

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 8Articles in various reputed Law Journals. Conducted IMoot 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.

EXAMINING CUSTODIAL VIOLENCE IN INDIA: CASE ANALYSIS OF DK BASU VS STATE OF WEST BENGAL

AUTHORED BY - BHAVYA SUREKA

➤ **Abstract**

Police audacity and ruthlessness are predictable wonders. In light of recent reports of excessive force by Indian law enforcement resulting in unnecessary custodial violence, this study seeks to examine custodial violence in India, with case analysis of landmark judgement of DK Basu vs. State of West Bengal. The National Human Rights Commissions (NHRC), High Courts, and the Supreme Court of India¹ have recorded a series of connections from the past times to modern-day cases related to custodial violence and death. The paper begins with discussion about what custodial violence is and how common it is in India. Then, it looks at the DK Basu case and how it impacted on custodial violence in India. The legal framework, statutes and provisions in India that attempts to prevent violence in custody is examined. Things that lead to violence in prisons in India are identified. This research paper also gives suggestions to stop custodial violence in Indian.

Keywords – custodial violence, police brutality, custodial death, Code of Criminal Procedure, 1973.

➤ **INTRODUCTION**

In India, violence against those in custody has existed for years and is a grave problem. Any form of violence that occurs while a person is in the custody of the police or the legal system is referred to as custodial violence. It means when law enforcement officials abuse their power to hurt people who are in their custody. These incidents clearly violate people's rights and can cause physical and mental harm or even death. With the rise in the frequency of violence against individuals in police custody, the Indian court has been instrumental in establishing norms and regulations on the proper treatment of those in police custody. Even though these rules are

¹ Neha Nehraa, *Custodial Violence and Police Brutality: A Critical Overview and ways to reach Reforms*, HEINONLINE.ORG (2022).

written into the law, they still are not that effective. This can be seen in the NHRC and NCAT's recent statistical report². The National Campaign Against Torture (2020) and the National Human Rights Commission (NHRC) released a report called "India: Annual Report on Torture, 2019," which revealed that there were 1,731 custodial deaths in jail in India in 2019.

One of the landmark judgement for setting up of more such guidelines is DK Basu vs. State of West Bengal³, which was filed in 1986 as a Public Interest Litigation by two lawyers who wanted to stop custodial violence in India. In its judgement, the Supreme Court of India set out several rules and guidelines that law enforcement officials must follow when arresting, holding, and interrogating individuals.

➤ **CATEGORIES OF CUSTODIAL VIOLENCE**

Custodial death and torture as two major examples of human rights abuses done by police officers while in custody. NCRB divides custodial violence into three categories:

- Violence in police custody following a court remand.
- Violence in police custody of "persons not on remand".
- When being transported to court or during court proceedings, there is violence.

➤ **TYPES OF CUSTODIAL VIOLENCE**

For goals such as extorting information or abusing authority, the government employs a variety of forms of violence under various circumstances.

1. **Physical violence:** This is the most frequent kind of violence employed by police officers. This comprises the use of physical force to induce bodily pain and exhaust the victim. In certain situations, this type of custodial violence might cause the victim to fear for his or her life and may also lead to death.
2. **Psychological violence:** The second sort of judicial violence involves the victim's psychological condition. This entails depriving the victim of basic requirements such as food, drink, sleep, or access to a bathroom, causing the victim to lose spirit and morale. Mental anguish can be caused by humiliation or intimidation to the victim's loved ones.
3. **Sexual violence:** Any sexual act or attempt to get a sexual act using coercion or violence is considered sexual violence. Also included are rape and sodomy.

