



FROM VIOLENCE TO ACCOUNTABILITY: REGULATION OF POLICE BRUTALITY IN INDIA

AUTHORS – DISHA CHATTERJEE, RHIANNE REUBEN STEPHEN & SNEHAL EKKA, STUDENTS OF CHRIST (DEEMED TO BE UNIVERSITY), LAVASA, PUNE

BEST CITATION – DISHA CHATTERJEE, RHIANNE REUBEN STEPHEN & SNEHAL EKKA, FROM VIOLENCE TO ACCOUNTABILITY: REGULATION OF POLICE BRUTALITY IN INDIA, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 4 (2) OF 2024, PG. 248-254, APIS – 3920 – 0001 & ISSN – 2583-2344.

ABSTRACT:

India is the largest democracy in the world, boasting a robust civil society, an autonomous judiciary, and a robust media. Although the Indian constitution clearly outlines a number of essential rights to support the human rights accorded to all citizens, its organs have failed to carry them out, raising severe concerns about India's human rights record. The complexity of human rights in India stems from the nation's size and population, pervasive poverty, rich cultural diversity, and dearth of many basic amenities like healthcare and education. The Indian police system now in place is one of the primary factors raising major concerns about India's human rights situation. Reforms to the Indian Police force are necessary to prevent thousands of citizens' human rights from being infringed. The current Police force serves the interests of prominent politicians over those of everyday people. Police frequently overstep their bounds and purposefully violate the human rights of defence-less bystanders.

Keywords: Police Brutality, police, Human Rights

INTRODUCTION:

Originating from the Latin word "politia," which itself comes from Ancient Greek, the English word "police" was derived from the Middle French word "police." In general, the word "police" refers to a public servant or an organisation that enforces the law, with the main objective being to maintain public order. The term "police" is also defined in Section 1 of the Police Act of 1861, which states that "the word police" will encompass all those who will be chosen in accordance with this Act. India consists of eight union territories and twenty-eight states. List II of the 7th Schedule, or state list, is where "Police" are listed according to article 246 of the Indian constitution. This implies that state governments are limited to enacting laws that control and oversee the police inside their borders.

In India, which has a quasi-federal system, the

central government also has a significant impact on police appointments made by UPSC. An Indian Police Service senior officer (IPS) is chosen by the national administration. Even different forms of paramilitary groups like the Central Reserve Police. The central government regulates both the Force and the Border Security Force. The police are well-known worldwide for their crimes and brutalities against suspects, undertrials, and detainees who are either arrested or taken into police stations or lockups under their control without a warrant. The Indian police force is the main topic of this essay. In the globe, India may have the greatest rate of police brutality. The guardians of the law treat the suspects with physical and psychological pressure.

In India, police consider themselves to be so powerful that they may carry out the duties of the courts, finding a suspect or undertrial guilty

while they are in custody. The police's lack of accountability was one of the primary causes of any rights being violated while they were performing their duties. According to Section 197 of the CrPC, police are exempt from responsibility. According to Amnesty International's annual report, police continue to subject people to various forms of torture, including rape, severe physical harm, mistreatment, false detention, and a host of other offences included by the Indian Penal Code, 1860.5. For many years, India has been a country where suspects are frequently tortured physically and psychologically. These thugs wearing police gear don't spare anyone. Numerous studies conducted in this area show that the police use a variety of physical torture techniques, including rape. At its worst, these physical abuses cause hundreds of innocent individuals to die while they are in custody, violating their human rights. There are still alarmingly high rates of mortality in custody around the country. Andhra Pradesh has the highest number of documented custody deaths—27. It offered a way to hold police officials responsible for any wrongdoing. The National Human Rights Commission was the most significant of these. It was founded in 1993 and granted a number of significant authority to control police behaviour and stop human rights violations.

Police misconduct encompasses a wide spectrum of actions, ranging from excessive use of force, custodial torture, extrajudicial killings, to corruption and neglect of duty. Such behavior violates the fundamental rights and dignity of individuals and undermines the rule of law.

HISTORY AND EVOLUTION:

The historical evolution of policing in India dates back to ancient times, as evident from references in Vedic texts like the Rig Ved and Upanishads, mentioning officials like Jivagribhs and Ugras who fulfilled policing roles. During the reign of various rulers such as the Mughals, a

structured system of policing existed, employing officials like Subhedars, Foujdars, Thanadars, and Kotwals to carry out policing functions, continuing the indigenous village policing system.

