



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

“POLICE BRUTALITY” – AN INFRINGEMENT OF HUMAN RIGHTS IN INDIA.

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ABSTRACT

This paper aims to bring forward the atrocities by the police officials which result in a grave violation of human rights of the public. It further states the problems faced by the citizens in filing a complaint against the police and it also deals with the accountability of police during infringement of Human Rights. This paper states the major police reforms since independence to make the police system accountable for their misconduct and also states the changes to prevent the infringement of human rights by the misconduct of police during custody or during the course of their duties.

Keywords- Police; India; Human Rights; Political System; Reforms

INTRODUCTION

Human rights are those rights which are exercised by the human beings right after they are born. They are the inherent rights available with any person regardless of their sex, caste, race, nationality, religion, and ethnicity. Human rights also include various fundamental rights such as right to life to life and liberty, right to work and education, freedom from forced labour or slavery, freedom of speech and expression and many more rights. All persons are entitled to these rights without any discrimination on any basis.

The Universal Declaration of Human Rights (UDHR) was officially adopted in 1948. The International covenant on civil and political rights came into force in 1976. India was also one of the countries who signed the Universal Declaration of Human Rights and acceded to two covenants by depositing the instrument in 1979. In 1993, the Vienna declaration and programme of action ‘Human Rights and Fundamental freedom are birth right of all human beings’¹

India is the world largest democracy with a strong civil society, an independent judiciary and a strong media. The constitution of India specifically provides for various fundamental rights to back the human rights given to all citizens but its organs has failed to implement it effectively making India a serious human rights concern. Human rights in India is a complicated issue due to the large size and population of the country along with widespread of poverty, diverse culture and lack of many essential services such as education, healthcare, etc. One of the main reasons for making India a serious human right concern is the existing Police system in India. The Indian Police force needs a reform in order to save thousands of citizens from getting their human rights violated. The existing Police is working more for the powerful politicians than for the normal citizens. Police often cross their limits and infringe the human rights of innocent civilians intentionally

The democracy of India is celebrated across the globe but back home the own society is facing increased harassment and infringement of their rights. The 2018 Country report on Human right practices has stated that India has serious human rights concerns. The civil society face harassment and those who criticize the government

¹ Agarwal 2006

are filed lawsuits against them.² The government has not yet repealed any law which provides immunity from prosecution to the public officials, government and security forces. This shows the scary side of Indian democracy which is ironically celebrated in other countries by the constitutional head i.e the powerful politicians of our country.

OBJECTIVES OF THE STUDY

- To understand the infringement of human rights by police in India.
- To know the accountability of police for their misconduct.
- To know the existing laws at the national level along with international conventions to prevent and control such incidents.
- To know whether the existing laws are effective in preventing infringement of human rights by police.
- To know what measures shall be taken to held the police accountable for their misconduct and to prevent the torture by the police. .

SCOPE OF STUDY

The paper aims to determine the misconduct of the police against the innocent citizens of India, whose human rights are infringed by the conduct of the police in the form of physical and mental torture, barbaric third degree treatment fake encounter, false imprisonment, which results in custodial deaths of some innocents who are only suspects and undertrials. Police is working in this manner because they are motivated by senior police officers and politicians with influential powers. It clearly shows that the police are in the hands of powerful politicians. It is the need of now to make the citizens aware of their rights in order to raise their voices against the violation of their human rights.

METHODS AND MATERIALS

This paper is based on both primary and secondary data like crime reports, NGO's reports, personal experiences, journals, books and internet surveys etc. Doctrinal method of research methodology has been used in this paper.

