

LEGALFOXES LAW TIMES

POLICE BRUTALITY – NEED FOR POLICING THE POLICE

By SURYA PRAKASH and MONALISA MUKHERJEE

ABSTRACT

Physical violence against detainees in police custody by the agents of law is prevalent in some form or other across the world. This paper presents a critical review of brutality committed by police personnel against detainees in police custody that is in police lock-ups at police stations in India. Police severity is an extraordinary type of police viciousness including physical damage or passing to an individual or creature. Widespread police exist in several countries and territories, even people who prosecute it. Although an illegal act can be performed under the system of law. Such brutality in India takes the forms of torture, third degree, rape, as well as custodial death resulting from physical violence.

LEGAL FOXES

"OUR MISSION YOUR SUCCESS"

KEY WORDS: India, Police brutality, Physical violence, Illegal

LIST OF ABBREVIATIONS

- CHOWKI – A police station or Thana
- CIRCLE OFFICER – Officer in charge of a police circle, which consist of few police stations
- FIR – First Information Report, the recorded complaint of a crime filled by police
- BANDOFAST – Protection of a person, building, or organization against crime or attack by the police
- DGP – director General of Police, the highest – ranking police officer of each state police organisation.
- IPS – Indian Police Service, the cadre of senior police administer by the central government
- LATHI – A heavy bamboo stick with a metal rim, used as a weapon especially by the police; a baton
- SHO – Station house officer
- MUNSHI – The writera police officer who maintains records
- DAILY DIARY – A community service register is a diary maintained in every India police station under Police Act 1861, for a non-cognizable offense.



Questioning and treating suspects or under trials or detainees under pressure (in police custody), both psychological and physical, by the agents of law is a practice prevalent in some form or other world-wide. In this paper, the focus is on India and the ill activities done by the police force. India has a longstanding parliamentary vote based system with a free press, a regular citizen controlled military, an autonomous legal executive, and dynamic political and common associations. Despite all these facts, brutality in police custody by the agents of law is widespread throughout the country. What is the extent of this brutality in police custody in India?

Police severity of police brutality is an umbrella term to depict any unjustified or deliberate badgering, boisterous attack, physical/mental damage, property harm, or passing endured because of collaboration with the police. Police fierceness is one of a few types of police offense that includes undue viciousness by police individuals. Police severity is an outrageous type of police savagery including physical mischief or passing to an individual or creature.

Hundreds of people were reported to have died in police custody¹. Due to torture and ill-treatment to common people at least 300 deaths in police custody². In 1995, at least 100 people died in the custody of the police throughout India, due to torture and medical negligence³. Given this context, the purpose of this paper is to critically review physical violence against the detainees in police custody (i.e. police lock-ups at police stations) in India.

HISTORY – WHEN IT ALL STARTED

Police brutality is been performed for ages. The Constitution of India, the police area unit of a State subject⁴. This suggests that they're the responsibility of State governments. The police and dealing of the police forces area units are ruled by rules and regulation framed by the state governments. Every state/ union territory has its own separate personnel. Additionally, their area unit central police organizations started by the union government for specialized work. The combined strength of the state and central police is concerning 2 million people around the country. This authority reservoir of trained force will become a really vital catalyst of positive modification in society provided they're created to serve the rule of law and command in charge of their sins of commission and omission if any. The problem of holding them responsible is extremely closely coupled to the sort of management and direction exercised over them.

The police as unionized establishment during this country came into existence with the Police Act of 1861. This legislation was passed within the wake of the Indian rising of 1857, once the

¹ Amnesty International 1999.

² Amnesty International 1998.

³ Amnesty International 1996.

⁴ The police, public order, courts, prisons, reformatories, borstal and other allied institutions figure in the State List

Indian troopers within the colonial army revolted against their British commanders. The mutiny later developed into a rebellion against British rule out Asian countries. Though the revolt was squelched quickly and with success, it did jolt the britishers into taking major steps to consolidate their rule out in the country, together with the institution of authority's personnel to support the colonial government. Britishers accomplished that to continue their rule out this country; they have to have their personnel that all subservient to the head. The head should exercise complete and unquestioning management over the personnel. Section 3 of the 1861 Police Act unconditional the direction⁵ of the state police forces within the state governments.