The establishment of civil and criminal courts occurred under the rule of the Great British Raj. In 1775, the Britishers set up Foujdari Thanas and Chowkies, and in 1861, the enactment of The Police Act served as the substantive law governing policing. Additionally, the Railway Police was formed in 1866, and the Delhi Special Police Establishment Act in 1946 aimed to investigate offenses related to bribery and corruption. Post-Independence, several legislations further shaped policing in India. Acts like The CRPF Act, 1949, The Kerala Police Act, 1960, The Mysore Police Act, 1963, and The Police Forces (Restriction of Rights) Act, 1966 were promulgated to regulate various aspects of police forces. In 1951, the All India Services Act (LXI of 1951) was enacted, establishing the Indian Administrative Service (IAS) and the Indian Police Service (IPS) as All India Services, setting the foundation for a centralized administrative and policing structure in the country.

WHAT COUNTS AS POLICE BRUTALITY?

Police brutality refers to aggressive or violent actions by law enforcement officers, including illegal detention, extrajudicial killings, physical assault, custodial violence, rape, coercion for confessions, etc. Recent instances of police brutality have gained widespread attention through mass media. The increase in such incidents could be attributed to the absence of explicit anti-torture legislation in India. Additionally, lack of awareness among citizens about their rights often leads to fear of the police. However, the challenges arise when seeking accountability and punishment for such actions, as the courts face obstacles and fail to deliver justice due to several reasons.

In India, police brutality encompasses a range of actions by law enforcement officers that violate human rights, exceed legal authority, or involve the excessive use of force against

individuals. Here are some specific instances that count as police brutality in India:

1. **Excessive Use of Force:** Unjustified or disproportionate force by police officers during arrests, protests, or interactions with individuals, resulting in severe injuries or fatalities.
2. **Custodial Violence and Torture:** Physical or psychological abuse inflicted on individuals in police custody, aiming to extract confessions or information, leading to injuries, trauma, or death.
3. **Extrajudicial Killings:** Unlawful killings carried out by law enforcement without due legal process, often termed as encounters, sidestepping legal procedures and denying the right to a fair trial.
4. **Corruption and Misuse of Power:** Abuse of authority for personal gain, including bribery, extortion, planting false evidence, or framing individuals with false charges.
5. **Neglect of Duty:** Failure to fulfill responsibilities, such as delayed or no response to complaints, overlooking crimes, or failing to protect citizens' rights.
6. **Discrimination and Harassment:** Targeting individuals based on caste, religion, ethnicity, gender, or socioeconomic status, leading to harassment, intimidation, or wrongful detention.
7. **Sexual Assault or Harassment:** Instances of sexual abuse, assault, or harassment committed by police officers, particularly against vulnerable groups.
8. **Violation of Due Process:** Ignoring legal procedures and human rights safeguards, including illegal detentions, denial of legal representation, or conducting unlawful searches.
9. **Unlawful Arrests and Detentions:** Arresting individuals without proper legal grounds, often leading to prolonged detention without formal charges or a fair trial.
10. **To Protect Failure and Serve:** Neglecting

the duty to protect citizens, allowing or participating in instances of mob violence, communal conflicts, or failing to intervene in situations requiring law enforcement to maintain peace and order.

These instances highlight the diverse forms of police brutality in India, infringing upon the rights and dignity of individuals and challenging the principles of justice and rule of law. Addressing and preventing police brutality require comprehensive reforms, stringent accountability measures, and a commitment to upholding human rights within law enforcement agencies.

Instances of Police Brutality in India are as follows:

1. **P.Rajan's Case:** It was one of the most well-known episodes during the Emergency and became a symbol of excesses in general and police brutality particular Kerala. It was the topic of literature and even Shaji Karun's film Piravi. During a time when civil liberties were suspended and the media was banned, the story of P. Rajan, an engineering student who was arrested by the police for a crime in which it was clearly verifiable he had no role in, and then tortured and killed, demonstrated the depths of State brutality. Rajan's body was never discovered. However, his father's spirit of truth-seeking was so strong that, despite the police's denials after taking the young person into custody, the High Court of Kerala stated in an April 1977 order in response to a habeas corpus petition he filed that there was enough evidence to support the court's conclusion that this had in fact occurred.

2. **Nilabati Behra Case:** The Nilabati Behra vs State of Orissa case is a significant milestone in Indian legal history for its comprehensive examination of custodial deaths and the infringement of the fundamental right to life and personal liberty (Article 21). The case stemmed from a tragic incident that occurred on January 31, 1987, involving the arrest of Suman Behera by the police in connection with

a theft case.

The following day, Suman Behera's body was discovered by his mother, Nilabati Behera, on a railway track about a kilometer away from the police station. An unnatural death case was registered, and a post-mortem examination revealed multiple injuries caused by hard and blunt objects. Distraught and seeking justice for her son's death allegedly due to torture in police custody, Nilabati Behera approached the Supreme Court via a writ petition under Article 32 of the Indian Constitution. She sought compensation, contending that her son's demise resulted from injuries sustained while in custody, as evidenced by the post-mortem report.

