**POLICE BRUTALITY: A HUMAN RIGHTS DISASTER**

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***Abstract***

Police in India, is not still relieved from the clutches of colonial British administration. The Indian Police system is based on a model devised by British Colonists. According to India: Annual Report on Torture, in India: custodial torture claimed 1,731 and 1,966 lives in 2019 and 2018 respectively. The killing of Jayaraj and his son Emmanuel Bennicks has sent shockwaves across the country. It has once again directed our attention to the police brutality that is taking place in our country and the vital need for police reforms.

This article deals with police brutality and the need for police reforms in India. The first part deals with a basic introduction to the police force in India. The second part gives recent instances of police brutality in India. It briefly explains Jamia violence, the death of Jayaraj and Bennix, and the recent case where a 19-year-old boy died due to police torture. The next part explains how the public plays a major role in perpetuating police brutality. The next part deals with police brutality during the Covid-19 lockdown and the last part is on how to hold the police accountable for their actions.

INTRODUCTION

For a human to survive, human rights are very important. It is the duty of the state to ensure that their citizen’s basic rights are not violated. But sometimes, these protectors turn out to be the violators of Human rights. Police in India, is not still relieved from the clutches of colonial British administration. The Indian Police system is based on a model devised by British Colonists[[1]](#footnote-2). Now, the time has come to make some reforms in our police system. According to India: Annual Report on Torture, in India: custodial torture claimed 1,731 and 1,966 lives in 2019 and 2018 respectively[[2]](#footnote-3). The killing of Jayaraj and his son Emmanuel Bennix has sent shockwaves across the country. It has once again directed our attention to the police brutality that taking place in our country and the vital need for police reforms.

The term ‘police’has not been defined in Criminal Procedure code or Indian Police Act. The police fall in the state list of the 7th Schedule, under article 246 f the Indian Constitution[[3]](#footnote-4). It is within the scope of the respective state government to make laws for the regulation of police force in their state. Since India is a quasi-federal state, the central government is also involved in the regulation of police forces. For Example, the appointment of senior police officers is done through All India Services. Similarly, Central Reserve Police forces come under the Central government.  The Ministry of Home Affairs also oversees the police force. The In In the past few years, several measures had been taken to make serious police reforms but little action was taken to implement them. Indian Police Act, 1961 oversees the central statute governing the police in India.

INSTANCES OF POLICE BRUTALITY

Four hundred and twenty-Seven people died in police custody between 2016 and 2019[[4]](#footnote-5). 5,476 people have died over the past few years if judicial custody is also involved[[5]](#footnote-6). Police custody is when the police have the physical custody of the plaintiff whereas judicial custody is when the accused is the responsibility of the magistrate concerned and is lodged in jail.

 According to Human Rights Watch report, there have been cases where the police blame most of the deaths on suicide, illness or natural causes but the family members would have alleged that it is because of torture. The police force is of the view that violent attitude must be adopted towards the criminals for the greater good of society.

**Jamia Violence**

On December 2019, police forcefully entered the Jamia Millia Islamia University during Anti-CAA protests. Police entered the campus and detained many students. The police also fired tear gas inside the library. The police used excessive force against the students. The police even denied entering the library. But the CCTV footage released by the Jamia coordination Committee proved otherwise. The footage also showed police lathi charging students who were trying their best to hide. Many Universities like IIM Ahmadabad, Banaras Hindu University, etc. stood in solidarity with Jamia Millia Islamia. Mass protest broke out in different parts of the country. This police brutality also gained international condemnation.

**Death of Father-son duo in Tamil Nadu.**

The incident of death of the Jayaraj and Bennix in judicial custody is an example of police brutality at its worst in the lockdown. They were arrested on June 19, 2020 for keeping their accessory shop beyond the curfew time. Bennix was alleged to have badmouthed police men[[6]](#footnote-7). After this, Bennix’s father Jayaraj was arrested and taken to Santhakulam police station. According to a newspaper report when Bennix reached the police station he saw his father being beaten up by the police[[7]](#footnote-8). When he intervened, he was also taken into custody. The duo was booked under section 188[[8]](#footnote-9) (disobedience to order duly promulgated by public servant), 269[[9]](#footnote-10) (action likely to spread disease), 353[[10]](#footnote-11) (use of force against a public Servant) and 506[[11]](#footnote-12) (criminal intimidation) of the Indian Penal Code. Bennix died on June 22, 2020 and his father after that. The autopsy report showed they were tortured to death. This case gained publicity on social media so much that film actors and cricketers concerned their concern. The district police suspended sub-inspectors Balakrishnan and Raghu Ganesh and police constables Murugan and Muthuraj. All the police from the Santhakulam police Station were transferred.

**SSLC student’s death after alleged police brutality**.

A 19- year old boy Sagar Chalavadi in Bijapur, Karnataka was allegedly lathi-charged by the police who had come to give his SSLC examination. As per initial reports, he died ofa heartattack after being beaten up by police[[12]](#footnote-13). The police suspected him of being involved in malpractices. His family said that he had gone to drop off his sister and was not involved in any malpractices.