A similar Act introduced a system of twin management at the district level⁶. It places the police forces of the command of the District Superintendents of Police, however subject to the overall management and direction⁷ of the District Magistrates. This was done deliberately as a result of the functioning of the District justice because the chief officer of the district was thought-about essential for the upkeep of British rule out Asian country. Underneath the system of police governance established by the 1861 Act, the police forces in Asian countries were unaccountable to anyone except their own hierarchy and also the colonial political and body government. Creating the police response to the community or alternative democratic or native autochthonous establishments didn't work into the British colonial model of management. Section twenty-five of the Indian Evidence Act, 1872 says that confessions recorded by a peace officer shall not be admitting table obvious.

LEGAL FOXES

"OUR MISSION YOUR SUCCESS"

The police were raised on the military and authoritarian patterns. There was huge stress on maintenance of a sort of discipline, that seabird on infliction, requiring the lower ranks to adapt orders blindly. The system didn't need the police to place on their thinking caps whereas performing arts their duties. They indeed weren't needed to possess any. That's why accomplishment to police stressed on the necessities of sinew and not the brain. The taller and

⁵The word Superintendence has not been defined in legislation. The word has been interpreted by the Supreme Court in the Judgement in Writ Petition (Criminal) Nos. 340-343 of 1993, pp 66-73.

⁶ Section 4 of the Act

⁷ The words general control and direction have also not been defined in the legislation.

heftier to enlist, the better. Throughout coaching, his good condition and endurance should improve.

It was for this reason that the coaching programs within the police were based heavily in favour of outside activities, like a drill. He needn't be educated, however, he should have an associate daunting presence, that ought to deter not solely the criminals however additionally standard voters. In his presence, no one ought to raise queries or demand answers. All the on top of factors combined to provide a system that set the majority of the law enforcement agency at a distance from the community. Clearly, the 1861 Act did not turn out associate economical, skilled associated with a responsible law enforcement agency within the country. This was completed by the colonial rulers themselves. For instance, the Indian Police Commission appointed in the Gregorian calendar month, 1902 beneath the birth of Sir A.H.L. Fraser concluded:

The law enforcement agency is way from efficient; it's defective in coaching and organization; it's inadequately supervised; it's usually thought to be corrupt and oppressive, and it completely does not secure the arrogance and cordial cooperation of the individuals⁸. The Commission created several recommendations however either did not recognize or handily unheeded the very fact that the majority of the ills afflicting the organization can be ascribed to the system established by the Police Act of 1861 and therefore the philosophy of policing that was prescribed. The Commission, despite themselves, unearthing huge proof to the contrary, all over that the system introduced in 1861 was on the full a wise and economical⁹.

CASES OF POLICE BRUTALITY

⁸ Government Central Printing Office, Shimla, 1903, Report of the Indian Police Commission, 1902-03, p 150

⁹⁹ K.S. Dhillon, Defenders of the Establishment, Indian Institute of Advanced Study, Shimla, 1998, p 150

There are instances when undue violence has been seen over the common masses by the Police as directed by the incumbent government thus setting an example for police brutality in the nation's history. These are the instances of Police Brutality that really shook us out of our reverie. Also, there are instances where the law enforcers have violated the law and human rights alike.

Police brutality against the common masses is the predominant scenario in the World and here are some instances that left a mark in the Indian history.

1. JALIANWALA BAGH MASSACRE:

It is also known as the Amritsar massacre where police killed hundreds of people by opening fire. The British Indian Army under the command of Colonel Reginald Dyer hurled bullets into the crowd of Baishakhi pilgrims. There was a majority of Sikhs who have assembled to take part in the Basishakhi celebrations. The incident happened on 13th April 1919.

2. BABU GHENU SAID KILLING:

Babu Ghenu Said, who was an active participant in the protests of Bombay cotton mill, was crushed by a truck in order of police. This protest was organized by Indian independence activists against the import of foreign-made cloth. His death which occurred on 12 December 1930 sparked quite the furor.