The state, however, refuted any wrongdoing, claiming that Suman Behera had escaped custody and accidentally died after being hit by a train. The case involved examining issues related to the violation of Article 21, the state's responsibility in safeguarding the rights of individuals in custody, the right to compensation for breaches of fundamental rights, and the concept of state immunity in such circumstances. The Supreme Court's judgment conclusively established that the constitutional rights to life and personal liberty of Suman Behera, protected under Article 21, were infringed. The court affirmed that the state bears a duty of care towards individuals in its custody, and any failure resulting in the loss of life amounts to a direct violation of the constitutional right to life.

3. Rudul Shah V. State of Bihar (1983): In this case, the petitioner was detained for over 14 years after his acquittal by the Court. The petitioner sought compensation for his illegal detention. The Supreme Court ruled that the detention was wholly unjustified and ordered the Bihar Government to pay a sum of ₹30,000 and ₹5,000.

REMEDIES AVAILABLE AGAINST POLICE BRUTALITY:

To combat Police misconduct, it's crucial for individuals to be aware of their rights, particularly

those outlined under Article 21 of the Indian Constitution when faced with an arrest. Various sections of the Code of Criminal Procedure (CrPC) also safeguard these rights:

1. **Section 41 of CrPC:** An arrest without reasonable suspicion of involvement in a cognizable offence is illegal.
2. **Section 46 of CrPC:** Specifies the correct procedure for arrest, including the involvement of female officers for arresting women and restrictions on arresting women between 6 pm to 6 am, except in exceptional circumstances.
3. **Section 49 of CrPC:** Emphasizes using only necessary restraint to prevent escape during an arrest.
4. **Section 50(1) and (2) of CrPC:** Ensures that an arrested person is informed of the grounds for arrest and their right to seek bail immediately.
5. **Section 51 of CrPC:** Allows police to search an arrested person, but it must comply with the constitutional protection against self-incrimination.
6. **Section 54 of CrPC:** Mandates a compulsory medical examination by a medical officer after arrest, with a female officer examining female arrestees.
7. **Section 57 of CrPC:** Limits police detention to 24 hours and necessitates a prompt judicial review by a magistrate.
8. **Article 22(1) of the Constitution:** Guarantees the right of the arrested person to consult and be defended by a counsel of their choice, while the police are required to inform the accused about available legal aid facilities.
9. **Section 29 of the Police Act, 1861,** addresses the issue of violence perpetrated by police officers against individuals in custody. If found guilty, the officer may face penalties or imprisonment for up to three months.
10. **Section 31** outlines the responsibility of a police officer to maintain peace and order in

public areas like roads, streets, or other places. Disobeying a police officer's orders in such situations can result in a fine of up to ₹200

11. Under **Section 34**, a police officer is empowered to apprehend an individual without a warrant if they commit specific offenses listed in eight clauses. These offenses include acts such as slaughtering cattle, obstructing passengers, engaging in indecent exposure, being intoxicated, or participating in a riot.

12. **Section 43** safeguards acts performed under a warrant signed by a Magistrate, ensuring legal protection for actions carried out under such authorization.

Remembering the aforementioned laws, if there is enough evidence, one can anticipate receiving recompense. It is also possible to file a complaint with the State and National Human Rights Commissions. The Protection of Human Rights Act of 1993 established it. Under the Indian Penal Code, 1860, a party who feels wronged may file a criminal complaint against the offending police officers. Finally, the police officer may be disciplined or summoned for a disciplinary hearing to address their inappropriate behaviour. Furthermore, based on the officer's wrongdoing, the review board has the authority to suspend, fire, or reduce the officer's pay. The corresponding state enactments contain the relevant laws.

Recommendations of NHRC: 1. **Independence from Political Influence:** Urged for measures to shield police authorities from political pressures to ensure impartial and just administration.

2. **Establishment of Police Security and Integrity Commission (PSIC):** Proposed the creation of a State-level body, PSIC, focused on enhancing police quality. PSIC would handle cases where officers face unlawful directives from superiors, aiming to maintain integrity within the police force.

3. **Formation of District Police Complaints Authority:** Advocated for the establishment of a non-statutory body, the District Police

Complaints Authority. This body would be responsible for addressing public complaints related to the misuse of power by police officers at the district level.

What can the constitutional courts of our land do to eradicate this evil practice from the country?

Constitutional courts indeed possess the authority to take substantial steps to address police brutality. Here are some measures that courts can implement to mitigate cases of police misconduct:

1. **Installation of Cameras:** Courts can mandate the placement of cameras in police stations. The footage should be regularly reviewed by a competent authority to assess the behavior of personnel towards complainants and ensure accountability.