WHY CITIZENS HAVE A MAJOR ROLE PERPETUATING THESE ACTS

It is very difficult to address the issue of police brutality in India because it is cheered and celebrated by media and citizens.The disturbing trends in police prejudice can be seen in the Status of Policing in India Report 2019. It indicates a significant bias against Muslims, Adivasis, Dalits, transgender and migrants from other states. About two in five of the police personnel surveyed in Bihar and one in five in six states had never received human rights training. The citizens also play a great role in perpetuating this violence through vocal support and silence. Telangana Police encounter of four people accused in the Hyderabad Rape case in December 2019 that widely celebrated can be a very good example of this.Last year, the police in Hyderabad shot down four men accused of Rape and Murder of the veterinary doctor. They were under judicial custody. The men, Mohammad Arif, Jollu Shiva, Jollu Naveen and Chintakunta Chennakeshavulu were taken at 5.45 am for reconstruction at the spot where the woman’s body was found[[13]](#footnote-14). The police claimed that the men were shot because they tried to escape. They also claimed that all the four accused got together and started beating the police officers. The officers maintained restraint and asked them to surrender but they did not oblige. Moments later, four bodies lay scattered to the ground. The encounter received mixed responses from the people. One section of the society openly applauded the police force whereas the other section criticized the police action.

 The protests against Citizenship Amendment Act (CAA) and National Register for Citizens (NRC) saw the police brutality in full display. The students in universities and people in the streets had to bear the brunt of this inhuman act. The thing that needs to be noted here is that amidst all of this, one section of the society was applauding the actions of the police.The death of George Floyd saw widespread protests in different parts of the world. Butthe outrage against the death of father on the duo in Tuticorin was only limited to social media.

POLICE VIOLENCE DURING THE LOCKDOWN

During this lockdown, the police have been flexing their muscles on the ordinary citizens in the name of the law. The people who fell prey to these atrocities are essential service providers and migrant labourers. Many roadside shopkeepers and people who went out of their homes to get basic goods were also beaten severely by the police[[14]](#footnote-15). A report by Commonwealth Human Rights Initiative (CHRI) stated that as much as 12 people have died due to police excesses in only the first few weeks of lockdown. Last year, police had used excessive force against peaceful protestors and students during anti-CAA protests.

Under the guise of the emergency measures during this Covid-19 pandemic the police brutality has increased worldwide. Instead of dealing effectively with the pandemic, the police force has used its power to violate the human rights of people. UN high commissioner Michelle Bachelet warned that emergency powers should not be used by the government as a weapon to quash dissent, control the population, and even perpetuate their time in power. Police and other security forces are using excessive and sometimes deadly force to enforce lockdowns and curfews.

Many countries have adopted the measure of arresting and detaining thousands of people for violation of the curfew during the lockdown. In South Africa to enforce social distancing there have been reports of police using rubber bullets, tear gas, water bombs and whips especially in poor neighbourhoods.

In Nigeria, the UN has received reports of 18 people being killed due to police brutality during this Covid-19 Pandemic[[15]](#footnote-16). The excess police brutality during Covid-19 pandemic has raised serious concerns over the policing in India at this time where compassion and empathy are needed more, the violent measures adopted by police has shaken citizen’s belief and trust in them. During this pandemic, even those who are out on streets for good reasons like several health care workers, suppliers and vendors of essential goods have faced harassment in the hands of the police force[[16]](#footnote-17). Poor, working-class men and women have been the victims of this brazen muscle flexing[[17]](#footnote-18). The migrant workers who were returning home on foot due to lockdown were excessively tortured by the police[[18]](#footnote-19).

The people who are bearing this brunt of police are the vulnerable sections of the society. Torture and violence have now an ordinary part of policing tools in India which have accelerated during the corona crisis. This unreasonable use of force is the breakdown of rule of law in India. Migrant workers have also faced the brunt of police brutality during this covid-19 pandemic. There have been many cases of death for violating the lockdown rule. Many video clips are being circulated which shows the violence imposed by the police force on citizens. The fires of the outcry of the death of George Floyd had not subdued when another incident happened in India. The right to live with human dignity which is incorporated under Article 21 has been excessively violated during this lockdown[[19]](#footnote-20).

REMEDIES AGAINST POLICE ATROCITIES

There are three broad mechanisms through which police can be held accountable for brutality against citizens. It includes Judiciary-based accountability, Police Complaints Authority, and the National and State Human Rights Commission[[20]](#footnote-21).

