

POLICE DEVIANCE

Human rights are the basic rights of every individual against the state or any other public authority as a member of the human family irrespective of any other consideration. Thus, every individual of the society has the inherent right to be treated with dignity in all situations including arrest and keeping in custody by the police. Rights of an individual in police custody are protected basically by the Indian Constitution and by various other laws like Code of Criminal Procedure, Evidence Act, Indian Penal Code and Protection of Human Rights Act. These rights are also recognized by various international documents like Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. In spite of these international and national legal standards for the protection of rights of persons in police custody, human rights violations in police custody are endemic in India and are tarnishing the image of India abroad. Since the police play a vital role in a democracy not only with respect to maintenance of law and order but also in dealing with the rapid increase of crime rates in the criminal justice system, policy of police must strive to attain objectives like fairness, consistency, tolerance of minority views and other values which are inherent in a society. Being the visible symbol of state authority, police should see that their actions are not affecting the liberty and freedom of individuals and not infringing the basic human rights values of the suspects in custody, while fulfilling the avowed objectives of prevention and investigation of crimes. There are frequent instances where the police, who are entrusted with the duty to enforce law and order, are violating the human rights. It is an admitted fact that when the police interrogate suspects in a crime, they employ third-degree methods. It includes torture either by not recording the arrest or deprivation of liberty in the guise of a prolonged interrogation. Experience shows that during the course of investigation, worst violations of human rights take place. Police is, no doubt, under a legal duty and has legitimate power to arrest a criminal, to interrogate him during the investigation of an offence but it must be remembered that the law does not permit use of third-degree methods and torture of accused in custody during interrogation and investigation of the crime.

The term 'police' are defined as the civil force of a State, responsible for maintaining public order. The term 'police officer' would include any member of the police force appointed

or deemed to be appointed under the Kerala Police Act. The term should not be construed in so wide a sense as to include persons on whom only some of the powers exercised by the police are conferred.

The term 'custody' is defined neither in procedural nor in substantive laws. The word custody means protective care.⁸ The expression 'police custody' as used in sec. 27 of Evidence Act does not necessarily mean formal arrest. It also includes some form of police surveillance and restriction on the movements of person concerned by the police. Thus, a man may be in custody without having been formally arrested. Custody includes a state of affairs in which the accused can be said to have come into the hands of the police or have been under some form of police surveillance or restriction on the movements by the police. Courts have extended the meaning of the term 'custody' in its strict sense to include a situation where the detenu may have been called to the police station for the purpose of interrogation and from the time that a person is placed under arrest. In other words, custody commences from the moment the person affecting the custody exercises some legally physical control over another. The accused even after his remand to judicial custody can, subject to his right to silence, be questioned by the police with the permission of the Magistrate in any place and manner which do not amount to custody in the police. Police custody commences when a Police Officer arrests a person by actually touching or confining his body or when the accused submits to the custody by word or action or offers to give information leading to discovery.

Custody means more than possession, it means care. When a judge grants 'custody' over an offender to the correctional authority, he is at once declaring that the correctional authority has power over the offender and that this must be used to promote the health of the offender.

The term arrest is highly comprehensive which consists of arrest made by an authority competent to do it and that made under the order of the criminal or civil court. Custody commences, when the police use its power to detain an accused or suspect in which the element of arrest may not be present. Police very often use the term 'apprehension instead of arrest', whenever they investigate the cases. But the field study shows that person taken in to custody do not feel any difference between arrest and detention.