² 76 Deaths in Police Custody, 14 Deaths Due to Lathicharge: NCRB 2020 Report' (The Quint, 2 September 2021)

³ DK Basu v State of West Bengal [1997] 1 SCC 416

➤ Research Objectives

1. To analyze the concept of custodial violence and the factors contributing to it in India.
2. To analyze the DK Basu vs State of West Bengal case and its impact on legal policies regarding custodial violence in India.
3. To examine the statutes and legal provisions of Indian laws concerning custodial violence including
4. To suggest measures for prevention of custodial violence in India, including legal reforms, policy changes, and training of law enforcement officials.

➤ **LITERATURE REVIEW**

1. **Neha Nehraa, (2022)**⁴. The barbarian approach of the police towards people in custody, have not diminished since a long time; rather, they are advancing step by step and one step at a time. The author intends to assess the police's use of excessive force against the public, the police's debts and obligations in the case of death caused by excessive brutality, and third-degree police violence. This study examines the question Does law enforcement have the capacity to harm people under any circumstances like their own custody? If this to be true, what restrictions are placed on police authority when the general population is harmed while being in their custody? The author attempts to evaluate the responsibilities of the police during the arrest, the responsibilities of the adjudicators during the request for legal guardianship, and the author also intends to offer the rehabilitation methods to study the process of prison release.
2. **Tanya Sehrawat, (2022)**⁵. It's common knowledge that as humans, we all have some basic rights, and that these rights can be limited by the due process in custody. But what rarely gets noticed is that when the law limits these basic human rights, it also takes on the duty of safeguarding the accused. Even though there are many laws on paper that are meant to protect the weak, law enforcement agencies often ignore this duty. This research paper is mostly about things that went wrong while the person was in police custody. It aims to carry out this duty and bring attention to the fact that the Judiciary has a proactive role to play in protecting these rights in cases of inhuman torture.

⁴ Neha Nehraa, *Custodial Violence and Police Brutality: A Critical Overview and ways to reach Reforms*, HEINONLINE.ORG (2022).

⁵ Tanya Sehrawat, *Human Rights & blatant custodial deaths: When will it stop?*, HeinOnline.ORG (2022)

3. **Karan Singh Chouhan, (2018)**⁶. Although efforts to reform the police force have been ongoing since the late 1960s, this study highlights the need to finally act on the problem of custodial violence. Many reports of the law commission, the National police commission, and other committees were cited in order to comprehend the background of police reforms and to track their progress to the current day. It has been established through these reports and supreme court guidelines that no action has been taken to reform the police in order to reduce custodial violence and police atrocities; therefore, action must be taken to implement police reforms in accordance with the reports and recommendations of several committees.
4. **Maasir Javed, (2020)**⁷. Law enforcement officials is supposed to always act legally. All law enforcement activities must be justified, fair, nondiscriminatory, proportionate, and humane. Cases of police brutality and the excessive use of force by police officers towards citizens are discussed in this article. Too much time has passed without enough monitoring, allowing police to conduct numerous crimes against innocent citizens and detained suspected or accused without consequence. The study looks at custodial death and torture as two major examples of human rights abuses done by police officers while on the job. It addresses the need for tougher laws for police to comply to and hold them accountable for their acts, as well as the legislation available for protecting individuals from this physical and mental abuse by police.

➤ **Research Methodology**

The research methodology for this research paper is secondary and non-empirical. Several relevant national and international research papers, which include Scopus indexed research papers and UGC peer reviewed research papers, were referred to write this research paper. The research paper is an in-depth analysis of the relevant sections and provisions of the custodial violence under CRPC, as well as a review of the existing case law, landmark judgements, articles, statutes, and amendments from authorized websites/books that have been referred to, are cited in this article. The study can contribute to the existing research on custodial violence in India and provide insights into the effectiveness of legal and policy measures in preventing such incidents.

⁶ Karan Singh Chouhan, Police Reforms against Custodial Violence in India: Past and Present, *Int'l JL Mgmt. & Human.*, 1, 29. (2018).

⁷ Maasir Javed, Police Brutality and Human Rights Violations by Police Authorities. *Jus Corpus LJ*, 1, 280. (2020).

