



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

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AN ACTION TO THE INACTION OF CUSTODIAL VIOLENCE: CRITICAL ANALYSIS

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Introduction

Violence means inflicting pain towards a person, and Custody means being held or arrested by the police or law enforcement authorities for interrogation. Custodial violence means torturing an individual while being held in the custody of the police; it can be physical, mental or sexual torture, committed by a police officer for various reasons, such as political influence, pressure from higher authorities, extortion, or punitive reasons.

Custodial violence may go to the extent of 'custodial death', which happens when a police officer is continuously torturing or abusing the person beyond their limit to make them accept the crime or to force confession. The vulnerable groups, like scheduled caste, scheduled tribe, women, minors, men, economically backward people and indigent communities, are the most affected groups in this type of violence. Custodial violence is a prohibited act that constitute violation of justice and law, particularly it is a violation of fundamental rights of the Constitution of India and a violation of human rights and international human rights. There is no specific section for custodial violence; it is combined with a cluster of provisions. The punishment for custodial violence hinges upon the nature and severity of the offence. The purpose of this study is to look into the causes of custodial violence. The study highlights the necessity of more robust accountability systems, efficient legal enforcement, and improved human rights protection in detention facilities. In the end, preserving the rule of law and preserving public confidence in the criminal justice system depend on minimizing custodial violence and to maintain the rule of law. Custodial violence is the term used to describe when someone is killed, mistreated, sexually assaulted, or subjected to physical or mental torture while in the custody of law enforcement. Sexual abuse, enforced disappearances, physical assault, psychological intimidation, and custodial fatalities are just a few of the numerous ways it manifests. It is described by the National Human Rights Commission (NHRC) as any abuse

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that exceeds the limits of restraint committed by law enforcement or other correctional authorities.³

Rule of Law - Basics

As A. V. Dicey states, the rule of law is traduced when the power is exercised in an arbitrary manner rather than in agreement with the law. According to Dicey, the supremacy of law provides the foundation upon which a popular system of governance operates. Breach of the rule of law result in opinions being made on the base of abuse of power, hindrance by the government, or the judgment of an individual rather than the law. This creates social inequalities.

The supremacy of law is the first principle of the rule of law, which holds that persons should not suffer any form of penalty or detriment without evidence of a violation of the law in a court of law.⁴ The violation of this principle takes place when the government exercises its powers without a just beget, for illustration, when the government apprehensions or punishes persons arbitrarily without a trial. In such a situation, the powers of the government stamp the law, leaving the people vulnerable to arbitrary action.

The second principle is that of equivalency before the law. This principle holds that all people are equal under the law, and no one is above the law. It's unjust for people with power or those with authority to be treated else from the ordinary citizens. For case, when those with wealth and influence are not held responsible, or when police officers misuse their power and are not held responsible, also there's a breach of the principle of equality before the law.

The third principle asserts that it is not the superintendent who protects individual rights, but the bar. Injustice occurs when the government goes beyond its limits, misuses its powers, and imposes restrictions on its citizens without the backing of the law. In such a case, the rights of the citizens are abused since they're backed by authority and not the law.

This change of a legal order- grounded society to one of individualities, where breaches of the rule of law are considered to be parlous, leads to corruption, the abuse of power, unfairness,

³ National Human Rights Commission, Guidelines on Custodial Deaths and Rape, NHRC (2005)

⁴ Aravind Dadar and Sanjay Jain's article on *Rule of Law: A Basic and Eternal Principle* published in Quarterly Bar Review, Delhi High Court, March 2023, P: 33

and the debasement of popular principles. In agreement with Dicey's principles, the genuine test of a system of law is not the presence of law, but the presence of effective law to contain the important.