3. MANYA SURVE KILLING:

Police brutality fired 25 bullets in his chest but he still kept alive by his willpower for one hour. This incident happened on 11th January 1982.

4. MANOJLAI LAUBORERS'S MASSACRE:

It was administered on the agitated tea-estate workers to silence them. It claimed 17 lives in Thirunelveli, Tamil Nadu.

5. NANDIGRAM MASSACRE:

It happened in Nandigram, West Bengal, India following a failed project by the Government of West Bengal under the Communist rule to acquire land for SEZ (Special Economic Zone). At least 14 people lost their lives in the police insurgency in the region. This incident prompted the opponents to adapt the warcy Ma Malti Manush for the coming elections.

6. RAMPURA TIRAHA FIRING:

Police opened fire in the unarmed Uttarakhand activists at Rampur Tiraha in UP's Muzaffarnagar district on 1-2 October during the night. Their claim was for a separate state of Uttarakhand and they were on their way to Delhi to stage a Dharna at Raj Ghat on Gandhi Jayanti. This indiscriminate police firing claimed six lives along with some women being allegedly raped

VIOLATION OF HUMAN RIGHTS BY POLICE AUTHORITIES

Police square measures are one in all the foremost vital organizations of the society. The policemen, therefore, happen to be the foremost visible representatives of the govt. In associate in nursing hour of want, danger, crisis, and problem, once a national doesn't understand what to try and do and whom to approach, the police officer and a lawman happen to be the foremost

acceptable and approachable unit and person for him¹⁰. The police square measures are expected to be the foremost accessible, interactive, and dynamic organization of any society. Their roles, functions, and duties within the society square measure natural to be varied on the one hand; and sophisticated on the opposite. Loosely the dual roles of the police square measure maintenance of law and maintenance of order. However, the ramifications of those 2 duties square measure varied, which lead to creating an oversized inventory of duties, functions, powers, roles, and responsibilities of the police organization. Giving them various power within the hands of police, whereas necessary to perform their duties and on another hand leaves the door to misuse and thus an infringement of Human Rights.

Due to continued police brutality and torture throughout the past 20 years, it looks that the keeper of law has become the law-breakers. When at the 80s the police where appear to be a lot more involved with lathi- wielding ideas and its brutality and use of interrogation procedure by it's become the order of the day. The mounting police authorities and different inhibitory live square measure the instances of violations of human rights.

i. Police authorities during emergency:

During an emergency amount in March 1976, a Satyagraha was taken into custody by the police; however, no case was registered against the group of people doing it. They were unbroken in ill-gotten and confined for a number of days throughout that they were subjected to numerous styles of physical torture like stamping on the clean body with heeled boots, beating with the cane on the clean soles of feet, beating on the spine, beating with rifle however inserting live electrical wires into body crevices, burning with lighted cigarettes and visible light, etc¹¹.

¹⁰ Phani Mohan K, Functions, Roles and Duties of Police in General.

¹¹ Katar Singh v. State of Punjab (1994) 3 SCC 569. A. R. Desai, Violation of Democratic Rights in India, Vol.

In Kerala, police atrocities took an ugly flip once all prisoners were stripped to their undergarments and overwhelmed by a cluster of ten to twelve constables. No food was provided whereas in custody. If physical signs of beating are too obvious they weren't made before a justice however rapt from station to station. Madhya Pradesh was such a state wherever most ranges of prisoners were unbroken in jail throughout the operation of emergency. In Gwalior district jail, political prisoners were unbroken at the side of disreputable dacoits and were allowed to be abused by them¹².

ii. Nature of police atrocities-after eighties:

After 1980, police have resorted to a lot of restrictive techniques as to not leave any scar of police atrocities on the body of victims. Even minors weren't spared at the hands of police. Young boys were equipped to convicts for his or her delectation, some tortured into impotency, hanged the other way up, ruthlessly overwhelmed, given electrical shocks, etc. Brutal strategies were adopted for forcing confessions¹³.

iii. Death in police custody:

After the seventies, death in police custody has become quite common. These deaths square measure sometimes the results of torture to extort data or to show the person involved a lesson.

iv. Torture:

