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Police Brutality In India: A Critical Analysis From A Human Rights Perspective.

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“...the threat to human rights and bodily integrity are the highest in police stations”

-Chief Justice N. V. Ramana

Abstract:

Gail B. Stewart famously said “Police Brutality- These are the two words that shouldn’t go together”¹. The Indian Law, like any other democratic country, believes in protecting its citizens and their rights, and for that, it has fundamental rights, other rules, and laws. The Legislature, the Executive, and the Judiciary work together and keep check on each other to ensure that. Under the executive authority comes the police and it has to maintain the peace and harmony of society. It plays an important role as it works on the ground level and assures the enforcement of law and order. It works very hard to prevent crime and disorder. But with all that being said, the police, are also known to misuse their powers under political pressure and for personal benefits. Former IPS Prakash Singh in an interview once said “I’d say that the police of this country is ruler’s police. The police for those in power. It doesn’t work for people”². Although the definition of police brutality is not given or mentioned under any law, the use of excessive power in a wrong or illegal way can be called police brutality. This article is about that only, it’s a study about police brutality. This article is more of a general public viewpoint backed by legal analysis.

¹ Gail B. Stewart, “*Police Brutality: Overview Series*”, (Lucent Books, San Diego, US, 2005).

² Interview with Police, Satyamev Jayate, Session 2, Ep-2, (Dt. 9th March 2014).

This paper will include all the major points related to police brutality, whether those be complaints, allegations, etc., and the Hon'ble Court's commentary on it. Police brutality includes both physical and mental torture, in some cases even death. Being rude and insulting people is a common thing for policemen, whether it be at police stations or traffic signals, we have seen it happening or heard it from someone. News about the violation of human rights, fake cases, fake encounters, etc. isn't something new to Indian society.

Keywords: Police, Police Brutality, India, Human Rights, Constitution.

Introduction:

The origin of the word "police" can be traced back to the Latin term and Ancient Greek word "politia". The Indian Constitution includes all important aspects like human rights, laws to prevent major crimes, etc for social stability. Human rights include rights to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights, and right to constitutional remedies. To make our nation peaceful and crime-free, the judiciary was set on the right track. The implication of law and citizens' protection was given in the hands of the police. India, being a union of 28 states and 8 union territories and 'Police' falls under List II of the 7th schedule under article 246 of the Constitution, which is State List. The Police Act 1861 defines the term "police" in Section 1, it reads that the word "police" will incorporate all the people who will be selected under this act. The police are the civil force of a state that is responsible for maintaining law and order in society. It acts as a major link in the legal chain system as it safeguards states from crimes and upholds the rights of citizens. But with all that the police also got a bad reputation among common people for misusing their power and using their uniforms to spread fear instead of a positive protection vibe in society. Mary Frances Berry said, "When you have a police officer who abuses citizens, you erode public confidence in law enforcement. That makes the job of good police officers unsafe". The Apex Court once observed and suggested establishing a "Police Complaint Authority"³ to look into complaints against police officers at the district as well as State level. Most of the time it has been seen that police show their soft side when it comes to investigating someone from their department.

One of the reasons behind police brutality may be the absence of anti-torture legislation in India. The secondary reason includes a lack of awareness among citizens about their rights. We, as a society, somehow also failed in our duty. Instead of making our children aware of laws and our duty as citizens of this country all we did was and still doing is putting fear in their minds about police. The National Campaign Against Torture (NCAT) uses local media reports to research and tally custodial deaths says 76% of deaths recorded in police custody last year were due to alleged torture or foul play and 19% were under suspicious circumstances in which police cited other causes including suicide and sudden illness.⁴

³ Prakash Singh v. Union of India (2006) 8 SCC1.

⁴ Mohit Rao, "Indian police use violence as a shortcut to justice. It's the poorest who bear the scars", (CNN Article, Dt. 3rd Dec. 2020).

