

Bill No. 106 of 2021

THE INDIAN EVIDENCE (AMENDMENT) BILL, 2021

By

DR. D. RAVIKUMAR, M.P.

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BILL

further to amend the Indian Evidence Act, 1872.

Be it enacted by Parliament in the Seventy-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Indian Evidence (Amendment) Act, 2021. Short title and commencement.

5 (2) It shall come into force on such date, as the Central Government may, by notification in the Official Gazette, appoint.

1 of 1872. 2. After section 114A of the Indian Evidence Act, 1872 the following section shall be inserted, namely:— Insertion of new section 114AA.

10 “114AA. (1) In a prosecution for an offence constituted by, or in any proceedings arising out of in connection with, an act alleged to have caused injury to a person, if there is evidence that the injury was caused during a Presumption as to custodial violence.

period when that person was in the custody of any police officer or police officers, the court shall presume that the injury was caused by such officer or officers having custody of that person during that period.

(2) The court, in considering whether or not such presumption under sub-section (1) is rebutted, shall have regard to all the relevant circumstances, including, in particular, 5

(a) the period of custody;

(b) any statement made by the injured or the victim as to how the injuries were received, being a statement admissible in evidence;

(c) the evidence of any medical practitioner who might have examined the injured or the victim as the case may be; and 10

(d) evidence of any magistrate who might have recorded the victim's statement or attempted to record it.

Explanation — For the purpose of this section, the term 'custody' includes custody lawfully obtained and otherwise." 15

STATEMENT OF OBJECTS AND REASONS

Despite thirty six years of the recommendation of the 113th Report of the Law Commission on the Injuries in Police Custody, no effort has been made to implement the recommendations that would help deter and prevent custodial violence. As a result, incidents of custodial violence have increased and a culture of impunity has only been reinforced by the continuation of the *status quo*. The people who are victims of custodial violence are often the poor and those who are dalit, adivasi or religious minorities.

This Bill attempts to carry out the recommendations of the Law Commission with a few notable changes. Firstly, the proposed amendment to Evidence Act, 1872 for the presumption of custodial violence applied only to criminal proceedings. It is proposed herein that such a presumption also applies to civil proceedings in case victims or their families desire to bring tort claims against the State or against its officials. Secondly, the Law Commission recommended that the term custody required no explanation. However, it is felt that in order for predictability of judicial outcomes, it is necessary that the explanation is added to include custody obtained through unlawful means (or means that are declared unlawful post-facto).

Lastly, the Law Commission in its report recommended that the presumption shall be at the discretion of the Court. That has been changed to a mandatory presumption, but rebuttable by other evidence. This change is again for the consistency and predictability of judicial outcomes.

Hence this Bill.

NEW DELHI;
July 5, 2021.

D. RAVIKUMAR

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further to amend the Indian Evidence Act, 1872

(Dr. D. Ravikumar, M.P.)