Causes of Custodial Violence

- **Lack of Accountability**

The common reason why officers often don't take accountability for their action is because they are backed by people with power, the high ranked officers usually used to close the case with unknown or absurd reasons to protect the department reputation, this behaviour inevitably protects the offender which lessens his burden and prevent him from taking accountability. Custodial Violence occurs in enclosed or secluded places with no cameras and witnesses therefore, no evidence can be found or traced, this made them easily escape from the crime they have committed as judiciary focus on evidence than baseless accusation.⁵ Comparing countries like the USA and the UK, which have independent police complaint processes and strict evidentiary criteria for confessions made while a person is in detention, may teach Indian reformers a few things.⁶

- **Evidentiary Difficulties**

Custodial violence generally occurs behind unrestricted doors, with no independent witnesses other than the victim and the perpetrators. Victims are constantly isolated, bullied, and denied access to attorneys, family members, or doctors who could validate injuries or serve as witness. By the time a victim is produced in court, visible injuries may have healed or been explained down.

- **Oversight and Monitoring**

Internal responsibility mechanisms within police departments are notoriously weak. Police complaints are excavated by other police officers, creating essential conflicts of interest. External oversight bodies, analogous as police complaints authorities or mortal rights commissions, constantly warrant independent investigative powers or respectable resources. Custodial settings themselves are rarely subject to meaningful independent monitoring,

⁵ Paul F. Clark's article on *Holding Police Officers Accountable for Misconduct: Arbitrators' Assessment of Police Discipline and Arbitration Processes*, published on Labor Studies Journal by Sage Publication V 50 Issue 3.

⁶ United Nations Office on Drugs and Crime, Handbook on Police Accountability, Oversight and Integrity (UNODC, 2011)

allowing abuse to flourish unseen.

- **Resource Constraints**

Overcrowded incarcerations, understaffed police stations, and lack of introductory structure produce conditions where violence becomes more likely. When a sprinkle of officers are responsible for dozens of detainees in confined, unsanitary conditions, the eventuality for abuse escalates. Lack of resources for forensic validation collection also increases reliance on admissions attained through coercion.

- **Performance of Judicial Guidelines**

In the case of *D.K Basu vs. State of West Bengal*⁷ Supreme Court established detailed guidelines to help custodial torture, including arrest memos, intimation to family members, and regular medical examinations. still, these guidelines are deficiently executed and rarely executed. The Supreme Court itself noted that compliance with its orders remained shy, taking repeated judicial intervention. Guidelines without monitoring and consequences come meaningless.

- **Prejudice**

Violence against privileged, upper- estate individualities is far less common and generates far farther outrage, while violence against the marginalized is formalized and ignored. This crossroad of social scale and power creates a deadly combination where the most vulnerable are also the most victimized.

- **Normalization of Violence**

In multitudinous police societies, violence isn't counter culturist behaviour but an accepted, indeed anticipated, part of the job. Officers who refuse to use violence may be seen as weak or ineffective by associates. New apprentices learn snappily that police work involves physical force, and that complaints about violence are ignored or punished.⁸ This normalization creates a terrain where violence becomes routine, inconspicuous, and unquestioned.

- **Power and impunity**

Custodianship creates a unique power dynamic where officers have complete control over

⁷ (1997) 1 SCC 416; AIR 1997 SC 610

⁸ T. Franklin Murph's article on *Subculture of Violence Theory*,

individualities who are insulated, vulnerable, and unfit to rebel. For some officers, this absolute power becomes intoxicating, and its exercise through violence becomes a source of particular satisfaction or dominance. When combined with the knowledge that responsibility is doubtful, this power dynamic enables the worst abuses.

- **Stress and Frustration**

Police work is constitutionally stressful, involving long hours, dangerous situations, and exposure to trauma. Officers may take out their frustrations on detainees who are safe targets for their outrage. Poor working conditions, low pay, and lack of support services contribute to this dynamic, turning police stations into pressure cookers where detainees come the release cock.

- **Group Dynamics and Peer Pressure**

Custodial violence is constantly a group exertion, with multiple officers participating in or witnessing abuse. Group dynamics can lead to escalation, as officers contend to demonstrate continuity or dedication. Observer goods mean that individual officers who might expostulate to violence remain silent because they believe someone else should intermeditate or sweat being ostracized. The presence of associates normalizes and encourages behaviour that an individual officer might not commit alone.

