

LEGALFOXES LAW TIMES

POLICE BRUTALITY

By Sandhiya R and Priyanka J

**“I object to violence because when it appears to do good,
the good is only temporary; the evil it does is permanent.”**

-Mahatma Gandhi

INTRODUCTION:

Few months ago, there was a deplorable mishap, where a father-son duo who was indicted for keeping their shops unlocked thereby breaching the prescribed lockdown deadline. It is evidently obvious to every single person in and around, about the arrest and the subsequent agony where blood oozed from their rectums, pain that rushed through the veins, voice that stumbled to even stand up for their personal esteem. It goes without saying wherein this happened just as a replica and a clear indication of “police brutality”.

There was another notable occurrence, where four men who were accused of gangrape of a Veterinary doctor in Hyderabad were shot dead by a police and the entire nation was in cloud nine that the justice was upheld. But being a serious admirer of Indian Law, who sincerely want this society to have their move on the procedural framework that had been followed long since, we on a deep sense appraise this (encounter and the momentum it gained) , an unnoticed side of police brutality.

“We, as a country, will now be told that ‘justice’ has been done,

the victim avenged...

but this justice is ‘counterfeit’

-The All India Progressive Women’s Association.

Here in this context we will examine brutality in its common as well as wider sense to ultimately bring out the loop holes and the setbacks, the Indian Legal System is yet to pull through.

DEFINITION CLAUSE:

Police Force:

The official organization, obliged to ensure that people obey the law, and to prevent and find the key to decode the crime.

Brutality:

The excessive or unnecessary use of force often unwarranted and illegal which a privileged sect of society gets to grip with and preside over the relatively deprived sect.

POLICE BRUTALITY:

In a democratic country, like India, where we like to owe reverence to division of power and have an innate bond on the concept that “Absolute power corrupts absolutely”, it stands a heart aching feel when police often take law in their hands and try to erode the very nature of our constitutional setup.

Brutality or cruelty is something that is omnipresent. But when cops are accused of brutality they often shell themselves taking a more comfortable and justified stand that whatever they do is according to their protocol (i.e. to maintain law and order).

HISTORY:

“History is the version of past events, that people have decided to agree upon”

-Napoleon Bonaparte

The concept of police in India had its well defined stimulus by the virtue of the Police Act, 1861 for the regulation of police class. It’s preamble instigates to make police, a more efficient instrument for the prevention and detention of crime. From then, the world has witnessed a lot

of instances which throws a lime light on police brutality. Here are some infamous affrays that the Indian soil has encountered:

- 13th April 1919- The **Jallianwalabagh massacre**, also known as Amritsar massacre where police killed at least 400 and injured over 1600.
- 12th December 1930- **Bombay Cotton Mill worker** Babu Genu Said was crushed by a truck at the order of police. He was an active protestor, against the import of foreign made cloth whose death resulted in rivals, strikes and protests throughout Bombay.

LEGALHUB:

“A right is not what someone gives you;

It’s what no one can take from you.”

-Ramsey Clark

The frame of the society gives a lot of power to the ruling class (here the police). Yet it is of no doubt that the people in common are envisaged with even more rights for their survival with self-esteem and dignity.

Though the concept of whether the criminals actually need rights and dignity serves a salient question...!?

“Criminal Once” need not necessarily be pointed as “Criminal Always” serves an apt answer to this question.

Kick starting from trivial issues like hand cuffing to bulk issues like encounters, here are the rights and provisions that the Indian Legal framework guarantees its people:

❖ CONSTITUTIONAL VALIDITY:

Article 246:

Article 246 of the Indian Constitution, propounds that police force comes under the purview of state list. Each State and Union Territory will have its own separate police force. Each State government will frame the rules and regulations for its police force.

Article 21:

Article 21 of the Indian Constitution lays out a bright lime light on the rights of persons arrested, under trial and even the convicts. In a democratic country, whether it be a pin or a mountain everything should be done “in and by the procedure established by law”. The powers of police force to arrest are subjected to certain restrictions. The judicial oversight safeguards the fundamental right to life of all persons under Article 21 of the Indian Constitution. This shows that both the accused and the convicts have rights to utilize.

