



THE SURGE OF POLICE BRUTALITY IN INDIA

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ABSTRACT

A criminal is considered to be an unsocial person who has to be kept away from the society in order to maintain the peace and order of the society. But does this mean that a criminal should be subjected to inhuman treatments such as torture, abuse and being disrespected? The answer is no. The constitution of India guarantees various protections including the right to life and personal liberty and the right against inhumane treatment including the rights of arrested person. Today, even after passing of various laws protecting the human rights, life and personal liberty; people are still unaware of their rights. The police are one of the important law enforcement agencies that controls the peace and order in the state. It is vested with authority and responsibility but with this power gives way to practices that shall harm the rights of citizens that are guaranteed under the constitution of India. Police brutality is an unjustifiable acts and excessive force, harm inflicted on individual that are carried out by police officers which is against the civil and human rights.

KEYWORDS: Police, brutality, torture, inhuman treatment, violence, excessive force.

INTRODUCTION

Police in a democratic setup play a vital role as a law enforcement agency. They ensure

proper conduct of the citizens and take action when an individual breaks the law or disturbs the public peace. Our society is strongly entrusted with the law enforcement agency to an extent when something goes wrong the first thought that strikes every person's mind is to call the police. Police's duty and functions do not have free times. They are held up with works, that is how society's peace is kept in pace. They are entrusted with various duties including duty of maintaining the peace and harmony of the state and society and have the right to arrest and take control when the people do not follow the law or create nuisance. At certain instances when the situation gets out of control, they are obliged to use lathi (stick) to prevent eruption of violence. These bodies enforce the laws of land and punish people who disobey the law. As citizens, people feel safe of their lives and property. Police's role is much wider than the duties at the police stations and check posts, these postings are made in town or cities depending on the crime rate in the area. They are also confined to protect political leaders and VIPs however; any common man can avail this protection in special circumstances. To protect the law and citizens and maintaining the harmony in a society or state is not an easy task to do. The police act as the protector of the weak and poor and carry out duties for the smooth function of the society. But if we look close into the history, there are numerous times people were subjected to violence and mistreatment by the police officials. This misconduct of police is normalized and often cases of victims of the weaker or poor section of the societies do not reach the doors of courts. Police brutality is a representation of uncontrolled and redundant force by the police towards an individual or group of individuals. Police brutality is violence against an individual and is a



evident demonstration of violation of the citizen's civil rights. The term brutality does not confide to 'violence' or physical harm caused to an individual and extends to verbal abuse, arbitrary arrest etc. the fair use of force is permitted in all jurisdiction and when a police officer crosses the line of such limitation, he commits the crime of police brutality. The torture and breach of fundamental rights of citizens in India is unbridled which is carried out in various acts such as extortion, forcing the detainee to lie naked on ice, amputating different body parts of victim, immersing the face in water until the person is out of breath, burning the body parts, giving electric shocks, arbitrary arrest, verbal abuse of victims and witnesses, sexual harassment, wrongful search and seizure, racial discrimination etc.

BACKGROUND OF POLICE BRUTALITY

Police brutality is not a new concept in India and has existed even during the British period because of the laws during the Victorian Era were formed accordance to the police that were legally sanctioned. One of the most evident example of police brutality in history of India was the Torture Commission Report of 1885. There were total of 79 complaints made against police obtained by the commission in the year 1885. The reports also mentioned the method and amount of torture used by the police officials such as twisting rope tightly around the arms and legs

to impede circulation, searing with hot iron, placing scratching insects such as carpenter beetle on navel, squeezing the testicles, hitting with canes, stopping from sleep, nipping the flesh in pincers, putting pepper or red chilies in eyes and private parts of men and women etc.¹

The torture and inhumane treatment of prisoners and the persons in custody is happening from a long period of time. Hirman Laxman suspected 21 years Naxalite was arrested on November 4 in the year 1976 by the Andhra Pradesh police, He stated that he was stripped naked and his testicles were damaged, forced to eat Hyderabad Goli, plastered with chili powder and fell unconscious for 8 hours. He was later taken to the Lakshatipet police station lock up where one of his hands was tied up to the cell window, he was forced to remain in the same position unable sit or sleep for 15 days.²

While the allegations contained in a report of Akhil Banga Manila Samiti- a non-political voluntary organization stated that some women prisoners were taken to Lal Bazaar police station in Calcutta were stripped naked and were burned in all parts of their body. While in certain cases an iron ruler was inserted into their vagina and rectum, while there are also allegations that some women were continuously raped by the hardened criminals on orders given by the police in the interrogation room.³

¹ POLICE BRUTALITY IN INDIA, Sofia Bhambri, <https://www.sbhambriadvocates.com/post/police-brutality-in-india> Accessed on November, 29, 2021 at 1:00 P.m.

