

# THE POLICE BRUTALITY IN INDIA: A CRITICAL ANALYSIS

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*There's a lot of things that need to change. One specifically? Police brutality.*

**-Colin Kaepernick<sup>i</sup>**

## ABSTRACT

The utilization of excessive power by the police might be named as police ruthlessness or police brutality. Although an exact definition of this atrocious act is yet to be given. The phenomenon of police brutality has existed since the commencement of policing in India and with the outbreak of Covid-19, there has been a lofty ascent in such instances of police fierceness. So it turns out to be important to investigate the laws and resolutions that administer the police and why the judiciary has ended up being incapable of curbing this unlawful policing culture. This article focuses on the laws and precedents related to police brutality and some of the instance of police brutality which still remains unsolved or unresolved. This is doctrinal research where the scholar has analyzed the provisions related to police and the reason why the judiciary proved to be ineffective to the common man in providing justice. With the help of the research, the scholar discovered that the Indian laws and statutes governing the police provide sovereign immunity to them which narrows the scope of the victims in getting justice. Even the judgments by the courts only provided pecuniary damages to the victims not only in cases of public liability but even in criminal acts done by the police. This situation of scant police accountability can be tackled if the lower courts are given jurisdiction to try the police brutality cases apart from the Supreme Court and High Courts. Separate acts or provisions should be framed defining the extent and liability of the criminal acts by the police. So that an unerring rule of law can be established.

**Keywords:** Police Brutality, Judiciary, Police Accountability, Pecuniary Damages

## INTRODUCTION

The English word police is devised from the Middle French word 'police', which is taken from the Latin term 'politia', which itself originates from Ancient Greek.<sup>ii</sup> Broadly, the term Police might be characterized as the public official or the law implementing body whose primary goal is to keep up the lawfulness of the general public. The Police Act of 1861 likewise defines the term police in Section 1 it reads that "the word" police" will incorporate all people who will be selected under this Act".<sup>iii</sup>

India, in past years, has seen the police force getting involved in various types of corrupt practices and misconduct. Now one must not get confused between the two terms corrupt practices and misconduct. Corrupt practices are acts by the police officials for their gains, but misconduct refers to the use of excessive physical force by the police which is deadly. These misconducts generally include brutally beating innocent people or even killing them without any order from the higher police authorities or judicial order. These misconducts are termed as police brutality.

Few kinds of police brutality are:

- False arrest and wrong imprisonment
- Sexual Harassment
- Racial discrimination
- Wrongful search and seizure

Hence, in this article, entitled, "THE POLICE BRUTALITY IN INDIA: A CRITICAL ANALYSIS", the research scholar has tried to explain the laws and precedents related to police brutality and the cases which lead the scholar to write this article. The scholar has confined the article up to the two objectives, firstly to analyze the provisions related to police and secondly the reason why the judiciary proved to be ineffective to the common man in providing justice. Finally, the research scholar would be concluding with what the judiciary and the government should do to curb this state of lawlessness and establish a land of peace and tranquillity.

## HISTORY AND EVOLUTION OF POLICE IN INDIA

The evolution of police in India is not a new concept. The reference of police can be found in every age. In ancient India, the study of Vedas shows the reference of the officials named

Jivagribhs in the Rig Ved and Ugras in the Upanishads who appear to have been police officers.<sup>iv</sup> Dr. R. K. Mookerji in his book “*Chandragupta Maurya and his Times*” refers to Kautilya's Arthashastra, in which 18 great police officers had been mentioned. Mughals also continued the indigenous system of village police. They had Subhedar, Foujdars, Thanadars, and Kotwal who performed the police functions.

In the reign of the British Rule, civil and criminal courts were formulated. In 1775 Foujdari Thanas, and Chowkies were established by the Britishers. In 1861 The Police Act was passed by the British which was a substantive law governing the police. In 1866 the Railway Police was constituted. The Delhi Special Police Establishment Act<sup>v</sup> was the last act enacted by the Britishers in 1946 for investigating offenses of bribery and corruption.

After Independence also, numerous acts were passed. Like The CRPF Act, 1949<sup>vi</sup>, The Kerala Police Act 1960<sup>vii</sup>, The Mysore Police Act, 1963<sup>viii</sup> and The Police Forces (Restriction of Rights) Act, 1966<sup>ix</sup> were promulgated.

In 1951 the All India Services Act (LXI of 1951) was enacted constituting an All India Service known as the IAS and IPS.

## **LAWS ON POLICE BRUTALITY IN INDIA AND PRECEDENTS RELATED TO IT**

The Constitution declares the police organization as a quasi-federal body mentioned under Article 246 and enshrined in the State List of the 7<sup>th</sup> Schedule.

In India, The Indian Police Act 1861 is the statute governing the police of India. All other states and UTs either have adopted this act or have their statutes modelled on this act. Still there existed a lot of discrepancies in the functioning of the Indian police even after the Act being amended innumerable times before and after independence. To remove these discrepancies, 8 reports with recommendations were submitted by the National Commission of Police in the years 1978 to 1981 but none were implemented.

In the case of *Vineet Narian v. Union of India*<sup>x</sup>

The Supreme Court for the 1<sup>st</sup> time noticed the urgency for implementation of the earlier reports submitted in 1978 to 1981 by the National Commission of Police. Based on this urgency various committees were formulated for studying the accountability and efficiency of police.

Based on the study and analysis the Ribeiro Committee submitted its report in 1998 and 1999, the Padmanabhaiah Committee submitted its report in 2000, and the Malimath Committee submitted its report in 2002. All these submitted reports were deeply studied by the Supreme Court in the Prakash Singh v. Union of India<sup>xi</sup> case. In this landmark judgment, the efficiency and accountability of police organizations were also broadly considered by the Apex Court. Based on the study The Supreme Court gave detailed directions to the Central and State Legislature to implement until legislations in this regard are enacted but till date, no effective changes can be noticed.