Under Judiciary-based Mechanisms, complaints against police brutality are held under Public law, private law, or criminal law. The police can be held liable for the violation of fundamental rights such as the right to life and personal liberty[[21]](#footnote-22), protection against arbitrary arrests and illegal detention[[22]](#footnote-23), protection from discrimination and unequal treatment[[23]](#footnote-24) enshrined under part III of the Indian Constitution. Compensation can be sought against violation of fundamental rights in the Supreme Court and High Court. But the problem faced here is that these courts deal with cases where the burden of proof is high. In the case of Rudul Shah v. State of Bihar[[24]](#footnote-25), the petitioner was unlawfully detained in prison for 14 years after his acquittal. He demanded compensation for his unlawful detention. The Supreme Court by saying that the detention was unjustified passed an order for compensation for the violation of Article 21 and 22 of the Indian Constitution. In the case of Bhim Singh v. State of Jammu and Kashmir[[25]](#footnote-26), the petitioner Bhim Singh, a member of the State Legislative Assembly was illegally detained by the police to prevent him from attending the assembly. The Single bench of the Supreme Court awarded compensation of Rs. 50,000 for a clear violation of article 21 and 22 (2) by the police officers. In the case of Saheli v. Commissioner of Police, Delhi[[26]](#footnote-27) a clear misuse of sovereign power was seen when a child was beaten to death by the police. The court ordered the Delhi administration to pay a compensation of Rs 75,000 to the mother of the deceased child.In the State of Maharashtra v. Ravi Kant Patil[[27]](#footnote-28), an under-trial prisoner was handcuffed and paraded through the streets was subject to humiliation. The court making the case of vicarious liability awarded the compensation of Rs 10,000 to be paid by the State Government. Thus, the courts have repeatedly ordered the state to compensate the victim and the victim’s family. Compensation can be sought against violation of fundamental rights in the Supreme Court and High Court.

Section 49 of the CrPc, provides several rights to an arrested person. The section specifically mentions that a police should not use restraint more than necessity. According to section 197 of the Criminal Procedure Code, prior sanction is required from the government to file a complaint against its public servant, if he is accused of any offence committed in the discharge of official duty. Section 132 also gives sanction of the government against the prosecution of police officers for the act done to control unlawful assembly that is alleged to have caused a breach of peace. In the case of P.P. Unnikrishnan v. Puttiyottil Alikkutty[[28]](#footnote-29), the complainant was illegally kept in the policy custody and tortured for several days. The police force raised the defence of section 64 of the Kerala Police Act wherein there are procedural safeguards against the initiation of legal proceedings against police officers acting in good faith in pursuance of any authority conferred by the State. The Supreme Court considered this provision based on the rationale of section 197 of the CrPc. The court held that the police officers were acting out of the duty and therefore would not get protected under section 197 of the CrPc. The case of Uttarakhand Sangharsh Samiti v. State of U.P[[29]](#footnote-30). was related to mass human rights violations including firing by the police and paramilitary forces on the assembly of protestors, resulting in the loss of 24 lives, mass-scale molestation, and rape, illegal detentions and incarceration of a large number of persons. It was held by the court that every act done by the public servant while o duty does not fall under the purview of section 197. It granted exemplary damages of Rs. 10 lakhs to the 24 persons killed, Rs 10 lakhs to each of the woman raped and Rs 5 lakhs to each of the woman molested. This thing to be noted here is that this section is often misused by police by not allowing filing complaints or First Information Report (FIR). This is grave misconduct.

Under the Police Act, 1871 the police can be held liable for violating laws and rules. Section 7 of the act deals with the “Appointment, dismissal, etc. of inferior officers” and section 29 deals with “penalties for neglect of duty”[[30]](#footnote-31). The proceeding against complaints takes place through the Internal Disciplinary committee that collects evidence and pass orders. These orders can be appealed to the High Court and Supreme Court.

In 2006, in the landmark Judgment of Prakash Singh v. Union of India, an historic order was passed by the court by instructing the State and Central Government to comply with seven sets of directives to kick start police reform in India. The important among them was the Police Complaints Authority. The Police Complaints Authority (PCA) is a body that can receive and hear complaints against officers of all ranks. It is established at the state and district level. The State level authority has the authority to look into all complaints against police officers of the rank of the Superintendent of Police and above, while the District Authority looks into the complaints against officers of and up to the rank of Deputy Superintendent. Some state laws even allow the PCA to initiate inquiry suomoto. A study by Commonwealth Human Rights Initiative (CHRI) discovered that no state has fully applied these seven steps[[31]](#footnote-32).

The relief can also be sought before the National Human Rights Commission (NHRC) and the State Human Rights Commission (SHRC). It can intervene in any judicial proceedings and evidence, procure documents and evidence, visit prisons and detention centers and make recommendations to the government. Every death in police and judicial custody is to be reported to the NHRC for its scrutiny irrespective of such death being natural or otherwise[[32]](#footnote-33).

The National Commission along with the state commission has the right under section 18 (c) of the Act to grant compensation in case of a human rights violation by the police after an inquiry[[33]](#footnote-34). The problem is that these institutions’ recommendations are not binding on the respective governments.

CONCLUSION

There is a need to end police brutality to make a better society for ourselves. This can only be done if police deal with people in a more humane way. Unnecessary force should not be used on his citizens.  Public support for this brutality should be withdrawn. If public, dissent to this form of behaviour by the police, and then changes can brought in the society. There is also a need to bring about the reform police force. In the end, due course of justice and rehabilitation should be adopted.

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