² India Today, Gruesome methods of torture employed by Indian police forces come to light, <https://www.indiatoday.in/magazine/cover-story/story/19770531-gruesome-methods-of-torture-employed-by-indian-police-forces-come-to-light>

823741-2014-08-14 Accessed on November 29, 2021 at 1:36 P.m.

³ India Today, Gruesome methods of torture employed by Indian police forces come to light, <https://www.indiatoday.in/magazine/cover-story/story/19770531-gruesome-methods-of-torture-employed-by-indian-police-forces-come-to-light>-823741-2014-08-14 Accessed on November 29, 2021 at 1:36 P.m.



The police brutality is a clear act of demonstration of abuse of power by the police officials, police brutality and abuse of power is one of the most gruesome challenges faced by any country because it displays the failure to address such heinous acts and to undertake necessary actions against the police officials. The Constitution of India guarantees several rights for the accused person including that such person is not guilty until proven and the right to free legal aid, the right to be informed of the charges against them and the right for bail etc. The country must not carry off any rights of the citizens including the rights of those persons in trial or sentenced guilty.

The police brutality and abuse of powers towards the citizens through the past have ranged from petty corruption, inefficacy, torture and inhuman treatment, custodial deaths, rapes etc. These heinous instances and growing politicization of force has fused the public to distrust the police.

Police brutality is a violation of civil and human rights and is now a prominent headline in India. It is the duty of police to protect us and to maintain law and order in the society, state and country. However, with greater power there remains more chances of abuse. Police brutality is an act of unjustified use of force against civilians. One of the examples is the history of African-Americans and the trail of abuse in the United States in 1619 a private ship consisting of 20 captives were brought to the shore of Virginia and they were seized by English pirates and they started to treat them as slaves which over time became a practice that led to ban inter-racial

marriage in the year 1661. Thousands of Africans were sent to United States of America However, even the declaration of independence in the year 1776 could not free them from shackles.⁴

Police brutality in India came into notice of higher authorities in the year 1996 in the light of Shri D K Basu, Ashok K. Johri vs. State of West Bengal, State of Uttar Pradesh case⁵. The case focused on requirement of protection of the fundamental rights and human rights of the individuals in prison and custody, it highlighted the arbitrariness of policemen in detaining a person and crimes committed by the officers against victims in custody of police as well as judicial custody. The court issued 12 guidelines that are to be followed in cases of arrest and detention in addition to the constitutional and statutory safeguards. The guidelines issued by the court included:

1. The arrested person must be aware of his right to have someone informed of his arrest or detention.
2. The arrested person must be medically examined by trained doctor every 48 hour during his detention in custody.
3. The arrestee should at the time of his arrest be examined where he so requests and if any major/minor injuries are present in his body, it shall be recorded.
4. The arrestee should be permitted to meet his lawyer during the interrogation, however not throughout the interrogation.
5. The police personnel executing the arrest must bear clear and visible Identification Card and the name tags with their designation must be present. The

⁴ Encyclopedia.com, Africans Arrive in Virginia, 1619, <https://www.encyclopedia.com/history/encyclopedias-almanacs-transcripts-and-maps/africans-arrive->

virginia-1619 Accessed on November 29, 2021 at 1:50 P.m.

⁵ AIR 1997 SC 610



particulars of the police personnel who handle the interrogation of the arrestee must be recorded in the register.

6. The police personnel who effect the arrest shall bear a memo of arrest and the person must be arrested in front of at least one witness. The witness can be either family member of the arrestee or a respectable person of the locality. The arrestee shall affix his signature along with time and date.
7. The place, time of arrest and venue of custody of the arrestee shall be notified by police personnel through Legal Aid Organization in the district and the police station of the area concerned within 8 to 12 hours after the arrest, when the next friend or the relative of the arrestee lives outside the district or town.
8. The particulars of the arrest including the person informed of the arrest shall be updated in the station diary.
9. Copies of the arrest memo, memo of medical examination should be sent to the concerned magistrate.
10. The particulars of the arrest shall be intimated to the police control room in every district and it should also be displayed on the notice board of every district.
11. The arrestee shall be medically examined and the memo of the medical examination shall be prepared, which should be signed by the arrestee and police officer and the copy of it shall be provided to the arrestee if he wants.

12. The arrested person has the right to meet lawyer if his choice during interrogation.

India has a long history of custodial deaths; the imperial rule of the British is one of the examples. When the gatekeepers of the English Administration used to torture Indian dissenters inside jails in order to break their spirit and to perceive the potential plans against them.⁶ The cellular jail in Andaman and Nicobar Island is an infamous example of gruesome treatments and is described as a living hell.⁷

POLICE BRUTALITY IN INDIA AFTER INDEPENDENCE

After the independence of India, police administration was given high responsibility and power. The police are supposed to work in synchronization with executive and legislative and their powers are exercised for the protection of citizens. But however, there are numerous incidents of exploitation of the power especially against the minority communities and disadvantaged groups such as Muslims, Dalits, Sikhs and Adivasis.