➤ DISCUSSION

Custodial violence is the mental or physical abuse of a criminal while in judicial or police custody. One of the biggest problems with custodial violence is that it infringes upon fundamental rights. This is a grave violation of human rights and a major roadblock to a democracy. While there are a number of variables that contribute to fatalities in police and court custody, including as overcrowding, malnourishment, dirty surroundings, and inadequate medical attention, the primary cause of death in prisons and lockups continues to be custodial violence.

The increase in fatalities and violence in prison has several reasons. The police have a duty to guarantee the well-being and security of those who are being detained in their custody. The HRC (Human Rights Commission) must be notified within 24 hours of a death in custody and within 48 hours of a fatal encounter. Article 22 mandates that all people in custody appear before the nearest magistrate within twenty-four hours after their arrest, with consideration for the time required for transportation from the place of detention to the magistrate. In addition, no one may be held in custody for more than twenty-four hours without a magistrate's approval. Consequently, the detained person is brought before the Magistrate, whose duty it is to ascertain whether or not the arrested person has been the victim of abuse while in custody. The person who was arrested is questioned about it, and the magistrate is expected to inform him of his entitlement to a medical examination. The magistrate is responsible for deciding whether or not to remand the person in custody.

According to the National Crime Records Bureau (NCRB), the number of custody fatalities increased by 9 percent from 92 in 2016 to 100 in 2017. The NCRB claims that in 2018, 1,639 inmates died of 'natural causes,' 149 from 'unnatural reasons,' and the remainder from 'unknown causes' because certain states were reluctant to disclose the specifics. The report primarily divides deaths into two categories: natural and unnatural.

Custodial violence is one of the most heinous violations of human rights that occurs during the investigative process, when officers, in order to obtain proof or confessions, frequently succumb to third-degree torture, and arrest techniques, such as not documenting them or referring to the loss of freedom as "prolonged interrogations."

➤ **REASONS FOR CUSTODIAL VIOLENCE IN INDIA**

1. **Lack of strict Laws** — In order to put a stop to custodial violence, strict and enforceable laws must be enacted. In India, custodial violence has not been criminalised, and those in power have enjoyed an undeserved advantage from it for decades.
2. **No Effective Prison Reform** — The prison system as a whole is fundamentally opaque, leaving little space for openness. India's jails continues to be challenged by poor facilities, overcrowding, severe personnel shortages, and inadequate protection from injury.
3. **Work Pressure** - The police operate under enormous strain, and in order to obtain evidence and confessions quickly in difficult cases, they resort to violence.
4. **Social Component** - Given the "an eye for an eye" philosophy, those in authority prefer to employ violence to get information from criminal suspects.
5. **Not adhering to international requirements** - India joined the United Nations Convention against Torture in 1997, although the nation has failed to implement its provisions.

Among the factors contributing to custodial violence in India includes, inadequate resources and training for law enforcement personnel, corruption, a lack of accountability, and societal beliefs that promote or condone violence against disadvantaged communities.

The victims of prison violence, their families, and society at large all suffer grave consequences. Victims may suffer from physical and psychological stress, and their trust in the judicial system and law enforcement may be completely damaged. Custodial violence has the potential to worsen social and political tensions in addition to undermining democratic values and the rule of law.

➤ **Statutes and provisions**

Articles 330, 331, and 348 of the Indian Penal Code; Sections 25 and 26 of the Indian Evidence Act; Section 76 of the CrPC; and Section 29 of the Police Act, 1986, are intended to restrict police personnel from using coercion and coercion to get a confession.

The CrPC sections define the arrest procedure including the arrestee's safety. Chapter 5 of the CrPC, 1973 focuses on the authority to arrest a person and the security that police must provide

during and after arrest.