It is a standard incontrovertible fact that police brutality and torture have long been widespread throughout the Asian nation. Such ways are oftentimes used once individuals suspected of standard criminal offences are interrogated by the police. so as to extract

¹² Extracted from 'Human Rights in India', Hearing before the Sub- Committee on International Organisation of the Committee on International Relations, U.S. House of Representatives, 1976

¹³ B. P. Sehgal, Human Rights in India, Problems and Perspectives, 226-7.

confessions or for purpose of intimidations the police use the extreme style of physical damage to the suspected persons. Torture is according to possess taken place in police stations though some cases of beating in prisons have additionally been calculated¹⁴.

v. Atrocities against women:

The Mathura rape case was a happening of tutelary rape in the Asian nation on twenty-six March 1972, whereby Mathura, a young social group lady, was raped by 2 policemen on the compound of Desai Ganj station in Chandrapur district of Maharashtra. The Supreme Court dominated in Tukaram vs. State of Maharashtra¹⁵, that there have been no injuries on the person of the lady, which meant that she didn't place up a resistance which the incidence was a "peaceful affair". Once the Supreme Court clean-handed the defendant, there was public outcry and protests, that eventually crystal rectifier to amendments within the Indian rape law via the legal code (Second Amendment) Act 1983.

WHY POLICE BUTALITY SO COMMON IN INDIA?

After all this police reforms being formulated and implemented, our country still has not managed to deal with police brutality adequately. Custodial deaths are frequent enough occurrences in India to be a systemic problem, but its pervasiveness has not been recognized when formulating policies. There were 591 people¹⁶ killed in police custody between the years 2010 and 2015. However, in these cases, the perpetrators are rarely brought to justice. It is ironic that those who have been entrusted with upholding the law¹⁷ should be the very ones transgressing it.

Violence committed by them, outside of prescribed procedure, is often over had owed by the idea of the inherent "goodness" of the police force. Police brutality in our country has become¹⁸

¹⁴ Black Laws 1984- 85", People's Union for Civil Liberties, 69- 70, New Delhi.

¹⁵ AIR 1979 SC 185; (1979) 2SCC 143; 1978 CrLJ 1864; 1979 SCC 143

¹⁶ Indian killings police custody, 2016

¹⁷ Policing editorial journal , 2018

¹⁸ Indian silent acceptance, Engage article

one of the main human rights issues faced by the country today. There we need to have a number of educated people who can separate this idea from the individuals and who can actually constitute and recruit the police force. It is important that India recognizes the need to build a police force of individuals who respect the rights that they are supposed to uphold.

A. Police Brutality against Those in Custody:

In the aftermath of the Emergency, the All India Anna Dravida Munnetra Kazhagam government in Tamil Nadu submitted the Justice Ismail Commission Report to Parliament in 1978. The commission committee studied police brutality inside jails and found that ill-treatment started right from the time when prisoners were brought in¹⁹. They were thoroughly searched, abused, and thrown in crowded cells with bloodied bandages. They were denied food, water, and bedding, and were beaten in custody. The commission had made recommendations and rules to improve these conditions of police brutality, but decades later, police brutality still exists

B. Police Brutality against Students

We all came across to know various ill activities done by the police forces instances of the police lathi-charging on protesting students have been a fairly regular issue in India for decades. In 1977, an EPW correspondent described and said how the police were used to attack the group of people protesting for Dalit students in Madras²⁰, even after the inspector general had promised to swipeup the “Gunda (unlawful people)” elements from the force by means of counselling and educating them. Using this process, the report argued that police brutality is at its worst when it is used to specifically target disempowered or underprivileged sections of the population, especially because they are the most vulnerable.

C. Police Brutality against Labour Movements

¹⁹ Political prisoners jail brutality journal, 1978

²⁰ Correspondent columns Tamil Nadu police rampage journal , 1977

In July 2005, workers of Honda Motorcycle and Scooters India, who were protesting at Gurugram were surrounded and beaten up by the police after the management of the factory had agreed to meet with the workers. Reporting this incident, Rakhi Sehgal argued and said that the police have often been used and get instructed by local politicians to protect corporate interests that are often tied with political interests.