In **People’s Union for Civil Liberties vs. Union of India**¹, The honourable Supreme Court held that murdering of two persons in sham encounter by the police was explicit violation of the right to life; thus awarded Rs. 1,00,000 as compensation for each deceased.

Article 22:

Article 22(1) and Article 22(2) of the Indian Constitution grants four rights to the arrested or detained person.

- i. He shall not be arrested or detained without being informed about the grounds of his arrest.
- ii. He shall not be denied to consult a legal practitioner of his choice.
- iii. Every person who has been arrested has the right to be produced before the nearest Magistrate within 24 hours.
- iv. The person is not to be detained beyond the prescribed 24 hours without the authority of court.

Article 22(3) of the Indian Constitution acts as an exception. The fundamental rights conferred upon the arrested or detained persons do not apply to:

- a) the person who is enemy alien
- b) persons who are arrested or detained under certain law which is made for providing ‘Preventive Detention’

Article 20:

¹People’s Union for Civil Liberties vs. Union of India AIR (1997) SCC 56

Article 20 of the Indian Constitution provides for protection in respect of offences. It puts forth certain shelters to the person accused.

i. Expost facto laws [Article 20(1)] :

No conviction for any offences except for violation of law in force at the time of commission of it. No penalty greater than that which might have been inflicted under the law in force at the time of commission of the offence.

ii. Double Jeopardy [Article 20(2)] :

No punishment for the same offence more than once.

iii. Freedom from Self-incrimination [Article 20(3)]:

No self-incriminating testimonial compulsion of the accused.

Landmark Judgments:

Prakash Singh vs. Union of India²

(Police Reforms in India – Landmark judgment)

The honourable Supreme Court has given specific rules and regulations to the central and state governments to effectuate structural variation in police, in order to wrap it from extrinsic pressures and making it accessible to the public.

National Police Commission was established in 1978 is the first committee after independence which gives directions about Police Organizations, it's role, functionality, accountability, relationship with the public. It produces 8 reports in which Model Police Act, 2006 is the major one. The core which the Model Police Act insist is to give respect for and promotion of human rights of the people.

Nilabati Behera vs. State of Orissa³

The Petitioner's son who was accused for theft was found dead on the very next day in a railway track, with several injuries which clearly indicated it, an unnatural death. The Supreme Court awarded compensation to the petitioner on the ground of 'Custodial death'.

²Prakash Singh vs. Union of India AIR(2006) 8 SCC 1

³Nilabati Behara vs. State of Orissa AIR (1993) SC 1960

JoginderKumar vs. State of Uttar Pradesh⁴

The Honourable Supreme Court held that arrest should not be made except for monstrous offences and to have someone informed of the arrest and consult privately with the lawyers.

D.K. Basu vs. State of West Bengal⁵

The Honourable Supreme Court held that Custodial Violence including torture and death in lockups and custody is violative of the Rule of Law. The Supreme Court provided with the guidelines to be followed by the police while arrest and detention:

- The Police Personnel executing the arrest and conducting the interrogation or investigation of the arrestee should bear accurate, visible and clear identification and name tags of their designations. The specification of all such officials who carry out the investigation or interrogation of the arrestee or detainee must be recorded in the register.
- The Police Officer executing the arrest of the arrestee shall draw up a memo and such memo shall be attested by atleast one witness who may be either a member of the arrestee's family or a reputable person of the locality where the arrest is made.
- Any person known to the arrested, detained or the person in custody shall be entitled to know about the arrest.
- Inspection Memo- The time, place of arrest and venue of custody of an arrestee must be notified 'to the person known to him lives' by the police. Through Legal Aid Organization in the District, such information should be transmitted by telegraph within 8-12 hours after the arrest.
- The arrestee should be subjected to medical examination by the physician, every 48 hours during his detention in custody by approved doctors.
- Copies of all documents comprising of arrest memo, inspection memo, medical examination should be sent to the magistrate for his record.
- The arrestee must be allowed to meet his lawyer during interrogation.
- The police control room should be and at all State and District headquarters.

