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## **POLICE BRUTALITY- MALFEASANCE OF POWER**

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### **ABSTRACT**

Through this article, the authors have tried to showcase the existence of Police Brutality all around the world and its intricacies. Police Brutality is the subject matter which everyone is aware off, however, the readers of this article would find the detailed analysis of recent police brutality cases and its consequences. Moreover, the reason for such abusive force of police and a possible solution opined by the authors to prevent such an offence.

**Key Words:** Torture, Custodial death, Human Rights

## **Introduction**

Police Brutality is an offence which is committed by the police officer, who acts in excessive force and power of his rights violating the civil rights of an individual. The excessive force here refers to the unnecessary actions which the police officers carry out violating a person's right. Police brutalities include false arrest, wrong imprisonment, sexual harassment, racial discrimination, wrongful search, and seizure and includes physical and verbal abuse. Police brutalities are found all around the world. It is quite phenomenon in Western countries of the world, arising because of racial discrimination, immigrants, minority communities or any possible reason to substantiate the use of abusive force over the people.

## **Police Brutality in India**

An interesting point to be noted is that a democratic country such as India does not trust one of the most important administration organs – Police Department. The Police personnel in India usually subscribe to two kinds of violations, firstly in corruption against individuals such as extorting money from drivers, from street vendors, hawkers and small-time shopkeepers. On the other hand, the second category is of criminal conduct practiced by the police officers on physical abuse of accused or witnesses, coercion against suspects of crime.

There are various provisions under the Indian Legal System which intends to protect brutality of Police Officers against the citizens. Compared to other laws, the Criminal Procedure Code of Indian Legal system, majority discusses about the dos and don'ts of police officers. Section 46 of the Cr.P.C states about the procedure for arrest wherein its physical handling of the person is prohibited, subject to certain condition. Section 56 contemplates that no police officer shall detain the arrested person without unnecessary delay, instead must be presented before the Magistrate having jurisdiction. Such persons shall not be detained for more than 24 hours from the time of arrest at police station without any warrant and absence of special order of a Magistrate. Under the Indian Evidence Act, section 25 describes that confession made to the police officer is not admissible and it cannot be taken as valid evidence.

The intend of the legislature in introducing these provisions is mainly because the Police Officers may use brutal force against the arrested person to make him confess the statement. To avoid the third-degree treatment given by police officers by abusing and torturing the accused person to forcefully confess. The brutal force used by the police officers to somehow make the person admit for crime, which may or may not have been committed by such person, in order to complete the case.

## Scenario during Lockdown situation

Police brutality during the lockdown is devastating in India. One such heinous incident is the Tuticorin custodial death issue. A study from Commonwealth Human Rights have found that an average of 5 people die in police or judicial custody daily, with 74.4% succumbing to injuries from torture and 19.2% supposedly committing suicide.

According to the New Delhi-based National Campaign Against Torture, 125 people died in police custody due to torture or other abuses in 2019. The country's National Human Rights Commission said in its 2017 annual report that violence in custody was so rampant "that it has become almost routine," adding that many custodial deaths were reported after a considerable delay or not reported at all.

In this pandemic situation, the police officers were brutal with small vendors, especially in the city of Mumbai, where the police officers had pushed down the stalls of vegetables vendors. When the Prime Minister Narendra Modi had announced lockdown on 23<sup>rd</sup> March 2020 which left many delivery services and vendors of essential services unprepared, leading to clash between the police and their staffs in many areas.

In the case of [Firdause Irani v. State of Maharashtra](#)<sup>1</sup>, wherein a PIL was filed on the police brutality in Mumbai who had assaulted a deceased man during the lockdown. The court in this case, found evidence to corroborate that assault was committed by the police officers. However, the bench held that "there are black sheep everywhere" and held that police brutality during lockdown is like "one side of the coin" because it is quite evident that the citizens do not comply with the lockdown restrictions. In furtherance, Chief Justice Dipankar Datta addressed that "Police brutality is only one side of the coin, whereas the truth being that there are many amongst us who do not follow the lockdown protocols and do not comply with the regulations, adding on, he said that every situation cannot be painted with the same brush. Thereby, the police officer's main task was to safeguard the interests of the public, in which the police officers use lathi as one such way. The bench had directed the petitioner of the case to submit his suggestions on how to handle this situation and what shall be the approach for such offences.

In the city of Kozhikode, the police officers had attempted to evacuate the roadside traders and other local traders contending that the traders are closely located without maintaining distancing and other protocols of the government. The street vendors raised an issue at the

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<sup>1</sup> 2020 SCC Bom 6062

corporation that, the police officers are enforcing inhuman regulations, preventing the street traders from conducting business.