After India got its Independence, many acts were passed which were related to police forces, The Police Forces (Restriction of Rights) Act of 1996⁵, and many states came up with their acts like The Kerala Police Act, 1963, The Punjab Police, Act, 2007, etc. The All India Services Act, 1951 was introduced from which IAS and IPS officers are selected. In a report by the Indian Annual Report on Torture published by the Human Rights group, a total of 1731 deaths took place in the year 2019 out of which, 1606 happened in judicial custody and 125 were in police custody. Paritosh Chakma, director of the National Campaign Against Torture, the torture techniques used in 2019 were hammering iron nails into the body, hitting private parts, electric shocks, branding with a hot iron rod, pressing fingernails with pliers, kicking the abdomen of pregnant women and many more.

Meaning:

Police brutality means the use of unnecessary or excessive force by officials when handling common citizens, it can be willful infliction resulting in a violation of the fundamental rights of citizens. It can be both physical and verbal. Even in the past, have been involved in various types of corruption and misconduct and both of these terms come under Police Brutality. A few examples of police brutality are: -

- Misbehaving with people.
- Brutally beating innocent people
- Fake encounters
- Sexual Harassment
- Custodial rape
- Threatening the accused for confession
- False arrest
- Illegal search and seizure
- Any kind of discrimination.
- Fake cases

Today, Human Rights need to be protected by the police as they are known for misusing their powers and crossing limits.

⁵ The Police Force Act (Restriction of Rights) vide notification No. G.S.R 1848, 3rd Dec. 1966.

History:

The roots of brutality by forces and armies go way in history. It's as old as our history itself. The King and Emperor used to have armies for the protection of their empire and its people but the same armies also used to frighten them. The police system has come a long way, from the times of Kautilya to the Mughals⁶ to the Britishers, it has evolved and changed. In history, examples before the British Era won't be mentioned as the scenario was different and the King or Ruler was treated as a divine lawmaker. Today's police system is closest to the British police system. The "Khaki" as we see it today is somewhat the same today as well, not just color or look of uniform but habits too driven from there. After all, soldiers working in the police department of the British era were Indians only. The Police Act of 1861 was also passed by the Britishers only. It was during British rule that civil and criminal courts were formulated and Faujdari Thanas and Chowkies were made, we still call police stations by these names in India. Under the British Raj, police were known for spreading fear among people. Physical torture of third-degree was commonly used on people who raised their voices against Britishers third-degree torture includes electric shocks, hitting private parts, putting hot irons over a human body, beating, and applying salt over the wounds of the accused, and whatnot. People had to go through this inhuman treatment and slave work even in the jails of the British Raj, the Andaman and Nicobar Cellular Jail is one example⁷. These methods still exist although they are not commonly used now "until required".

Jillian Wala Bagh massacre, which occurred on 13 April 1919, is a prime example of police brutality. In which 380 died and some historians think deaths were maybe above the mentioned number and many injured. All this was done on orders of General Dyer, who did it on purpose to set an "example" for other Indians. Even before that, in 1895, the Ganesh Visarjan procession passed from the vicinity of the Sai Masjid in Old Dhule Township, Maharashtra, where communal altercations between Hindus and Muslims ensued. To control the riot, police opened fire on a crowd in which many got killed and wounded. That temple even now is known as "Khooni Ganpati"⁸.

Post Independence, the first police brutality example was the Angamaly firing, which took place on 13 June 1959, in which 7 people were killed and many injured in police firing⁹. 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. This was one of the first steps, after India's independence toward the protection of Human Rights.

⁶ Pragati Sen, "Get complete information on Police Organisation of the Mughal Empire" article on preservearticles.com (visited on 18 Nov. 2023).

⁷ Robyn Wilson "Inside Cellular Jail: the horrors and torture inflicted by the Raj on India's political activists." (Independent, Dt. 11th Aug. 2017).

⁸ Dhaval Kulkarni, "How communal conflict led to the birth of Ganesh Utsav", (Hindustan Times, Dt. 22nd Aug. 2022).

