled to be witness against himself.'³ This guarantees the protection of the accused from the coercion of authorities for procurement of evidences.

B. THE CODE OF CRIMINAL PROCEDURE, 1973

Our legislature had amended Section 41 of the Code of Criminal Procedure in 2009 to safeguard the procedure for arrest and detention for investigation by including 41A, 41B, 41C, and 41D. This amendment made reasonable grounds for investigation and all the procedure followed in that investigation must be documented. Also, family members, friends, and the public to be informed of the arrest, and legal representation to be allowed for the arrested individual.

Section 163 also bars the police authorities from including, threatening, or promising under Section 24 of the Indian Evidence Act. Section 49 prohibits exercise of more restraint than necessary to prevent one's escape.

C. INDIAN PENAL CODE, 1860

Section 220 states the provision for the punishment if officer who wrongfully confines

³ Indian Const. Art. 20

any person.

Section 330 provides that whoever causes hurt to extract information of confession which may lead to detection of offence shall be liable to be punished with imprisonment which can be punished up to 7 years of imprisonment or fine.

Section 376(2), 376B to 376D deal with the sexual offences committed in the custody.

D. INDIAN EVIDENCE ACT, 1872 AND POLICE ACT, 1861

Section 25 of Indian Evidence Act bars the use of confessions made to police officers as a evidence in the court. Section of 26 make those confession inadmissible unless the confession is made in the presence of a magistrate Section 29 of Police Act, 1861 imposes penalties, including fine and imprisonment, on police personnel who inflict violence on individual in their custody.

These were some of the statutes which ensures the protection of an individual from the custodial violence.

LANDMARK JUDGMENTS

1. Nilabati Behera vs. State of Orissa, 1993

- **Fact:** In this case, Suman Behera, the petitioner's son, was taken in the custody through arrest by the police and the very next day, his dead body was found on the railway tracks with some serious wounds and multiple injuries. The claim made by police was that the victim had escaped from the police station.
- **Issues:** Whether the victims suffered injuries due to custodial violence and whether the police were liable for the death.
- **Judgment - Supreme Court** held that the injuries found were inflicted on victim while he was in custodial. Therefore, the victim was subjected the custodial violence. The court awarded the compensation of Rs. 1,55,000 to petitioner and State should provide that compensation.

2. D.K. Basu vs. State of West Bengal, 1997

In this landmark case, the Supreme Court gave custodial violence and police brutality a recognition for an attack on the dignity of human being. 'Withstanding with its observation

Supreme Court provided 11 guidelines which should be followed to reduce the case of custodial violence.

- a) Arrest memo to be prepared and copy of it to be attested by a family member or a respectable person of the locality. It must also be attested by the arrestee and the date and time of the arrest should be mentioned in it.
- b) The police personnel must bear name tags with their designations while making arrests or conducting an interrogation.
- c) In cases where a relative or family member of the arrestee is not present during the arrest, he is entitled to inform one friend or relative or other person having an interest in the ongoing procedure of his arrest and his location.
- d) Person arrested to be made aware of his right to inform someone of his arrest.
- e) Within 8-12 hours, the relative or friend of the arrestee must be informed of the time, place of arrest, and venue of custody if they live outside the district or town.
- f) Major and minor injuries to be recorded at the time of arrest and to be signed by both the arrestee and the police officer
- g) A copy of the record is to be provided to the arrestee. The information should be recorded in a diary of the place of detention, name of any friend who has informed, and details of names and particulars of police officials who to the arrestee in the custody.
- h) Medical examination by a doctor every 48 hours during the arrestee's detention.
- i) Copies of all documents are to be sent to the Magistrate.
- j) Arrestees may be permitted to meet their lawyer during interrogation.
- k) A police control room to be provided in all districts and arrests to be intimated within 12 hours to the control room.⁴

CONCLUSION

Without any doubt, Custodial Violence is an objectionable act towards any human beings. The arbitrary use of power can result in the occurrence of numerous inhuman incidents. In the consequences of this, the victim often faces traumatic attacks and panic attacks which can long last forever. Many steps are taken for reducing the occurrence of these cases but international bodies and governing bodies. But there is so much yet to achieve. Every year, the Supreme Court passes numerous guidelines and judgments for prevention of the custodial violence.

⁴ D.K. Basu vs, State of West Bengal (1997 (1) SCC 416)

Prevention of custodial violence is crucial for ensuring justice, upholding the rule of law and safeguarding the well being of those in custody.

REFERNCES

- Sambit Rath, Custodial Violence (June 23, 2022), https://blog.ipleaders.in/custodial-violence/#Causes_of_custodial_violence_in_India
- Law Bhoomi, Custodial Violencew (February 9,2024), https://lawbhoomi.com/custodial-violence/#Indian_Laws_Dealing_with_Custodial_Violence
- Abiyaa R , Custodial Violence – Indian Perspective, <https://www.legalserviceindia.com/legal/article-55-custodial-violence-indian-perspective.html>