D. Police Brutality and Custodial Deaths

In the year 2013, Rebecca Gonsalvez and Vijay Hiremath said and wrote about how custodial deaths and encounter cases are rarely been prosecuted by the government because the government is reluctant to hold its police officers liable²¹. The official narrative in cases of custodial deaths, which the police control, is readily turned to suicide, assault by fellow prisoners, or natural causes.

POLICE BRUTALITY IN INDIA IS OUT OF CONTROL



We come to know about the various ill activities done by the police forces. Even kids are attacked by police and are given no chance to be proven innocent. Instead, these people are beaten and humiliated until proven Innocent. Unlike in America, the police in India do not respect the natural rights of a human being. The police in India will wrongfully arrest someone and beat them into a confession even though they did not even do the crime. A huge number of “591 people have died in police custody” because of the disrespect of human rights by these police officers. They do not believe in innocent until proven guilty, all they believe in is beaten until proven guilty²².

²¹ Custodial death journal , 2013

²² World Asia , Jammu Pakistan convict India, 2015

The only reason that this has not stopped and has gotten worse is that these officers feel that they can get away with it. That “the powerful are able to get away with it” and that they will have no consequences afterward. That is why these officers must be stopped before more innocent people died²³.

The law in India is that “police have 24 hours to prove the accused guilty” and if that does not happen then the accused must be released. The only problem is that if the police do not get a confession then the person is most likely dead or the cops were bribed. The main people who are violated by this are the people of India. Unfortunately, it's all ages, even kids and the elderly that are the victims to the police force. The violation is mainly happening in the slums or very poor parts of India where the people have very little say in what happens to them. The violation is happening because the police do not respect these people and more importantly do not respect their rights as human beings. The police do not care about innocent or guilty, all they need is someone to look the part of the culprit

INDIA NEED URGENT POLICE REFORMS

Internal security of our country is very much a prerogative of police and efficient policing is needed in order and in a uniform manner to tackle threats that are been persisting in the country. But for that, the police system needs to be efficient, effective, and technologically sound. Several years have passed, a new government has been in power, but the internal security of the country is still threatened by multiple threats. With the progressive growth in technology, newer versions of threats are rapidly arising in the form of cyber-attacks, bank frauds, and organized crimes, just to name a few, which need to be tackled or solved in a more specialized and in a better way. Current National Security Advisor Ajit Doval termed this kind of war ‘fourth-generation war’, warfare with an invisible army and warned the police officers “...this war cannot be won by the armies. This is the war of a policeman and their force and if you win, the country wins and if you lose then the country loses²⁴.

In such circumstances, the role of a policeman becomes very important. Against all these security threats, the first line of defence is the police system. Internal security is very much a

²³ Human rights violation in Kashmir, 2016

²⁴Press Trust of India, “Internal security going to be a big challenge for India: NSA Ajit Doval,” The Economic Times, 13 July 2018.

prerogative of police and efficient policing is needed in order to tackle these threats. But for that, the police system needs to be efficient, effective, and technologically sound. The superintendence and control of the police is a debatable issue. As per the police laws, both the Central and State police forces come under the supervision and control of political executives or heads²⁵. Police priorities and their functions fewer times are altered based on the will of political heads. It seems that the police force has become a puppet in the hands of its political masters as they follow the instructions given by them. There is no mechanism for registering a complaint against erring police officials. The existing police infrastructure is also inadequate and incompetent to cater to or fulfil the needs of the police force. There is a huge manpower shortage in the police department. The police-population ratio, currently 192 policemen per lakh population²⁶, is less than what is recommended by UN that is 222 policemen per lakh population. Likewise when it comes to weaponry; the police force machinery is still using old and outdated weapons. The Comptroller and Auditor General (CAG) of India in its report also highlighted and mentioned that the force continues to depend on outdated and unserviceable weapons.

Another problematic area relates to communication networks. In an era of Information and communication technology (ICT), the police system is still struggling to get a proper communication network for their work. The Bureau of Police Research and Development (BPR&D) data shows that across all States and UTs of India, there are 51 police stations that have do not telephone nor does wireless set²⁷. The police housing facilities are also an issue. It is currently facing a shortage to accommodate the increased police person's strength across the country. The BPR&D report shows that although there is an 8.06% increment in the overall sanctioned strength of the police force. Despite recommendations from these committees, no substantial changes have been seen.