POLICE BRUTALITY IN INDIA

India is a union of 28 states and 8 union territories. Under article 246 of the constitution of India, 'Police' fall under list II of the 7th schedule,³ which is state list. It means that the state governments can only make rules to regulate and govern the police in their respective states. Being a quasi federal structure in India, the central government also plays an important role in the appointment of police through UPSC. A senior officer of Indian Police Service (IPS) is appointed by the central government. Even various paramilitary forces such as Central Reserve Police Force and the Border Security Force are regulated by the central government. The police force is notorious across the world for its atrocities and brutalities against the suspects, undertrials and detainees who are either arrested or brought, without any warrant to the police stations or lockups under the jurisdiction of respective police forces. This paper is focused on the Police force in India. The extent of police brutality in India is perhaps the highest across the world. The suspects are treated under both physical and psychological pressure by the protectors of law. In India, police assume themselves to be superior enough to perform the functions of the judiciary by deciding a suspect or undertrial in his lockup as guilty. One of the main reasons for infringement of any rights during the course of their duty was the unaccountability of the police. Section 197 of the CrPC⁴ has given immunity to the police from the accountability. Amnesty International in its annual report has stated that various forms of torture are being continued to be given by police which includes rape, grievous hurt, ill treatment, false imprisonment and many other crimes given under the Indian Penal Code, 1860.⁵ Physical and psychological torture of the suspects have been quite prevalent in India for several decades. The suspects or detainees in the police custody include

² Country Reports on Human Rights Practices for 2018
United States Department of State • Bureau of Democracy, Human Rights and Labor

³ The Constitution of India

⁴ Code of Criminal Procedure, 1973

⁵ Amnesty International, 2000, p. 4

undertrials who sometimes are minors or people who are being arrested for the first time. Both the types of detainees are inflicted physical torture by the police in their custody. No one is spared from these goons in the uniform of police. An extensive research in this field indicates that various forms of physical torture are carried out by the police which includes rape also. These physical tortures result in the custodial death of hundreds of innocent suspects resulting in the infringement their human rights at its peak. These disturbing numbers of custodial deaths continue to surface in all parts of the nation. Highest number of 27 custodial deaths was reported in Andhra Pradesh.⁶ The human rights commission was established under the Protection of human rights act, 1993. It provided means of holding the police accountable in case of any misconduct. The most important of this was National Human Rights Commission. It was established in 1993 conferred with

various important powers in order to regulate the conduct of police and to prevent the infringement of human rights.

S. No.	Incidence of	Number of Cases Registered	Number of Cases Found to be False	Number of Police Personnel Chargesheeted	Number of Police Personnel Convicted
1	Fake Encounter Killings	13	6	4	0
2	Illegal Detentions or Arrests	16	2	1	0
3	Torture	1	0	0	0
4	Hurt/Injury	52	22	22	0
5	Extortion	50	18	7	0
6	Failure in Taking Action	2	0	0	0
7	Others Human Rights Violations	75	25	16	0
Total Human Rights Violation by Police	Total Human Rights Violation by Police	209	73	50	0

State/UT-wise Cases Registered against Police Personnel for Human Rights Violation during 2016⁷

NATIONAL HUMAN RIGHTS COMMISSION (NHRC)

The National Human Rights Commission along with the State Human Right Commissions have the power to take cognizance suo moto or on the basis of petitions filed on matters related to violation of human rights. It has the power to intervene in any matters related to violation of human rights such as judicial proceedings, summon of witnesses, procurement of documents and evidence, visit detention centers, prisons and lockups and to recommend the government of subject matters related to human rights. Any death in police custody was made mandatory to be reported to the commission for its scrutiny irrespective of the death being natural or due to any other cause. The commission grants compensation as a norm, in all cases of police cases as a form of relief to the victim. The NHRC was a weak body of mechanism because it only had mere recommendatory power. The NHRC, for public information purpose would categories all its reported cases into several categories of offences such as custodial deaths, fake encounters, police excesses, atrocities on dalit and minorities, cases relating to women/children,

⁶ Crime in India Report 2016. National Crime Record Bureau. New Delhi.

⁷ <https://data.gov.in/resources/stateut-wise-cases-registered-against-police-personnel-human-rights-violation-during-2016>

bonded labour other cases. Unfortunately, the law does not confers the power to the commission to inquire into complaints of human rights violations against the members of the armed forces. Armed forces include the army, navy, air force central armed police organizations, the Border Security Force.⁸ No reports of the NHRC are accessible after 2010 report. In NHRC's 2009 report, 67,354 cases of human rights violations, 1330 cases of custodial deaths, 2 cases of custodial rapes and 83 cases of fake police encounters out of total registered cases of 68,779 were disclosed.⁹ By the end of 2003, 43,010 cases out of these cases remained pending. The law was very weak in the effectiveness of NHRC's redressal in those cases where the members of the commissions were involved. The only power the commission has in these cases to protect the human rights is to call for reports from the central government and make recommendations to them. In several cases the central government denied NHRC the records it sought for.¹⁰ The commission has no binding authority, it does not have any mechanism to enforce its decisions. It can only give advise to the government to take action against the guilty or provide relief to the victim. It is on the discretion of the government to accept or reject the request. The commission can not force the government to comply with its recommendations. It can only approach the higher courts and seek directions.¹¹ The institution like National Human Right Commission in a big sized country like India is too far off from the scene to be approachable in many cases. A large number of brutalities of police are committed in rural areas where people are not educated and they are not aware of their rights. In such places people are not aware even of the existence of the commission.¹² Moreover most of the states have not set up a commission in their respective states yet.