2. **Enforcement of Court Orders:** Police officers failing to comply with court orders should face penalties, including imprisonment or other measures that reinforce the duty to obey judicial directives.

3. **Maintenance of Station Diary:** Courts can require police personnel to maintain a detailed station diary, regularly submitted to the district complaints authority. This ensures cross-verification between recorded footage and diary entries.

4. **Complainant Enquiries:** Regular inquiries into complainants' experiences with police officers can be conducted to safeguard society against instances of police brutality.

5. **Promotion of Awareness:** Courts can establish stringent provisions to promote awareness among individuals about their rights when dealing with police officers.

6. **Mandatory Body Cameras:** Police officers transporting accused individuals should carry body cameras that cannot be turned off. The recorded footage must be preserved until the case is adjudicated by the court, ensuring transparency and accountability.

Implementing these measures would

significantly enhance oversight, accountability, and transparency within law enforcement, consequently reducing incidents of police brutality and protecting the rights of individuals interacting with the police.

COMPARISON BETWEEN POLICE BRUTALITY LAWS IN INDIA AND INTERNATIONAL CONVENTIONS:

In India, laws regarding police brutality and the protection of human rights are primarily governed by domestic legislation like the Indian Penal Code, Criminal Procedure Code, and various other state-level laws. However, there are international conventions and standards that outline guidelines and principles concerning police brutality and human rights. Here's a comparison between Indian laws on police brutality and some key international conventions:

Indian Laws on Police Brutality:

- Indian Penal Code (IPC) and Criminal Procedure Code (CrPC): Sections within these codes deal with offenses related to excessive force, custodial violence, torture, and other forms of police misconduct.
- National Human Rights Commission (NHRC): While not a law, the NHRC addresses human rights violations, including those related to police misconduct, and recommends actions for redressal.
- Judicial Pronouncements: Landmark judgments by Indian courts, like the D.K. Basu case, have laid down guidelines for arrest, detention, and the prevention of custodial torture.

International Conventions and Standards:

- Universal Declaration of Human Rights (UDHR): Article 5 prohibits torture and cruel, inhuman, or degrading treatment, emphasizing the right to freedom from torture and abuse.
- International Covenant on Civil and Political Rights (ICCPR): Article 7 protects individuals from torture and cruel, inhuman, or degrading treatment or punishment.

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT): Sets standards and defines torture, obligating signatory nations to prevent torture and investigate allegations of torture impartially.

Comparison:

- Scope and Coverage: International conventions offer broader principles safeguarding against torture and inhuman treatment, while Indian laws focus on specific offenses related to police brutality.
- Enforcement and Compliance: International conventions provide frameworks for member states to implement and comply with these standards, while Indian laws are subject to domestic enforcement mechanisms and the effectiveness of institutions like the NHRC and the judiciary.
- Specificity and Definitions: Indian laws often provide specific provisions on various aspects of police misconduct, while international conventions set broad principles without specific domestic legal details.
- Oversight and Accountability: International conventions emphasize the need for independent oversight and accountability mechanisms, encouraging investigations and prosecutions, similar to the NHRC's role in India.

CONCLUSION:

Police brutality is a grave offense committed by authorities, and constitutional courts hold significant power to address it effectively. Court directives should be mandatory for police compliance, and failure to adhere to these directions should result in severe penalties and terminations. Legislative measures, including the enactment of laws specifically targeting brutal acts and an anti-torture law by the Central government, are necessary.

Instances of police brutality, escalating from beatings and illegal detentions to incidents of rape and fatalities, are escalating, necessitating

immediate measures and directives from the legislature to curb these unlawful occurrences. Every police station should install CCTV cameras, and the recordings must be presented to an authorized body for scrutiny to ensure adherence to laws within police stations.

Establishing an authority that holds the station in-charge accountable for actions occurring in their police station is imperative. A thorough review of existing laws and a comprehensive investigation are essential to uphold the rule of law in India and safeguard citizens from the scourge of police brutality.

REFERENCES:

1. <https://thewire.in/politics/remembering-rajnath-kumar-the-innocent-victim-of-brutal-emergency-excesses>
2. <https://lawplanet.in/nilabati-behera-vs-state-of-orissa-1933/>
3. Nilabati Bahera v. State of Orissa - BareLaw
4. <https://edition.cnn.com/2020/12/02/india/police-brutality-india-dst-intl-hnk/index.html>
5. <https://legodesk.com/legopedia/police-misconduct-and-laws-against-it-in-india/>
6. <https://www.lawcolumn.in/police-brutality-an-infringement-of-human-rights-in-india/>
<https://thewire.in/government/it-is-the-need-of-the-hour-to-understand-police-brutality-in-india-and-take-action>

GRASP - EDUCATE - EVOLVE