1. According to **Section 46 and 49⁸** of the Criminal Procedure Code, A law enforcement officer may not use violence unless the suspect is resisting arrest, attempting to flee, or is suspected of a crime punishable by death or life in prison. Arrest Process is governed by Section 46 of the CrPC.
2. **Section 41⁹** of CrPc is the section in which the police can arrest and detain without the need for a magistrate's permission or warrant.
3. **Section 50¹⁰**, highlights the necessity of the person being completely aware of the reasons for his or her arrest.
4. **Article 57** of the CRPC is just like the Article 22 of the Indian Constitution.
5. According to **Section - 54¹¹** CRPC, 1973, when a person files a complaint against a police officer or law enforcement authority in whose custody the individual is, the court must inspect the individual's body and maintain documentation of the evaluation. With the magistrates notice, it will be assessed by the clinical expert. In accordance with **Section - 176¹²** of the law, the justice is obligated to submit a request upon the death of a suspect under police guardianship.
6. **Section - 167 & 309¹³** of the law specifies that the purpose of bringing a case before a judge is to protect the the privileges and interests of the accused.

➤ CASE ANALYSIS

1. DK BASU VS STATE OF WEST BENGAL (1997)¹⁴

D. K. Basu vs. State of West Bengal is a landmark case that act against the custodial violence such as rape, abuse, and fatalities in judicial custody or jail. The DK Basu case established the ground principles and safeguards that must be followed before conducting an arrest. It is regarded to be one of the earliest instances in which the judiciary attempted to preserve the rights of persons who had been arrested and to restrict the authority that the police had without being monitored.

⁸ Code of Criminal Procedure, 1973, ss 46 and 49

⁹ Code of Criminal Procedure, 1973, s 41

¹⁰ Code of Criminal Procedure, 1973, s 50

¹¹ Code of Criminal Procedure, 1973, s 54

¹² Code of Criminal Procedure, 1973, s 176

¹³ Code of Criminal Procedure, ss 167 and 309

¹⁴ DK Basu v State of West Bengal [1997] 1 SCC 416

➤ **ISSUE**

1. Growth in incidents of Custodial Torture and Deaths by Police
2. Arbitrariness of Police in arresting a person
3. Is there any need to specify some guidelines to make an arrest?

➤ **JUDGEMENT**

The court stated that police authority must be checked by maintaining an appropriate level of openness and accountability. Furthermore, there is an urgent need for changes in workplace culture and training for police officers.

The case of Joginder Kumar¹⁵, which was also referenced in the ruling, was explained along with directions for arrest procedures. Another case cited was Nilabati Bahera v. State of Orissa, in which the Supreme Court declared that prisoners' basic rights, such as Article 21, are not violated while in custody. The prisoner is only subjected to reasonable limitations under the law.

Article 21 states that no one shall be deprived of his life or personal liberty unless there is an extraordinary circumstance when the legal procedure is followed. It was explicitly established in the judgement, relying on Nilabati Behera v State of Orissa (1993), that custodial assault is a direct violation of Articles 21, 22, and 32 of the Indian Constitution, which grants us our most basic fundamental rights. The judgement also clarified what the term "torture" meant. Any type of violence would be a violation of Article 21.

The court also considered how violence in prison harms people both physically and emotionally. According to the ruling, "torture in detention" is an obvious breach of human dignity that diminishes a person's personality. Furthermore, the court announced its decision by detailing eleven preventative measures that must be followed during the arrest and custody process.

2. NILABATI BEHERA VS. STATE OF ORISSA, 1993¹⁶

The petitioner's son, Suman Behera, was arrested by the police and the next day his deceased body was discovered dead with several injuries on the railway tracks. According to the officials,

¹⁵ Joginder Kumar v State of UP [1994] 4 SCC 260

¹⁶ Nilabati Behera v State of Orissa (1993) 2 SCC 746

the person fled the police station and was discovered dead on the train tracks the next day.