In the case of *M. Nagaraj and Anr. vs. Superintendent of Police and Ors*⁸ two Dalit persons suspiciously died in the custody of police. It emphasized that the custodial violence does not only includes violence caused by the police personnel but also includes torture and brutality carried out by the armed forces. As the regions of Kashmir and Arunachal Pradesh are more vulnerable as in terms of the socio-geographical

⁶ Social Talk, The Violence and Torture under Colonial Rule in India, <https://thesocialtalks.com/news-analysis/the-violence-and-torture-under-colonial-rule-in-india/#:~:text=The%20torture%20committed%20by%20the%20elites%20from%20Europe%2C,head%20of%20the%20department%20of%20the%20anti->

thuggee%20campaign. Accessed on November 29, 2021 at 2:00 P.m.

⁷ Fair Gaze, History of Cellular jail in Andaman and Nicobar Island, <https://fairgaze.com/fgnews/history-of-cellular-jail-in-andaman-and-nicobar-island.html> Accessed on November 29, 2021 at 2:00 P.m.

⁸ H.C.P. (MD) No. 597 of 2016



conditions, there is need of extra forces to maintain the peace and order however, the armed forces deployed there uses extraofficial means to exercise their power and order which is injustice to the vulnerable citizens of the state.

The police violence and police brutality have become frequent in India however, there's only lesser being done to demand the accountability of such acts. The unjustified encounter killings and other unconstitutional practices carried out by police divests the accused persons of their right to fair trial. Often the powers vested with police are used to evade the legal consequences and legal or moral accountability after committing an illegal act. Police supposedly carry out crimes of institutionalized set up within their own profession while trying to control the same in the society. The cases of police brutality often do not reap much attention as required as these cases are suppressed by the police using wrong accusations and false claims to defend their selves. As a common man/people in order to file a complaint or report a case against the police personnel has to approach the police (station) which ultimately causes fear and dilemma.

The United Nation Convention against Torture defines the term 'torture' as an act through which severe pain or suffering is inflicted on a person physically or mentally for information or confession which also includes intimidating or coercing any person at investigation with acquired consent or acquiescence of public official or punishing a suspect of any crime.⁹

⁹ The abuse of police power and police brutality, Abhinav Ashok, [https://www.legalbites.in/abuse-of-](https://www.legalbites.in/abuse-of-police-power-police-brutality)

Laws to safeguard the rights of citizens

The constitution of India guarantees the protection of life and personal liberty of a person under Article 21. This right cannot be waived or taken away except according to the procedures that are established under law, the prisoners have right to be treated with moral and right manner. Article 21 is known as umbrella of the constitution as it has multi-fold aspects of criminal jurisprudence. The Supreme Court in various cases guaranteed that the Article 21 cannot be denied to convicts, undertrials, detenus and such other prisoners in custody except according to the procedure that are established under law which includes prevention, detention, death penalty in arrest of rare cases etc. the duty of the police is to collect evidence, investigate and administer the arrest and detention of criminals under trial so that they can be punished and put into jail for their criminal act but however, this power do not in any way gives right to the police to deprive the basic fundamental rights of the accused person. The arrest, detention and procedures carried out by the police to safeguard the society and to eradicate offences must be done in a manner that is right, just and fair.

Section 330 of the Indian Penal Code, states that any person voluntarily causing hurt to other person with an intention to extort confession or to compel the restoration of a property will be liable to punishment.

Section 331 of Indian Penal Code, states that any person voluntarily causing grievous hurt in order to extort confession or to compel restoration of a property shall be liable to punishment.

police-power-police-brutality Accessed on November 29, 2021 at 2:00 P.m.



On 22nd and 23rd of May 2018 in the district of Thoothukudi, a group of protestors that were protesting against a copper smelting factory in the area were shot by the police which led to death of 12 individuals that reaped criticism from across various human rights groups and United Nations as the measure taken by the police was uncalled as they do not have the right to strike off the right to life of any individual.¹⁰

Article 20 (1) of the Constitution of India states that, a person shall not be convicted unless there is a violation of law in force during the time of commission of the offence or be subjected to greater penalty than that which is prescribed under the law. provided, the article also prohibits the creation of new offence in a retrospective effect.

Article 20 (3) of the Constitution of India states that no accused person shall be compelled to be made witness against himself. This provision under the Constitution protects and safeguards the accused in police custody from being subjected to torture or coercing.

Section 41 (D) of the Code of Criminal Procedure lays down that the arrested person has the right to meet advocate of his own choice during interrogation, though this privilege cannot be availed throughout the interrogation.

Section 54 of the Code of Criminal Procedure lays down that when any person is arrested, the arrestee shall be examined by a medical officer in service of Central or State government or by a registered medical practitioner if the medical officer is not

available. The provision also states that if the arrestee is a female, then the examination of her body shall be made by a female medical officer/practitioner or under a female medical officer/practitioner.