⁹ Fr Joyce Kaithakottil "Remembering the Angamaly police firing" (The Indian Express, 12th June 2009).

Police Brutality and Human Rights in India:

After Independence, all this continued and even to this day, the police force is known for its atrocities and brutalities, against suspects, undertrials, and detainees. Some are arrested or brought without warrants to the police stations. Cases related to police brutality can be seen worldwide but this paper focuses on India only as the extent of brutality by police forces is highest here, across the world. The suspects or detainees are sometimes minors, women, or elderly people, but even they have to go through torture in police custody. The highest number of custodial deaths were reported in Andhra Pradesh which were 27. India was also one of the countries that signed the Universal Declaration of Human Rights and acceded to two covenants by depositing the instrument in 1979. In 1993, the Vienna declaration and program of action 'Human Rights and Fundamental freedom are Birthright of all Human Beings' Human Rights Commission was founded under the Protection of Human Rights Act, 1993, to hold the police accountable in any case of misconduct. But the problem with NHRC was that it was good for collecting data and research but was a weak body and was only with "recommendatory powers". The law does not give any power to NHRC to inquire into complaints of human rights violations against police. It was made to collect reports and several times Central government has denied data provided by NHRC. The commission has no binding authority and it cannot enforce its decisions. But this data is also not purely correct as in rural areas people are not aware of their rights and most states have not set up a commission in their states.

The Indian National Congress established the National Police Commission. The job of this commission was to review the police system and make a new, fresh police system, as both a law enforcement agency as well as a protector of the rights of citizens. The main task of this commission was to recommend measures and arrangements regarding the misuse of powers by police and the misuse of police by politicians. From the year 1979 to 1981, this commission submitted 8 reports which were never taken into consideration by the government. In its reports, the NPC suggested establishing the "Criminal Justice Commission", separate wings of investigation for backward societies such as scheduled tribes and scheduled castes. It also suggested that no person shall be handcuffed in any bailable offense until ordered by the court. NPC also suggested that the working of the police force should be transparent. In the last report, it suggested removing the protection given to police under sections 132 and 197 of the Code of Criminal Procedure of 1973 (CrPC)¹⁰.

The report by the Law Commission suggested to the government that section 114B shall be inserted in the Indian Evidence Act of 1872. Section 114B provides for the prosecution of police officers for an injury to a person in custody and if such injury is caused during police custody then it'll be presumed that injury is caused by the police. It also recommended that a medical examination of the arrested should be done by the doctor. In its 152nd report, the Law Commission made some recommendations to reduce custodial violence. It was recommended that Sec. 41 (1A) of IPC, that arrest must be officially recorded and also inserted section 50A so that police must inform the family or relatives of the person arrested. It also suggested inserting Sec. 197 (1) which was "When

¹⁰ Reports available at [npc_recommendations.pdf\(humanrightsinitiative.org\)](http://npc_recommendations.pdf(humanrightsinitiative.org)), (visited on 16 Nov. 2023)

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 offense 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 offense except with the previous sanction". Many other suggestions include amendment in CrPC, compensation in case of police atrocities, and effective mechanisms for the protection of complainants and victims.

Over 11,000 complaints of human rights violations by police have been filed with the National Human Rights Commission (NHRC) in 2020-21 so far with Uttar Pradesh (UP) topping the list accounting for around 48% of the total complaints.¹¹ UP accounted for 5,338 in 2020-21 as of January 15 to top the list of ignominy followed by Delhi (940), Tamil Nadu (575), Assam (562), and Haryana (408) at a distance. Karnataka had 175 such cases during this period. The total cases dealt with by the Investigation Division of NHRC from April 2019 to March 2020, which include Police/Judicial custodial deaths and fact-finding cases are 8019¹². This data shows that there is a clear violation of human rights that going on even currently in this country and this is concerning. If even after 76 years of Independence, people still are facing these problems that means there is something that needs to be changed in this system.