- **Lack of Legal Framework**

Despite indigenous guarantees against torture under article 21 (right to life and personal liberty), India lacks a specific, comprehensive anti-torture law that defines torture as a distinct lawless offense. The absence of analogous legislation means that custodial violence is fulfilled under general provisions of the Indian Penal Code, which weren't designed to address the unique dynamics of state-executed violence. likewise, India signed the UN Convention Against Torture in 1997 but has yet to confirm it, leaving a gap between international commitments.⁹

⁹ R. Bhattacharya, "Custodial Torture in India: An Unfinished Legislative Agenda," (2024) 66(2) Journal of the Indian Law Institute 112, at p. 118

Case Analysis

- **D.K. Basu v. State of West Bengal¹⁰**

Legal Issue: Whether the absence of clear procedural guidelines for arrest and detention leads to custodial violence, and what safeguards are necessary to help torture in police guardianship.

Fact: D.K. Basu, the president of the Legal Aid Services in West Bengal, wrote a letter to the Chief Justice of India grounded on review papers pressing multitudinous cases of custodial violence where shamefaced officers went unpunished due to absence of rigid guidelines governing apprehensions. While this solicitation was being considered, another letter from Ashok Kumar Johri pressing the custodial death of Mahesh Bihari in Aligarh was attached to the proceedings.

Judgment: The Supreme Court issued comprehensive guidelines to help custodial torture that remain binding to this day. These include police officers must wear visible identification; an arrest memo must be prepared at the time of arrest and inked by a substantiation and the arrestee; family members must be informed of the arrest within 8- 12 hours; the arrestee has the right to inform a family member; a guardianship journal must be maintained; medical examination must be conducted at the time of arrest and every 48 hours during detention; and all documents must be transferred to the justice. The Court declared that custodial violence strikes at the rule of law and cannot be permitted in a cultivated society.

- ***Nilabati Behera v. State of Orissa*¹¹**

Legal Issue: Whether the State is liable to pay compensation for violation of abecedarian rights performing in custodial death, and whether autonomous impunity applies in similar cases.

Fact: Nilabati Behera's son was taken into police guardianship and was latterly set up dead with multiple injuries on his body. She transferred a letter to the Supreme Court seeking compensation for the custodial death of her son.

Judgment: The Supreme Court held that award of compensation in proceedings under article 32 is a remedy available in public law grounded on strict liability for violation of rights. The Court distinguished this from private law remedies in tort, establishing that the State cannot hide behind impunity when fundamental rights are violated. Compensation was awarded to the victim's mama, setting a pivotal precedent for financial relief in custodial violence cases.

¹⁰ *Supra* 5.

¹¹ (1993) AIR 1993 SC 1960; (1993) 2 SCC 746

Conclusion

In India, custodial violence is a serious betrayal of the constitutional guarantee that state authority will safeguard rather than destroy. Addressing custodial violence requires more than token administrative reforms or superficial inquiries. It demands a paradigm shift in the legal and institutional architecture grounded in the principles of transparency, accountability, and human dignity.¹² Widespread non-compliance with procedural safeguards, investigative failures stemming from police investigating their own colleagues, forensic systems that destroy or compromise evidence, procedural barriers like prior sanction requirements that shield officers from prosecution, and trials postponed for years until accountability is impossible are all found in the research, which reveals a systematic architecture of impunity built on multiple pillars.

The research paper is not conclusive, rather it is a call to action, to record, to support, to oppose, to quarrel to amend until the day when custody refers to legal detention rather than state terror, and when the response to the question “who interrogates the interrogator?” is not violence or silence but justice and law itself.



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¹² Sunil Kumar and Dhruv's article on *Custodial violence in India: Legal gaps and the quest for police accountability* published in *International Journal of Law, Policy and Social Review* Volume 7 Issue 2