The medical officer/practitioner shall make a record on the examination mentioning the injuries, marks of violence, or any other marks present on the arrestee's body. The copy of the examination report shall be furnished to the arrestee or to the person so nominated by the arrestee.

Section 348 of Indian Penal Code, 1860 deals with provision relating to wrongful confinement and prohibits such confinement for extorting any confession, information for detecting any offences or misconduct. This is punishable with imprisonment which may extend up to 3 years and fine.

Section 55 of Code of Criminal Procedure lays down that it is the duty of the person in custody of the accused to take reasonable care of health and safety of the accused person.

National Crime Bureau Report

According to the report of National Crime Bureau, there were 1727 people that died under police custody between 2001 to 2018 however, only 26 policemen were convicted for these deaths while the other deaths were convinced on causes like suicide, deaths in hospitals etc.¹¹

In 2018, 5479 cases across India were registered but only 2858 police personnel were charge-sheeted out of which only 41 were convicted. Another such incident in

¹⁰ TIME, Protest against a copper plant in southern India turn deadly as 12 people are killed by police, <https://time.com/5288153/india-copper-plant-protest-killed/> Accessed on November 29, 2021 at 2:10 P.m.

¹¹ The abuse of police power and police brutality, Abhinav Ashok, <https://www.legalbites.in/abuse-of-police-power-police-brutality> Accessed on November 29, 2021 at 2:20 P.m.



year 2018, where 70 individuals lost their lives in police custody but however, only 4.3% of the cases were attributed to injuries sustained by violence during remand. This displays the misuse of power vested to the saviors of lives that entwine the rules in their accordance and deprive the rights to justice to the innocent victims of police brutality.¹²

According to India: Annual Report on Torture 2019 which was published by a human rights group stated that, there were total of 1731 deaths in the year 2019 out of which 1606 cases of deaths happened in the judicial custody and 125 cases of deaths was reportedly happened in police custody. The report denotes on average 5 custodial deaths happen every single day in India.¹³

The director of National Campaign Against Torture, Paritosh Chakma, stated that the torture techniques used in 2019 were hammering iron nails into the body, electric shocks, hitting private parts, branding with hot iron rod, pressing fingernails with pliers, kicking the abdomen of pregnant women etc.¹⁴

Tata Trusts and Centre for the Study of Developing Societies in its report Status of Policing in India 2019 stated that police officials in India are overburdened with work and are given only few weekly or monthly offs. 24% of police personnel are put to work for more than 16 hours a day while the 44% of police work for more than 12 hours a day which ultimately results in lower efficacy in the individual's work as well as affects the behavior while carrying out their duties.¹⁵

The exercise of extrajudicial executions is one of the greatest threats to rule of law as the

police often carry out extrajudicial executions. One of the examples is the Hyderabad rape case of Veterinarian where the police exercised extrajudicial execution by taking the accused person to the scene of crime and executed the accused claiming that the accused tried to escape. This shows exercising of powers that are not assigned to police officers as the power of police is limited because of the existence of specialized organs such as Judiciary in order for the culprit to be tried for the offence he has committed irrespective of the guilt or gravity of crime.¹⁶

United Nations Convention Against Torture

United Nations Convention Against Torture is convention against torture and other inhumane or degrading treatments or punishments that was adopted by the General Assembly of the United Nations on 10 December, 1984 and came into force from 26 June, 1987 after being ratified by 20 States. The committee under the UNCAT constituted as Committee Against Torture (CAT) monitors the implementation of rules of the conventions by the State parties. This Committee also has provisions to deal with complaints or communications from any individual claiming for their right being violated.¹⁷

India is a signatory to United Nations Convention Against Torture since 1997 however, it is yet to be ratified. In order to ratify the UNCAT, it will be required to make few modifications to the existing laws in the country for better protection of rights of the

¹² *Ibid* 11

¹³ *Ibid* 11

¹⁴ *Ibid* 11

¹⁵ *Ibid* 11

¹⁶ *Ibid* 11

¹⁷ *Ibid* 11



citizens still and all no action has been taken by the government on the matter.

In the year 2010, Lok Sabha passed the Prevention of Torture Bill that was sent for review by the Select Committee in Rajya Sabha which anyhow did not become a law and sent back with suggestions of the committee after 2 years.

The Law Commission in the year 2017 submitted its 273rd report which was accompanied by an Anti-Torture Law recommended by the central government asking to ratify the United Nations Convention Against Torture in order to overcome the hardships faced by the Indian law enforcement agencies while extraditing fugitives from a foreign territory. The petition was filed in Supreme Court in order for the formulation of the law but nonetheless the apex court observed that the government cannot be compelled to make this law through the writ of mandamus, as the treaty ratification is a political decision and is a matter of the policy. Thus, once again in the year 2017, the Prevention of Torture Bill was presented in Rajya Sabha but however it failed to become law.¹⁸

NORMALIZATION OF POLICE BRUTALITY

The police brutality/ruthlessness is no more a rarity in India. The cases of police brutality have surged to greater heights in the society to a point it is normalized between the people

and police officials. There are numerous cases that are reported on police ruthlessness and misconduct but often these cases are suppressed.