India being the world's biggest democratic country, provides human rights to every citizen. The Constitution of India, Part-III contains fundamental rights that were the outcome of the Universal Declaration on Human Rights signed by India on January 01, 1942. The six fundamental rights include:

- Right to Equality
- Right to Freedom
- Right against Exploitation
- Right to Freedom of Religion
- Cultural and Educational Rights
- Right to Constitutional Remedies

The purpose of a state is to protect the liberty of an individual. However, when it comes to police torture, our society and government have shown no concern the fundamental rights. The police personnel is allegedly the primary offender when it comes to human rights. This all started with the British Raj and our police are continuing it despite they are now the protectors of citizens and are not in uniform to suppress voices and use physical power to stop people from going against the government. Misconduct and misbehaving aren't only done with offenders or people accused of doing something illegal but also with common people who have done nothing wrong. Examples of this can be seen on traffic signals- and, at checking points and, even recently during Corona and Farmer's protests. Although, there is a Human Rights Commission in India, the only thing it does is to watch over such cases and issues and to keep data. It has not given any power apart from that. However, no law has ever been

¹¹ Shemin Joy, "Over 11,000 complaints against police filed with NHRC since April 2020", (The Deccan Herald, Dt.20 Feb. 2021).

¹² National Human Rights Commission, India, Annual Report 2019-20.

able to fix any problem on its own. For the protection of citizen's human rights, collective and intentional action is required so that people of this country can be protected from police brutality.

Police brutality isn't something that only exists in India, it's a worldwide issue, and in the year 2021, UN experts called for an end to police brutality worldwide and warned the US of the grave danger arising from such abuse of Human Rights and the rule of law. As Human Right Council has acknowledged "public confidence in the police and other law enforcement officials is paramount for their ability to perform their function effectively and depends on, inter alia, their respect for the human rights, fundamental freedoms, and human dignity of all persons". The statement by Ex-IPS Meeran Chadha Borwankar on this topic where he says "Punish such officers swiftly, demystify the police". It continues now as Chief Justice of India, C. V Ramana said, "Threat to human rights and bodily integrity is highest in police stations"¹³. Thus all this shows that Police Brutality still exists and it need to be pointed out and changed. India needs new police reforms to save thousands of citizens from getting their human rights violated and for police accountability of misconduct. The current police system is working more for the powerful and corrupt politicians than for the citizens. Police often exceed their limits and infringe on the human rights of innocent civilians intentionally.

Conclusion:

After independence, India has come a long way and has made many changes regarding the police department and its work. But still has a long way to go. Police brutality has been present since pre-independence and most of the cases related to police officials violate human rights or constitutional rights. Despite several suggestions by different Hon'ble Courts as well as committees and data by dozens of organizations, no major changes have been made that can stop police brutality. The suggestion made by the Apex Court, the Prakash Singh case¹⁴, was not implicated on the ground level, and the Justice Thomas Committee, while working on this "expressed dismay about the total indifference to the issue of reforms" exhibited by the States. The biggest problem here is that most of the data that is provided by police in police brutality cases can not be trusted so that needs to be changed. The laws and statutes governing the police provide immunity to them and this narrows the scope of victims as immunity will save policemen from imprisonment.

¹³Dhananjay Mahapatra, "Threat to human rights and bodily integrity is highest in police stations: CJI Ramana", (Times of India, Dt. 9th Aug. 2021).

¹⁴ Prakash Singh v. Union of India (2006) 8 SCC1, Writ Petition (Civil) 310 of 1996.

Some suggestions based on research are: -

-The compensation to the victims of police brutality should be awarded in all cases and instead of the state, the police officials should be accounted liable.

-Separate Laws or provisions under the Indian Penal Code should be framed against criminal acts done by the police.

Thus, it's important to change the current policing culture in India and create a police system that focuses on helping and serving the citizens of this country. The Lawmakers should now focus on protecting the basic rights of citizens and bring up new laws to maintain justice. Being the biggest democratic country in the world, it should be our main focus that each citizen of this country enjoys the basic human rights given to them by the Constitution, and police brutality must come to an end.