The Supreme Court in 2006 also came up with a landmark judgment in the Prakash Singh case, where the court made seven-point directives to the Centre and State governments. However, to date, these have not seen the light of the day. It reflects the lack of political will and inflexible on

²⁵Mohan, Garima and Navaz Kotwal , "State Security Commissions: Reforms Derailed," Commonwealth Human Rights Initiative (2011)

²⁶Bureau of Police Record & Development, "Data on Police Organisation," (2017): pp. 37.

²⁷Bureau of Police Record & Development, "Data on Police Organisation," (2017): pp. 37.

the part of bureaucracy to follow-up the order. Neither the politicians nor the bureaucrats want to lose their control over the police. This problem lacks clarity in control of police and also mentioned in The Police Act of 1861, which is silent on ‘Superintendence’ and ‘general control and directions’²⁸. This enables the executives to reduce the police to mere tools in the hands of political leaders to fulfil their vested interests. All these challenges require the immediate attention of the governments — both at the Centre and the States. The political leadership needs to understand that the dilapidated condition of the police system will negatively impact the security and integrity of the nation.

PERSPECTIVE OF THE AUTHOR /ANALYTICAL DEDUCTION

Providing a sense of security to the ordinary citizens and attending to their grievances is dependent on the establishment of a police force, which is efficient, honest, and professional to the core. The fact that such a police force does not exist in India is attested to by the findings of the various commissions and committees, the complaints received by the National Human Rights Commissions(NHRC), the stories mentioned by the press and the experiences of the people around the streets. In other words, the police function to establish the rule of law and not the rule of politics. The existing mechanisms of accountability of police force must be strengthened and improved in our country. In addition, to new mechanisms, working independently to monitor the functioning of the police force and to inquire into public complaints against the police, must be established to look after the police ill activities. The performance of the police as an organization and the behaviour of police personnel as individuals both need constant monitoring. Apart from upgrading the recruitment, training, and leadership standards, the working and living conditions of lower police personnel need vast improvement- an exercise that should start with raising the status of the constabulary.

²⁸ Mohan, Garima and Navaz Kotwal, “State Security Commissions: Reforms Derailed,” Commonwealth Human Rights Initiative (2011).

CONCLUSION

The purpose of this paper was to critically review the phenomenon of physical violence committed by police personnel against the detainees in police custody in India. , the most unfortunate fact is that there is little or no enforcement of these laws. As a result, despite the presence of all these safeguards and legislations, torture, rape, and deaths in police custody have been extremely widespread across India. There is wide scope for abuse of power within the confines of police stations in India. Torture and other forms of cruel, inhuman, and degrading treatment of detainees in police custody are encouraged by several factors. These include - routine denial of access by police to lawyers and relatives/ family members of the detainees, pressure on police to mete out instant punishment due to the inability of the criminal justice system to deliver justice promptly and effectively. Due to the lack of investigative machinery available to civic bodies like the National Human Rights Commission, and most of like this are flooded with corruption. However, such policy-making requires a government with both a will and away.

The rights of the detainees in police custody have little or no meaning unless there are agencies to enforce them and provide remedies for violations. Law enforcement and judicial levels need to work hand in hand to eradicate police brutality in custody. Senior police officers should ensure that no person or suspect is detained unlawfully and that he/she is not subjected to brutality in police custody. They should look upon the way of interrogating done the police force and what are the procedure and methods they are using to do that for a cross-examination. The policemen need to be reminded that in the event of custodial deaths, rape, and torture, they have to face prosecution. The bottom line is, maintenance of public order is largely the responsibility of the

police. Police personnel at all ranks, from Indian Police Service officers to constables, must function within the framework of the law. Responsibility and cooperation at all levels and effective supervision and training of police personnel are necessary to minimize, if not completely eliminate, unlawful brutal activities of India's police.



• LEGAL FOXES •

"OUR MISSION YOUR SUCCESS"