⁴Joginder Kumar vs. State of Uttar Pradesh AIR (1994) SC 1014

⁵D.K.Basu vs. State of West Bengal AIR (1997) 1 SCC 416

❖ CRIMINAL PROCEDURE CODE , 1973

Warrantless Arrest:

Section 41: Affords a lot of powers to the police, where they can arrest persons without even a warrant for any cognizable offence, or on reasonable suspicion and so on. But this doesn't unanimously put them in a dominant position. The accused person do have the rights to know about the grounds of such arrest, mentioned in the aforesaid section.

Section 45: Members of armed forces cannot be arrested for discharging their duties, unless prior permission from the central government has been obtained.

How to arrest:

- The police officer can touch or confine the body of the person to be arrested unless there is a submission to the custody by word or action.
- If the person to be arrested resists himself from arrest or tries to evade, such police officer can use all means necessary to effect the arrest. The arrest shall involve only reasonable force when the arrestee tries to escape or restrains from getting arrested.
- Nothing applies to cause death of person who isn't accused of offence punishable with death or life.

Special provision for women:

Section 46(4): When the arrestee is a woman, the police officer should always be a female, and such police officer shall not touch the person of the woman for making an arrest and arrest would be presumed on her submission to custody on oral intimidation. No arrest 'after sunset and before sunrise', except under exceptional circumstances and only with the prior written permission from the local magistrate.

Gratuitous detention:

Section 49: No unnecessary restraint of the arrested person to prevent escape i.e. the arrestee shall not be subjected to more restraint than necessary to prevent him/her from getting escaped.

Rights to perceive:

Section 50(1): The person accused and arrested has full rights to know the ground on which he is arrested and it's the inherent duty of the police to disclose such particulars.

Section 50(2): In case of warrantless arrest except bailable offence, the police should inform the arrestee that he can be released on bail and also promise that he may arrange for sureties.

Section 51: The Police officer can make personal search of arrested persons, but they cannot compel him for Self-Incriminating Testimonial.

Section 55: It establishes the procedure to be followed when police officer deputed some other subordinate, to arrest without warrant. He must deliver to the officer required to make the arrest, an order in writing specifying the person to be arrested, the offence and cause for such arrest. Such subordinate officer should notify the arrested person about the causes and also if required by such person, should show him the order.

Section 75: Arrest with warrant: The police officer or the person executing the warrant of the arrest shall notify the substance thereof to the person to be arrested and if so required, show him the warrant⁶

Medical Examination:

Section 54: Bestows for compulsory medical examination by a medical practitioner in service under Central or State government, or any other registered medical practitioner if such officer is not present. Female arrestees should definitely be examined by only a female medical practitioner.

Section 57: Produce such arrestee before the magistrate within 24 hours of such arrest.

Khatri vs. State of Bihar⁷

⁶Foot Notes 4 & 5 i.e.

⁴Johinder Kumar vs. State of Uttar Pradesh AIR (1994) SC 1014

⁵D..K.Basu vs. State of West Bengal AIR (1997) 1 SCC 416

⁷Khatri vs. State of Bihar AIR (1983) SC 378

Free Legal Aid:

After being arrested, the accused has the right to consult and get defended by the legal practitioner of his choice. If he is too poor to do so, the society under the Rule of law has the duty to arrange for the counsel⁸

❖ HUMAN RIGHTS STANDARDS

“To deny people their human rights

is to challenge their very humanity”

-Nelson Mandela

Policing in democracies:

- The police shall furnish laws that shield the public safety and the rights of all persons.
- The police shall be a free-spirited frontier of the executive and shall be subjected to the superintendence of the courts and margined by their orders.
- The police officers shall discharge their duties, powers and functions as unbiased

servitors of the general public and government of the day.

- No police officer shall be stipulated or coerced to exercise their duties or powers or avail police resources to elevate or undermine any political party or interest group.
- In the exertion of their rights and freedoms, everyone shall be subjected only to such limitations as or determined by law.

Citizen's Corner - Non-Discrimination in Law Enforcement:

- All human beings are born free and equal in dignity and rights.
- Law enforcement officials are bound to effectuate the duty foisted on them by law, by serving the community and by guarding all persons against felonious acts.

⁸Law Commission of India, 14th Report, Vol. I, page 587-600

- Law enforcement officials shall pay homage to human dignity and nurture and uphold the human rights of all persons.
- In the course of fortifying and aiding the community, the police shall not unlawfully discriminate on the basis of language, colour, gender, religion, property, birth, political opinion or other status.