### **Custodial Death – Jeyaraj Case**

A person who dies in custody because of the acts committed directly, indirectly upon the deceased person when he was in custody is called as custodial death, which includes death occurring in police, private or medical premises, in a public place or in a police or other vehicle or in jail. Custodial deaths are one of the highest forms of violation of human rights. The death may be because of natural causes like illness or due to suicide, however majority it is of police brutality and torture over the deceased person.

In the infamous Tuticorin Custodial death case, wherein the father and son were brutally beaten up at police station. The arrested persons were sexually assaulted and tortured by the police in their custody leading to their death. This matter was taken suo moto cognizance by the Madurai Bench of Madras High Court, a bench consisting of Justice P.N. Prakash and B. Pugalendhi. It is first time in the history of Indian Police that a district administration had seized control of police station.

According to multiple witnesses, at the incident on 19<sup>th</sup> June 2020 where the police officers of Sathankulam Police Station, Tuticorin District had taken Jayaraj (the father) into police custody to conduct inquiry about an argument which happened between the police officers and the nearby shop of Jayaraj on the previous day. Immediately, Bennicks, son of Jayaraj reached the police station questioning his father's arrest, for which the police took him also into custody. The Sub-Inspector had brutally beat them up which caused profuse bleeding from their rectums. The most devastating point is when the father-son duo was taken to the Magistrate D. Saravanan for holding them in custody had taken the side of the police and allowed them to take the injured person back to police custody without following proper protocol. The court ordered the Superintendent of Police of Tuticorin to submit an inquest report. The CBI had submitted its report indicating that the DNA samples collected from the walls of the Sathankulam lockup, toilets and from the lathis were in match to the samples of the 2 victims, to the Madurai Bench of Madras High Court.

The custodial death of this father-son duo saw a mass nationwide outrage resulting to 10 police officers being arrested. Furthermore, questions were raised on whether the incident had occurred because of casteism.

## International Perspective

Police brutality continues to be a central issue in many advanced democratic countries in the world. The United States surpasses most of the democratic countries in killings by the police.<sup>2</sup> Not only have the US, other countries like France, Nigeria, Kenya and Canada also been subjected to police brutality. When police use unlawful force, people are deprived of their right to life. If it is unnecessary and excessive, it amounts to torture or other cases of ill treatment to basic human right. The existence of police and other state authorities is to safeguard and provide security to the people. Using unlawful force by the police to guarantee the security amounts to violation of right to liberty and security and equal protection under law. There are strict provisions in international laws to govern the use of police force. The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (BPUFF) is one of the major instruments that deal about the use of police force. Under international law, police officers should use lethal force only as a last resort. It means that such force is strictly and necessary to protect themselves or others from the imminent threat of death or serious injury, and only when other options for de-escalation are insufficient.<sup>3</sup>

## International Conventions Prohibiting Police Brutality

Most conventions and treaties of international law are in favour of protection of human rights. In the present context, treatment given to a subject of a nation is viewed in context of international human rights regulations. The state is responsible for the acts of its law enforcement officials and if they violate their obligations under the international law, it becomes responsible, and the issue is to address at the international level. The people residing in a nation entrust important responsibilities to the law enforcement officials. Those officials must carry out their functions within a limited scope subjected to certain limitations as per international human rights law. But police brutality has a massive negative effect on the relationship between the people's community and the police officials. Thereby, there is an obligation upon the state to protect its subjects from abusive treatment like police brutality.

The Universal Declaration of Human Rights (UDHR), 1948, recognizes human rights. There are various Articles in UDHR to govern police brutality. Art. 5 prohibit torture, cruelty, inhuman and degrading treatment, or punishment. Art.7 provides that all are equal before law

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<sup>2</sup> <https://mappingpoliceviolence.org/>

<sup>3</sup> <https://www.amnesty.org/en/>

and are entitled to equal protection of law without any discrimination. Art. 9 prohibit arbitrary arrest and detention.

The International Covenant on Civil and Political Rights (ICCPR), 1966, recognizes the inherent right to life with dignity. Art. 3 provide that the state must ensure equal right to men and women for the enjoyment of civil and political rights. Art.6 provides that every human being has an inherent right to life, and it should be protected by law, and no one shall be arbitrarily deprived of their life. Art. 7 prohibit torture, cruelty, inhuman and degrading treatment, or punishment. Art. 9 prohibit arbitrary arrest or detention. One shall not be deprived of liberty except on such grounds and procedure established by law. A person can be arrested only after he is informed about the grounds of arrest and the charges against him. A victim of unlawful arrest has the right to compensation. Art. 10 provide that any person who is deprived of personal liberty must be treated with humanity and with respect for his inherent dignity.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment prohibits torture either physically or mentally. It says that, even in the case of emergency, war or political instability, torture cannot be justified. The state must be responsible and punish any act of torture.