➤ **ISSUE**

1. If the victim was injured as a result of custodial violence.
2. If the cops are responsible for the victim's death.

➤ **JUDGEMENT**

The Supreme Court came to the judgement that the person had been injured while being held in custody, suggesting that he could have been the victim of an assault while in custody. After ruling that the state, not the police, should be responsible for paying compensation, the court granted Rs. 1,55,000 in compensation.

3. PEOPLE'S UNION OF CIVIL LIBERTIES (PUCL) VS STATE OF MAHARASHTRA CASE (2014)¹⁷

Addressing violence against prisoners, PUCL v. State of Maharashtra is a landmark judgment in India. The decision stemmed from a letter PUCL wrote to the National Human Rights Commission (NHRC) highlighting the issue of abuses and deaths that take place when an individual is under police custody. The NHRC then filed the letter with the Indian Supreme Court in the form of a writ petition. The petition raised issues with the investigation into the custodial death's lack of accountability and openness as well as the need for an unbiased monitoring body to monitor the proceedings.

➤ **JUDGEMENT:**

In India, the PUCL v. State of Maharashtra case was an important development addressing the issue of custodial violence. The court established rules to eliminate violence during police detention and guarantee protection of inmates' fundamental rights. To ensure accountability and openness in the custodial death inquiry, the court ordered the creation of an independent monitoring mechanism to oversee the guidelines' application. The ruling upholds the value of human rights and the requirement that the government take the appropriate action to safeguard them.

¹⁷ PUCL v. State of Maharashtra (2014) 10 SCC 635

➤ CONCLUSION

Violence in prison is not only against the law, but also against society as a whole. Arresting a criminal and questioning him is a necessary and legal police job, but using violence or torture to get information or confessions is not okay in a democratic country. Even though the DK Basu case happened twenty years ago, violence in prisons is still a problem in our society. The only reason for this is that the guidelines given in the DK Basu case were not followed properly. The guidelines given in the DK Basu case are good and should be followed, and no one has the right to break the law on their own while pretending to be an official. Crimes like rape and assault are not allowed and must be thoroughly looked into or people will lose faith in law and order.

To ensure that police personnel are held responsible for their unreasonable acts against victims, laws should be strengthened and clarified. Significant structural changes are required to reduce judicial violence:

- Body cameras - Officers in India are required to wear body cams. Since they will effectively dissuade the police, body cameras that comply with all standards—such as audio recording and GPS tracking, should be made available as soon as possible.
- Even if police stations are installing more and more CCTV cameras, a clear system must be in place to ensure that the cameras are functioning properly and are routinely inspected. A higher-level officer is required to monitor the CCTV cameras during interrogations.
- Regular physiological, physical, and medical inspections are necessary to ensure that all police personnel are mentally fit to execute their duties.
- Finally, as soon as possible, a anti-torture law must be passed, with severe consequences for those who violate it.

➤ REFERENCES

JOURNALS AND ARTICLES

1. Neha Nehraa, *Custodial Violence and Police Brutality: A Critical Overview and ways to reach Reforms*, HEINONLINE.ORG (2022).
2. Tanya Sehrawat, *Human Rights & blatant custodial deaths: When will it stop?*, HEINONLINE.ORG (2022).

3. Karan Singh Chouhan, Police Reforms against Custodial Violence in India: Past and Present, Int'l JL Mgmt. & Human., 1, 29. (2018).
4. Maasir Javed, Police Brutality and Human Rights Violations by Police Authorities. Jus Corpus LJ, 1, 280. (2020).
5. Devendra Kumar Sharma, RIGHT AGAINST TORTURE AND CUSTODIAL VIOLENCE. ISSN: 2395-4132. (2016)

CASE LAWS

1. DK Basu v State of West Bengal [1997] 1 SCC 416
2. Joginder Kumar v State of UP [1994] 4 SCC 260
3. Nilabati Behera v State of Orissa (1993) 2 SCC 746
4. PUCL v. State of Maharashtra (2014) 10 SCC 635

STATUTES

1. Code of Criminal Procedure, 1973