THE NATIONAL POLICE COMMISSION (NCP)

No serious efforts were made to regulate the misconduct by the police before the imposition of emergency. The next government which came in power after the Indian National Congress, having witnessed the police torture during the time of emergency, established the National Police Commission. The main job of this commission was to do a comprehensive review of the police system in order to make a fresh police system, both as a law enforcement agency as well as an institution for the protection of rights of citizens. The most important task was to recommend measures and arrangements to prevent misuse of power by the police and misuse of police by the influential people and politicians. During 1979 to 1981 the commission produced 8 reports, however these recommendations were not taken into consideration due to lack of initiative by the ruling party and the political climate at that time. In the first report, the NCP recommended that there should be a separate mechanism for inquiry into the complaints against the police officers either by an independent agency or by any superior officer of the department and in case of custodial rape, custodial death or fake encounter, it is to be inquired by judicial authority. The second report of NCP suggested establishment of "Criminal Justice Commission" to monitor the performance of various wings of the police department and to take corrective measures whenever necessary. The police act shall be amended in order to prevent any undue and unlawful influence on the police by the political parties. The role of the police to be unbiased and lawful in order to enforce the law. The third report recommended having separate wings of investigation for the backward societies such as scheduled castes and scheduled tribes. It provided guidelines for arrest and suggested that no person shall be handcuffed in any bailable offences except by an order or the court. It mentioned that the powers available to police in case of arrest are very wide and can cause harassment or humiliation to any person based on mala fide intentions. In its fourth report, NPC suggested to provide protection to a person being arrested. It suggested that section 50A shall be inserted into CrPC which would require the police to inform the person of arrest, which is nominated by the arrestee. It recommended that there should be surprise visit of senior police officers to any police stations in order to prevent the instances of custodial torture or false imprisonment. NCP recommended in its fifth report that the working of the police system should be transparent. In sixth report it recommended that the law and order wing

⁸ Vadackumcherry, James. (1983). *Criminology and Penology*. Kairali: Trivandrum.

⁹ National Human Rights Commission Report (2002-2003) (New Delhi, 2003) 168, 169

¹⁰ Saxena, A.K., P.S.V. Prasad and Sankar Sen. 1994. *Custodial Deaths in India (A Research Study)*, 1st Ed.

¹¹ Pranjape, N.V. (2008). *Criminology and Penology*. Allahabad: Central Law Publications.

¹² Srivastava, S.S. (2007). *Criminology Criminal Administration*. Allahabad: Central Law Agency

and investigation wing shall be separate. It was suggested in the seventh report that there shall be central law to bring uniformity across the armed police force in the country. The most important recommendation of the last report was to withdraw the protection provided to the police under section 132 and 197 of the CrPC. With the withdrawal of these sections, any person could file a complaint against the police officer and get justice. No response was given to the reports of the NCP because no state was ready to accept and more importantly the politicians could exert more influence over the police in the current system and no one wanted to withdraw that supremacy.

LAW COMMISSION REPORTS

The 113th Law Commission reports recommended to the government that section 114B shall be inserted in the Indian Evidence Act, 1872.¹³ Section 114B provides for the prosecution of police officer for an injury to a person in custody, and such injury was caused during the period of the custody then it will be presumed by the court that such injury is caused by the police officer who has his custody. It also recommended that medical examination of the arrested person should be done.