Uttar Pradesh state of India has seen 8,742 encounter cases out of which 146 dead and 3,302 people injured since Bharatiya Janata Party came to power in 2017.¹⁹

While in State of Assam, there are 50 encounters out of which 27 people have died and 40 were injured between the span from May 10 to September 21, 2017 since Bharatiya Janata Party was re-elected.²⁰

The Policing in India Report 2019 stated that 3 out of 4 policemen believe that violence carried out by them towards criminals is justifiable. They believe that violence is a means to grasp extra-judicial confession out of persons accused of crime.²¹ The glorification of police brutality is embedded in the society to an extent that even the entertainment industries glamorize the acts of police turning themselves into judge and executioner.

Bollywood is one of the top entertainment industries in India that is apparently a conscience keeper of Indian society, glamorize the acts of cop in a film who involve in beating the accused terribly before arresting the accused, using violence to extract confessions from the persons etc. this glorification of acts which are form of police brutality influence police personnel and

¹⁸ The abuse of police power and police brutality, Abhinav Ashok, <https://www.legalbites.in/abuse-of-police-power-police-brutality> Accessed on 29 November, 2021 at 2:30 P.m.

¹⁹ THE LEAFLET, The unlawfulness of police brutality in India, Anurag Tiwary, <https://www.theleaflet.in/the-unlawfulness-of-police-brutality-in-india/> Accessed on 28, 2021 at 5:00 P.m.

²⁰ *Ibid* 3

²¹ YKA, On Police Brutality: A Spectre That Has Haunted India For Decades, Harsha Roy <https://www.youthkiawaaz.com/2020/01/on-police-brutality-a-spectre-haunting-the-nation/> Accessed on December 28, 2021 at 5:00 P.m.



ordinary citizens to self-image themselves to be judge and executioner. This eventually becomes a public approbation.

One such other factor is the matter interpreted in media or opposition party or general public that are against the police brutality. This problem exists because police are often controlled and influenced by the politicians for their benefit. Police personnel are influenced by politics, politicians and political narratives taking part in the country and so it is not just a problem of law and order but also in ambit of politics. As policemen are like any other citizens who have right to vote and have their own political bias, prejudice, beliefs and morals.

Police fall prey to political unconsciousness that runs the state's politics and since police are the peace-keepers of the society and they hold power, have right to bear arms and bestowed with authority to use blunt forces when they feel it is justified. The authority, power bestowed with the police to control the general public/individuals and their actions through means of violence to curb their freedom while having no moral or political consciousness is the root cause of police brutality.

It is important for offending officials to be held accountable for their actions, while police are bestowed with powers and authority, to do and receive to safeguard themselves under law when they use force. But it is important that the constitutional rights of an individual are not violated while exercising such force. The balance between

the reasonable force and unfair/excessive use of force which violates the rights of an individual are to be held accountable.

INCIDENTS AND CASES RELATING TO POLICE BRUTALITY

The police brutality in India is widespread and celebrated. Police personnel believe that police are justified in being violent towards the accused/criminals and there's nothing wrong in hitting the criminals to extract information from them. This thinking of police lead to misuse and abuse of the authority and power vested with them. Police forces are the ones who get called when there is any nuisance or public disruption in the society which ultimately makes them to work for more than an average in a day. 50% of Indians condone the act of police violence. In the Status of Police in India Report of 2018, there were over 15,000 people interviewed regarding the people's perception on violence of police, 16% population did not answer while 13% of people partially and completely rejected police violence.²²

On 15 December, 2019 the Delhi police were accused of responding with disproportionate to peacefully protesting students against the Citizenship Amendment Act in the campus of Jamia Millia University located in Delhi. The police allegedly attacked the students with batons and also used tear gas against the protestors including library and bathrooms.²³

On 5th January 2020, 50 masked men reportedly belonging to the ABVP the student wing of ruling BJP attacked the

²² Scroll.in, In charts: High approval for police violence in India- 80% among police, 50% among citizens, <https://scroll.in/article/936162/in-charts-high-approval-for-police-violence-in-india-80-among-police-50-among-citizens> Accessed on December 01, 2021 at 10:30 A.m.