❖ THE INDIAN POLICE ACT, 1861

Sections 7 and 29 of the Indian Police Act, 1861 accord the penalty, dismissal or suspension of police officers who are reckless in the accomplishment of their allegiances. This sets up liability on those officers who infringe the constitutional and statutory guidelines.

WHY SO RUDE..?

Down the street, when there is clumsiness overloaded,

inspite of all censures

all if's and don'ts and

all bumbles

we definitely to ponder into the deep soils and unveil the truth. And this piece of work is best done only by a cop. So when we see a person's outlook at a large, we definitely need to mind about the circumstances, situations and more often the factors that made them of that sort.

Here, in this segment, we will talk about "off the record" side of police community that depicts them in such a denounced spot.

- **Surge of Psychological distress:**

"If you can't handle stress;
everything gets screwed up."

There are various grounds that influence their behaviour as a whole. The uninterrupted imposition of societal pressure to investigate, interrogate and illuminate the

crucial whereabouts of the crime, to maintain social stigma and lot more of this sort bumps them up with undeniably high work pressure.

On the other hand, the time constraint to finish up the case, the trial by media, the pressure by department or higher officials adds fuel to the fire which all together puts them in the peak of stress that ultimately drives their behaviour.

- **Physical strain:**

“Policing is a grunt work
which lurks a lot of physical strain”

Starting from ordinary health issues to heart problems, increased levels of destructive stress hormones, suicide and hence forth makes them physically weak as well. They argue that there are shifts and time records but they are only on papers. More often the job stress, long hours, low pay and lack of adequate grievance redressal stirs up their physical as well as mental strain where they end up in brutality.

They live under the shadow of their superiors forgetting their family whereby at the end they outburst all their agony on general public in the form of brutality.

- **Mental Examination Zone:**

There are certain factors that accelerate the mental state (i.e. the behaviour) of a police officer. They are:

- Situational
- Individual
- Organizational
- Community

“The face that the globe sees is not always our character

more often our behaviour gets

sprung from the plight we get exposed to..!”

Situational factor:

The behaviour of the police officers differs from human to human. The race, age, sex, outlook, caste, societal background is some of the key determinants that influence their behaviour towards both the convicts and the victims. Furthermore, the locus, number of bystanders, presence and amount of evidence and seriousness of the offence also plays a significant role.

Individual factor:

“Don’t trust any police officer

because they are trained not to trust you”

This is a sort of complicated concept where the education, training, investigatory procedures influence their individual behaviour to a wide extent. They always follow a suspicious routine because they are trained to do so. This greatly influences their character.

Organizational factor:

Workplace brings out two things:

Either You reflect yourself or

Your folk’s reflection influences you.

Staying, working and discussing on something that always invokes negative vibes, makes you get adapted to it. A long time practice becomes a habit which eventually changes your behaviour.

Community:

”Small acts, when multiplied by millions of people can transform the world”

-Howard Zinn

This is one undeniable factor which creates a greater impact upon their behaviour. Society rules the table and like a giant wheel, it sways the globe to its best and the worst. The escalation in crime rates itself inhabits a considerable amount of pressurized space in their work agenda. Adding to this, comes the media trial, territorial, political protection (like Bandobast),

demographic characters, more importantly the public expectation. These burry them deep inside and when they try to strike it big, they often loose temper which portrays them brutal.

Fatal Ends:

- March 7, 2018 – R. Sathish Kumar shoots himself due to heavy work pressure at Ayanavaram, Chennai.
- March 4, 2018 – Arunraj of Armed Reserve Wing of city police ends his life at Jaya Memorial.
- August 7, 2017 – Special SI Ashok Kumar attached to Pulianthope police station sets self on fire and dies.

REMEDIES:

“A single remedy can obliterate
hundreds of prescriptions,
thousands of scandals,
millions of reproaches.”

Here are some essential remedies and changes that the law needs to make this brutality endeavour to get faded of its traces.

- **High priority to the National and State Human Rights Commission's Recommendations :**

Laws that compel the State Government to follow the recommendations made by the HR Commissions should be enacted. As these recommendations are not mandatory it usually falls on deaf years. Strict imposition of HR recommendations should be made.