The 152nd Law Commission report made some recommendation in order to reduce custodial violence. It recommended that section 41(1A) of the IPC, 1860 in such a manner that the arrest must be recorded officially and also inserted section 50A so that the police must inform the relatives or any person nominated by the person arrested of his arrest. It also stated that police officials are abusing the protection given to them under section 197 of CrPC. It stated that section 197 has some loopholes, sanction is required in an act committed by a public official in discharge of his duty or related in some manner to discharge of his duty. The Law Commission stated that it is very difficult to prosecute a public official and this section is making it even more difficult and therefore it suggested insertion of section 197 (1) which states :-

“When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction”

Law Commission in its 177th report suggested amendment of section 55A of CrPC by adding a proviso to protect the health and safety of the arrested person.¹⁴

The Law Commission in its 217th report recommended that definition of torture should include “inflicting injury, either voluntarily or involuntarily or any attempt to cause such injury which will result in mental, physical or psychological injury. It suggested that the convention of United Nations against torture should be ratified. Other suggestions include amendment in CrPC, compensation in case of police atrocities, stringent punishment in case of any type of torture, effective mechanism for protection of complainants and victims.

DIRECTIVES BY SUPREME COURT

In 2006, the Supreme Court of India in the case of Prakash Singh vs Union of India¹⁵ gave a landmark judgement provided the central as well as state government with seven directives to reform the police.

1. Constitution of a State Security Commission.
2. Appointment of DGP through merit based and transparent process.
3. A minimum tenure of two years for the police officers on operational duties.
4. Separation of investigation and law and order function.
5. Setting up of Police Establishment Board to decide transfer, promotions and other related services.
6. Setting up of Police Complaints Authority at state level.
7. Setting up of National Security Commission at union level.

¹³ Law Commission, Law Commission Of India One Hundred And Thirteenth Report On Injuries In Police Custody, Report Number 113th (1985)

¹⁴ Law Commission, Law Relating to Arrest, Report No. 177 (2001)

¹⁵ (2006) 8 SCC 1

Only directive 4 and directive 6 are relevant to this paper as it establishes an accountability for the police officers and also helps in preventing the infringement of human rights of the civilians. Directive 4 deals with the separating function of investigation and law and order. Directive 6 deals with setting up of Police Complaint Authority at state and district level. The purpose of this authority is inquire into the complaints made by the citizens against the police officer for any misconduct during their duties including police atrocities. It then investigates the matter using the machinery of states and recommend the appropriate authority for any punishment if required. It can even ask the authority for registration of in FIR against the accused police officer. They recommendations of PCA are binding on the state. The jurisdiction of district PCA is limited to the investigation of police officer till the rank of Deputy Superintendent of Police and below that whereas the jurisdiction of state PCA will be in all matters of any police officer of or above the rank of Superintendent of Police. As per the 2016th report of Commonwealth Human Rights Initiative (CHRI)¹⁶, it has been provided that 23 states have already established PCA at both state and district levels but the members of PCA are selected through a transparent manner in only one six state. The recommendations made by the PCA is binding in only nine states. This proves that the government himself does not want to reform the police because it will lead to withdrawal of government's influence over the police. It has been more than 12 years since the Prakash Singh judgement was delivered but till now no concrete steps are taken by the government.

CONCLUSION

Police often treats suspects, undertrials and detainees as animals. They do not care about the human rights of these people and this misconduct on the part of police results in as custodial death, custodial rape, grievous hurt, illegal custody, false imprisonment, etc. Police are given immunity by the statutes made by the legislators in order to save them from prosecution. Stringent laws shall be made in order to make the police accountable for their grave misconducts.

With the police system being reformed from time to time, there's still some hope that some day the police system will get truly reformed and there will be no case of infringement of human rights by the police officers. The main reason behind the police atrocities is the power hungry politicians who use these police officers as their lapdog. Despite the directions being given the Supreme Court of India, it takes decades to effectively implement any law to regulate the conduct of police. The politicians do not want the police to get reformed because their influence over the police will be withdrawn with a reformed system of police. People should be made aware of their rights which are given to them by various statutes. They should be able to exercise their rights in order to prevent anyone including the police officers to infringe their human rights. With the enactment of various legislations recently, now the police can be held accountable for any of their misconducts. The citizens shall complain to the appropriate authority if any of their rights are being infringed by any police officers. Everyone gets human rights inherently and no one can take away or infringe anyone's rights in any circumstances without being proven guilty.

¹⁶ Compliance with Supreme Court Directives on Police Reforms, Commonwealth Human Rights Initiative (CHRI), 30th November 2016