²³ YKA, On Police Brutality: A Spectre That Has Haunted India For Decades, Harsha Roy, <https://www.youthkiawaaz.com/2020/01/on-police-brutality-a-spectre-haunting-the-nation/> Accessed on December 01, 2021 at 10:40 A.m.



students, teachers in the campus of Jawaharlal Nehru University including vandalized buildings and public property. But however, it was alleged that the police failed to intervene and control the situation.²⁴

In the state of Kolkata during 1970 the police in order to quell the student movements or the Bhagalpur incident of 1979 and 1980 blinded 31 individuals under trial by pouring acid into their eyes.²⁵

On Independence Day of India, police stormed into the slum of western state of Gujarat and dragged 65-year-old Hira Bajania from his home at night. He was taken to the nearby police station along with 11 other men accused of stealing cell phones. As the crack of dawn on the next day of Independence the accused were taken one by one from their cell for interrogation up to 30 minutes. According to the complaint later filed to the police which was seen by CNN, the accused persons were bound, stripped, beaten, abused. While two persons from the group stated they were tortured sexually and told to confess. Many of them were returned to their cell unable to stand. The next day, around 5:30 p.m. Hira Bajania collapsed after being hit by the police, Shankar Bajania states that the police thought Hira Bajania was pretending. However, he further states that the body of the accused person was taken to hospital and he was pronounced dead.²⁶

The National Human Rights Commission (NHRC) of India, government body that deals with human rights violation states that since start of 2019 there are at least 194 people that died in the custody of police in India.²⁷ The police violation is now a daily reality that ranges from batons to control the crowd to fatal custodial violence. The officers in these cases rarely gets convicted for their actions which is often carried out against the most vulnerable groups/members of the society.

In the case of *Rudul Shah vs. State of Bihar*²⁸ the petitioner ever after being acquitted was unlawfully detained in the prison for term of 14 years. The Apex Court held that the State should pay a compensation of 30,000 rupees under the writ jurisdiction for violating the fundamental rights guaranteed under Article 21 and Article 22 of the Constitution of India.

In the case of *Sebastian Hongray vs. U.O.I*²⁹ the Supreme Court awarded compensation for the torture, agony and harassment of two ladies whose husbands were reportedly missing from an army camp by the army officials in the state of Manipur. This verdict was passed based on the Rudul Shah's judgment.

In *State of Maharashtra vs. Ravi Kant Patil*³⁰ the Supreme Court in this case awarded compensation of 10,000 rupees to the victim, as the police tied the arms and handcuffed the

²⁴ *Ibid* 3

²⁵ *Ibid* 3

²⁶ CNN World, Indian police use violence as a shortcut to justice. It's the poorest who bear the scars, Mohit Rao, <https://edition.cnn.com/2020/12/02/india/police-brutality-india-dst-intl-hnk/index.html> Accessed on December 01, 2021 at 11:00 A.m.

²⁷ CNN World, Indian police use violence as a shortcut to justice. It's the poorest who bear the scars,

Mohit Rao, <https://edition.cnn.com/2020/12/02/india/police-brutality-india-dst-intl-hnk/index.html> Accessed on December 01, 2021 at 11:00 A.m.

²⁸ 1983 AIR 1086

²⁹ 1984 AIR 1026

³⁰ <http://courtverdict.com/supreme-court-of-india/state-of-maharashtra-vs-ravikant-shankarappa-patil-ors> Accessed on December 01, 2021 at 11:00 A.m.



under-trial prisoner and made him to walk on the streets.

In *Nilabati Behara vs. the State of Orissa*³¹, the custodial death was reported by a woman whose son was inflicted with wounds on him by police in police custody. The Supreme Court held awarded compensation under Article 32 of Constitution of India concluding that the death was caused due to police brutality which is violation of fundamental rights.

In the case of *A.V. Janaki Amma vs. U.O.*³² the court observed that the Public Authorities, Officials and the States are only liable to pay compensation when Article 21 of the Constitution of India is violated. In the case of *Nilabati Behara vs. the State of Orissa* the court referred to this principle as the privilege of compensation shall be provided only when there is violation of Article 21 of Constitution of India and custodial violence or custodial death are proven beyond doubt.

However, the Sube Singh judgment added to *Nilabati Behara case*³³ concludes that the compensation will be provided only when such violation is higher and has the magnitude to break the conscience of the court.

In *P.P. Unnikrishnan vs. Puttiyottil Alikutty*³⁴ S.L of police and police constable of Perambra police station unlawfully detained the respondent in Perambra police station for 4 days without registering case nor producing him in the court. The police also tortured the respondent for 4 days in custody. In appeal made to the Supreme Court, it was held by the court considering the scope of section 197

of the Code for a public servant to claim protection there must be a reasonable nexus between the act and the discharge of the official duty; and such act should stand related to the duty that the accused person could lay a reasonable but not a pretended or fanciful claim, which the person carried out during the performance of his duty.

In *Uttarakhand Sangharsh Samiti vs. the State of Uttar Pradesh*³⁵ the police allegedly killed 24 persons, molested and raped women. The Court under this case ordered the offending officials to pay sum of 10 lakhs to the people who were killed, 10 lakhs to women who were raped and 10 lakhs to the molested women. However, no charges were framed against the officials in this case. Further, it was stated that, it is not every single act carried out by the police official on duty which falls under the scope of section 197. In order for a person to be charged under the section there must be a direct nexus to discharge of his official obligations.