- **Serious scrutiny of the procedures followed:**

Indian Legal framework has built its castle in such a way that it strives too hard to be free from ambiguity. It provides with written laws and ensures that it binds all sorts of possibilities to eradicate vagueness. Whether it be constitutional provisions, Cr.P.C

provisions or any other Act in relation to this, the outlook is clear cut. But the field of execution lacks its supervision which increases the brutality regime.

- **Professional load:**

“Too much of anything
spoils everything.”

Lack of recognition, Peer pressure, Greater risk of being injured, Unequal work load, Upholding an impeccable image in public, Low-pay are some key issues that every police men face. This can be much reduced by additional number of police appointment, so that division of labour within themselves makes their work easier.

- **Capacitate booming laws:**

The police take great effort to catch, interrogative, investigate and unravel the truth. But the convicted in no time gets bail, comes out and commits the same crime again which would put the police to severe agitation.

Laws that impose striking punishments on the convicts and that makes the bailing procedures a bit complicated should be introduced to reduce crime rates, thereby stirring up the spirit of police officers.

- **Individual entity:**

Separate bureaucracy to track complaints lodged against police officer's use of excessive force. Most of the complaints are not openly made, which makes it hard to track. So, we need a separate independent bureaucracy to ponder upon those brutality complaints which can augment the public's belief and hope as well.

- **Regular Counseling:**

The Director-General of Police in Uttar Pradesh, boasted to Human Rights Watch,

“If you brought a US policeman here, he’d commit suicide within one day. Here you are literally thrown against the wall. We don’t have a shift of 8-10 hours, it is the system we have: we work 24 hours a day”

A survey that transpired a decade ago throws light on the long working hours – the reason for police cruelty which in turn led the way to ‘shift system’. This initiative failed to bear the sufficient fruits due to lack of fund to pay the more recruited police officers.

STATISCAL CORNER:

“Five custodial deaths daily”, says report – ‘The Hindu’

The National Crime Records Bureau (NCRB) disseminates data on the number of deaths that the year 2018 has witnessed with respect to police custody.

Custodial Death – States that ‘rules the table’:

Between 2014 and 2018,

- Maharashtra (78)
- Andhra Pradesh (70)
- Gujarat (52)
- Tamil Nadu (35)
- Uttar Pradesh (30)
- Madhya Pradesh (30)

elucidates 69% of the Custodial Deaths reported in the whole of India during those years.

Zero Police Convictions:

Between 2014 and 2018, 452 deaths were reported in Custody of which only 192 cases were registered and only 118 police officers were charge sheeted. The bitter reality is not even 1 from 118 were convicted during this period.⁹

“A report on 2019 exhibits 1606 deaths happened in Judicial Custody and 125 in Police Custody.”¹⁰ “Out of this 125 deaths in Police Custody, UP topped with 14 deaths, followed by Tamil Nadu and Punjab with 11 deaths each and Bihar with 10 deaths. The States like Madhya Pradesh, Gujarat, Delhi and Odisha stands the next.”¹¹

CONCLUSION

There has been increase in police brutality over the last few decades. When the police personnel, who are obliged to safeguard the people and preserve law and peace, overindulge in felon-like behaviour, it brings a great infamy and discredit to their uniform and law. When a human's behaviour appears brutal we call him an 'animal'. But it is an irrefutable fact that humans are the only animals who manifest brutality. The people who look on and do nothing will be accounted more for a crime, than the people who actually do it. Watching something, doing nothing adds on to the main stream commotion. So now raise your voice up, and this time in a bold and even more bright-eyed and bushy-tailed way.

“Not for special status;

LEGAL FOXES

Not for opulent life-style;

“OUR MISSION YOUR SUCCESS”

Not for virtuous leaders;

Not for immaculate society;

But just to get rid of the pangs of agony of being slaves

and

to quench the thirst of 'JUSTICE'.”

* * *

⁹The Annual Crimes in India ncrb.gov.in/en/crime/india

¹⁰India Annual Report on Torture 2019 uncat.org/wp-content/uploads/2020/06/INDIATORTURE2019.pdf

¹¹National Campaign against Torture uncat.org