The United Nations Code of Conduct for Enforcement Officials Art.2 provides that, law enforcement officials must respect and protect human dignity and uphold the human rights of all persons. Art. 3 provide that; officials must use force only when there is strict necessity in performing their duties. Art.5 provides that, law enforcement authorities shall not inflict or tolerate any torture or other cruel inhuman, degrading treatment or punishment and should not justify torture even in cases of war, political instability, public emergency or threat to national security.

### **Black Lives Matter Movement**

Police brutality to the blacks in the United States is one of the severe infringements to their community. Brutal treatment by the police towards the blacks began in the early 70s as there was absence of equal rights, security and protection to the African Americans. Due to this unnecessary killings and excessive force caused to them, three black organizers created “Black Lives Matter”.

This movement began in July 2013 with the use of the hashtag #BlackLivesMatter on social media after the acquittal of George Zimmerman in the shooting death of African-American teen

Trayvon Martin in February 2012. The movement became nationally recognized for street demonstrations following the 2014 deaths of two African Americans, that of Michael Brown—resulting in protests and unrest in Ferguson, Missouri, a city near St. Louis—and Eric Garner in New York City. In 2015, the activists of the movement involved in the 2016 United States presidential election. The Black Lives Matter movement is a decentralized network of activists with no formal hierarchy.

The movement returned to national headlines and gained further international attention during the global George Floyd protests in 2020 following the murder of George Floyd by Minneapolis police officer Derek Chauvin. An estimated 15 million to 26 million people participated in the 2020 Black Lives Matter protests in the United States, making it one of the largest movements in the country's history. The movement comprises many views and a broad array of demands but they centre on criminal justice reform.

Derek Chauvin, a white former Minneapolis police officer, was for murdering African-American George Floyd. He faces up to 40 years in prison on the most serious charges of second-degree murder and manslaughter. This is a massive decision on testing the accountability of the police officials and using of brutal and unnecessary force.

### **Reaction to the Conviction – A Turning Point**

President Joe Biden called members of the Floyd family to say he was “relieved” by the verdicts, then later he and Vice President Kamala Harris addressed the nation in televised remarks.

“This can be a giant step forward in the march towards justice in America,” Biden said, as he called on citizens to “unite” against racism and violence.

“This verdict is a turning point in history and sends a clear message on the need for accountability of law enforcement,” Crump tweeted.

Barack Obama, the nation’s first Black president, said “a jury did the right thing” but “true justice requires much more.”

The city of Minneapolis on Friday agreed to pay USD 27 million to settle a civil lawsuit from George Floyd's family over the Black man's death in police custody, even as jury selection continued in a former officer's murder trial.

The popularity of Black Lives Matter has rapidly shifted over time. Whereas public opinion on Black Lives Matter was net negative in 2018, it grew increasingly popular through 2019 and 2020. A June 2020 Pew Research Centre poll found that 67% of adult Americans expressed some support for the Black Lives Matter movement. A later poll conducted in September 2020 showed that support among American adults had dropped to 55%, with notable declines among whites and Hispanics, while support remained widespread among black adults.

## **Conclusion**

The exercise of power by any authority vested by it must be to regulate and control an illegal action and not constrain the basic right of an individual except when there is a violation. But, the police officials in various parts of the world seem to cause arbitrary and brutal acts on persons. These brutal acts are not only committed during the custody but also prior to any investigation and enquiry into the matter. Police brutality always was and will always be a central issue on human rights. It's a basic principle of law that a person will be assumed to be innocent until proven guilty beyond reasonable doubts and when proved, the accused would be punished according to law. It is also a rule that police should not use lethal force or any third-degree treatment on a person as the law does not sanction it. But police use inhuman treatment with an aim to obtain confessions and other information from the accused and sometimes from an innocent who does not even deserve to be treated that way. The above-mentioned cases are only few incidents of custodial torture and death. To curtail this, firstly, people must be aware of their basic human rights so that they can abstain themselves from surrendering to the police without any prior information and procedures. Secondly, police officials who perform inhuman and brutal acts must be punished severely so that others do not follow the same. At the end of the day, innocents who are subjected to custodial death are compensated. But no monetary compensation could ever evaluate the torture that is committed to them. Finally, the authors opine that because of inadequate institutionalised training and overall stress of the job may also be one of the factor for the police brutality all around the world.