POLICE BRUTALITY DURING COVID-19 LOCKDOWN

The cases of police brutality in India have surged to increasing level during the Covid-19 Pandemic lockdown imposed all over the country. India imposed Section 144 of the India Penal Code that prohibits the assembly of four or more people. The lockdown curfew was imposed in order to ensure that the spread of virus can be contained easily. Person that violates Section 144 shall be arrested and detained in the police custody however, the use of force was never granted to police officials.

³¹ 1993 SCC (2) 746 JT 1993 (2) 503

³² 2004 (1) ALD 19

³³ 1993 SCC (2) 746 JT 1993 (2) 503

³⁴ 1999 CriLJ 4261

³⁵<https://www.casemine.com/judgement/in/5ac5e2974a932619d9010917> Accessed on December 02, 2021 at 10:00 Am.



The study by Commonwealth Human Rights

In the month of May, 2021, a 17-year-old reportedly died after being beaten by the police with stick in the Bhatpuri region of Uttar Pradesh for violating the Covid-19 lockdown protocols in the state.³⁶

Another incident where 18-year-old vegetable vendor named Faisal Hussain in Unnao district of Uttar Pradesh was picked by three police officers from the market and was beaten terribly that he died of injuries. The police officers were charged of murder.³⁷

According to India's National Human Rights Commission report of the year 2017/18, states that there are nearly 148 intimations of death in the police custody. While it disposed 2,151 cases of custodial death out of which 1,945 cases were pertaining to death in judicial custody, 205 cases of death in police custody cases and one case in para-military forces. It further stated that some of the custodial violence were only reported after a considerable delay or not reported at all. The violence was also frequent that they became a routine.³⁸

One of the horrifying incidents was on the night of 19th June 2020, in the district of Toothukudi in Tamil Nadu where a father and a son namely Jayraj and Fenix were beaten brutally that resulted in mutilation of their body parts. The father and son were taken to

Sathankulam Police Station where the deceased were brutally beaten. The police carried out such serious action on a mere cause that the deceased were keeping their shop open past the permitted time/lockdown curfew. The police in this case stated that there was a large gathering outside the shop of the deceased which was forbidden during the time of pandemic. However, the witness as well as the video evidence from the site shows entirely different story which concludes that it is tactic used by the police to cover up their misdeeds.³⁹

On March 26, Sonu Shah, a pickup-truck driver carrying potatoes in Patna state of Bihar reportedly short by police because he refused to offer bribe.⁴⁰

The police brutality is also widespread against the LGBTQ+ community in India. In the month of June 2020, in the state of Kolkata, two men on a motorcycle approached Sanjit Mondal, a gay man. At the first instance Sanjit Mondal refused to go along with them however, the police officials verbally and physically assaulted the person and forced him on the bike. After which the police officials kept asking inappropriate questions relating to his behavior, appearance, whether the person has a boyfriend or girlfriend etc. when they reached the station, Sanjit Mondal was

³⁶ POLICE BRUTALITY IN INDIA, Sofia Bhambri, <https://www.sbhambriadvocates.com/post/police-brutality-in-india> Accessed on December 02, 2021 at 10:20 A.m.

³⁷ Legal Up, What are the laws regarding police brutality and custodial death?, <https://legaluplaw.com/sparsh/police-brutality-and-custodial-death/> Accessed on December 02, 2021 at 10:30 A.m.

³⁸ National Human Rights Commission India, https://nhrc.nic.in/sites/default/files/NHRC_AR_EN_2017-2018.pdf Accessed on June 22, 2022 at 5:31 P.m.

2017-2018.pdf Accessed on June 22, 2022 at 5:31 P.m.

³⁹ 47, Jeyaraj and Bennicks: Police Brutality in India, <https://www.47roots.com/police-brutality-indias-george-floyds/> Accessed on December 02, 2021 at 10:30 A.m.

⁴⁰ YKA, It's High Time We 'Police' The Police And Change the System, Yasir Mumtaz <https://www.youthkiawaaz.com/2020/06/in-the-shadow-of-george-floyd-assessing-indian-police/> Accessed on December 02, 2021 at 10:40 P.m.



humiliated, abused and threatened for his sexual orientation.⁴¹

In the month of October 2018, a 25-year-old trans woman, Obhishek Kar was slapped and humiliated by the police officials. The police officials used transphobic slurs and accused Obhishek Kar of being a sex worker. While in the month of September 2018, the Supreme Court of India ruled that the consensual homosexual acts do not constitute as an offence anymore but however, the cases of such kind still continue to raise.⁴²

The lack of anti-brutality laws in the country is one of the major causes of rapid increase of such heinous crimes. The media unflinchingly shows various episodes of police officials mistreating and torturing the suspects in police custody that gives impression of glorifying the act of police brutality. The individuals from the minority and deprived sections often become the victim of police brutality.

POLICE BRUTALITY AGAINST MINORITIES

Police brutality in India is widespread and in the last few years there have been surge in police brutality against students, protestors, minority communities and migrant workers. There have been various instances of video footages and recordings circulated in social media. In the year 2018, the Centre for Study of Developing Societies (CSDS) found

Indian police personnel think that Muslims are most likely to commit crimes while Schedule Castes and Schedule Tribes are more naturally prone to commit crimes.⁴³

On March 23, Deepak Bunde, a lawyer was brutally beaten by the Madhya Pradesh police while he was on his way to hospital. The police officials stated that bunde was wrongly identified as Muslim man.⁴⁴

Section 129 of Criminal Procedure Code, states that the police and armed forces can use force to disperse the crowd of five or more people in an unlawful assembly. However, in the case of *Anita Thakur and Ors. Vs. Govt. of J&K & Ors.*⁴⁵ the Supreme Court held that the use of excessive force by the police officials violates the human rights and dignity.

One of such incidents includes the police brutality during the CAA protest that happened after the Citizenship Amendment Act passed by the government on 12th December 2019. On 16th January, a jury of People's Tribunal on State Action in the state of Uttar Pradesh noticed that the state machinery from the top have acted with grave and serious prejudice and perpetrated violence targeting against a particular community, Muslim population and the social activists who lead the movement. There were visible incidents of police brutality and use of violation beyond the

⁴¹ POLICE BRUTALITY IN INDIA, Sofia Bhambri, <https://www.sbhambriadvocates.com/post/police-brutality-in-india> Accessed on December 03, 2021 at 9:00 A.m.

⁴² POLICE BRUTALITY IN INDIA, Sofia Bhambri, <https://www.sbhambriadvocates.com/post/police-brutality-in-india> Accessed on December 03, 2021 at 9:00 A.m.

⁴³ YKA, It's High Time We 'Police' The Police And Change the System, Yasir Mumtaz

<https://www.youthkiawaaz.com/2020/06/in-the-shadow-of-george-floyd-assessing-indian-police/> Accessed on December 03, 2021 at 9:20 A.m.

⁴⁴ YKA, It's High Time We 'Police' The Police And Change the System, Yasir Mumtaz

<https://www.youthkiawaaz.com/2020/06/in-the-shadow-of-george-floyd-assessing-indian-police/> Accessed on December 03, 2021 at 9:20 A.m.

⁴⁵ IV (2016) ACC109 (SC)



usual method of controlling the crowd using water cannons, lathi-charge, stun grenades to enter and firing.⁴⁶

In Nagina, a town in the state of Uttar Pradesh, the police have reportedly tortured 5 minors in custody between the age group of 13-15 after the protest. All the minors were from Muslim community and were beaten brutally, stripped, forced to watch the tortures on their adult custodians and have been led sleep-deprived.⁴⁷

AUTHOR'S CRITIC

Police is one of the important law enforcement agencies of a country. They are entrusted with maintaining peace, harmony and brotherhood in the country. The safety of the citizens is entrusted with police to an extent when any wrong happens in a society or to a person, the police are the ones called for help and protection. They're no less than a savior. Given a high authority paves corruption while, police have power to control and manage the peace and harmony in a state, the excessive use of such power and authority may violate the human rights and dignity of the citizens. The absence of anti-brutality laws in the country is one of the major causes of increase in police brutality in the country. Police brutality is no less than an offence and is a serious threat to the judiciary and democracy as the acts of police brutality violate the power of judiciary and freedom in democracy.

CONCLUSION

Police is one of the important law-making agencies and have been vested with power, authority and responsibility to control and protect the state from crimes and offenders. These powers of the police officials may cause serious violation of human rights and dignity of citizens when it is used exceeding a reasonable limit. There have been various instances in the history of India where innocent people have been subject to violent actions and brutality by police. The history of India has a long horror of police violence. The acts of police brutality create a fear and hostile environment/state for citizens that makes the civilians lose their faith in judiciary. The perceptions of the violence inflicted by the police on offenders will make them less vulnerable to commission of offence leading to more vicious and horrific treatments. This prompts that the use of violence and force is an easy way to obtain justice. The lack of anti-brutality laws and glorification of the acts of police brutality in movies are one of the causes for increase in police brutality. The media is supersensitive tool which directly connects the citizens. Movies and media are vulnerable, having power to influence people into believing that the violence used against the criminals and offender is justifiable, when in reality it is a violation of fundamental rights and human rights of the individual. When the laws are openly violated and are justified without proper judgements following it, the state becomes police state.

⁴⁶ THE WIRE, Anti-CAA Protest Reveal Torture Remains at the Heart of Indian Policing, <https://thewire.in/rights/anti-cao-protests-reveal-torture-remains-at-the-heart-of-indian-policing> Accessed on December 03, 2021 at 10:40 A.m.

⁴⁷ THE WIRE, Anti-CAA Protest Reveal Torture Remains at the Heart of Indian Policing, <https://thewire.in/rights/anti-cao-protests-reveal-torture-remains-at-the-heart-of-indian-policing> Accessed on December 03, 2021 at 10:40 A.m.

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