There are generally three types of laws under which a case can be filed against the police:

1. Public Law
2. Criminal Law
3. Private Law

In this article, we will be dealing with 2 laws i.e. Public and Criminal law because most cases are filed under these two laws.

## **PUBLIC LAW**

Public law liability as for police discovers its source in the Constitution of India. For infringement of fundamental rights expressed in Part III of the Constitution, the courts have oftenly held police liable under public law and have forced pecuniary obligation on the State as compensation for the mischief caused. The biggest flaw here is that the state is vicariously held liable and not the Police official himself. The precedents below prove the same.

### ***Rudul Sah vs. the State of Bihar***<sup>xii</sup>

In this case, the petitioner even after being acquitted was unlawfully detained in prison for 14 years. The Apex Court passed an order that the state should pay compensation of amount 30,000 under writ jurisdiction for violating the fundamental rights guaranteed under Article 21 and 22 of the Constitution.

### ***Sebastian Hongray vs. UOI***<sup>xiii</sup>

In this case, the Supreme Court awarded compensation for torture, agony, and harassment of two ladies whose husbands were taken to an army camp by army officials in Manipur and were

missing. This verdict was passed based on Rudul Shah's judgment. The Courts even didn't bother to mention the ratio decidendi.

***Saheli vs. Commissioner of Police*<sup>xiv</sup>,**

In this case due to the brutal beating of police a nine-year-old child had died. But the division bench held that the Delhi Administration is liable to award a compensation of Rs. 75,000 to the mother of the deceased child and not the police official.

***In PUDR v. Delhi Police Headquarters and Anr*<sup>xv</sup>**

A laborer was brutally beaten to death. The court had ordered the Delhi administration to pay a compensation of Rupees 50,000 in this case.

***In State of Maharashtra vs. Ravi Kant Patil*<sup>xvi</sup>**

The police handcuffed an under-trial prisoner tied his arms, and made him parade on the streets. The Supreme Court ordered the State Government to award a compensation of Rs 10,000 to the victim.

The court in this case pondered over the subject of who is to pay the compensation whether the individual police or the State. The court thereby considering the vicarious liability, expressed that the police officer has acted as an official and in any event, accepting that he has surpassed his limits, still, we don't think that he can be made personally liable.

***In Nilabati Behara vs. the State of Orissa*<sup>xvii</sup>**

In this case, a custodial death was reported by a woman whose son had succumbed to the wounds inflicted on him by the police in police custody. It was concluded by the Supreme Court that the death was caused due to police brutality which was a violation of fundamental rights and hence awarded compensation under Article 32 of the Constitution.

***A.V. Janaki Amma. vs UOI*<sup>xviii</sup>**

In this leading case, the court has observed that the Public Authorities, Officials, and the State are liable to pay compensation only if Article 21 is violated.

In Nilabati Behara's case, the Supreme Court added to this principle that compensation will be provided only if, Article 21 is violated and custody death or torture of the victim is proved beyond doubt.

The Sube Singh judgment added to the Nilabati Behra that compensation will be provided only if the violation is gross and of a magnitude to shock the conscience of the court.

Thus, it is clear that no set principle has evolved till date on how the amount of compensation is to be calculated it's totally on the discretion of the court. Till now any specific method has not been devised either by the court or by the government as to when a state will be held liable and for what acts the police himself will be held liable under public law. It is only under criminal liability when a police officer can be personally held liable but that also till a pecuniary extent.

## **CRIMINAL LAW**

In contrast to the vicarious liability in public law, criminal liability of cops is personal.

For criminal liability, the Code of Criminal Procedure, 1973 (CrPC) gives procedural safeguards and sovereign immunity to government servants which are mentioned under section 197 and more specifically in Section 132 of CrPC to protect them from unnecessary allegations. The necessary criterion for sovereign immunity is that the police officer must have done the act on behalf of the order of the Center or State for which he is criminally held liable.

### ***P.P. Unnikrishnan v. Puttiyottil Alikutty***<sup>xix</sup>

In this case, the S.L of Police and the Police Constable in Perambra Police Station took the respondent to Perambra Police Station, unfairly kept him in the police custody, and severely tortured him for 4 days without registering any case against him nor producing him before the Court.

On appeal

The Supreme Court considering the scope of Section 197(1) observed that “There must be a reasonable nexus between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.”

### ***Uttarakhand Sangharsh Samiti v. the State of Uttar Pradesh***<sup>xx</sup>

In this case, the police allegedly killed 24 people and even molested and raped women. But the court even in this particular case didn't frame any charges against the offending officials and just ordered them to pay pecuniary damage.

In this case, 10 lakhs were provided to the people killed, 10 lakhs to the women raped, and 5 lakhs to all molested women.

The division bench in this suit held that "It isn't every single act done by an on-duty police official which falls within the domain of Section 197 but the one's which have direct nexus to the discharge of the official obligation." It was expressed that acts of wrongful confinement, planting weapons to show fake recuperations, encountering of unarmed instigators, altering or tampering of evidence, acts of sexual harassment, rape, and so on are neither the one ordered by the state nor expected to be done while performing the official duties. No order from the government is required in prosecuting such transgressing officials.

But even in criminal law, the police are only liable to pay compensation and no criminal charges can be framed against him due to sovereign immunity even if he exceeds his powers. Due to this immunity, there are several reported cases in India on police brutality out of those tons of cases that go unreported.

## **INSTANCES OF POLICE BRUTALITY IN INDIA**

This is especially ironic because India doesn't have to reference a case of police brutality from the US. The nation has its own inheritance of shameful acts. As per data presented by the Home Ministry, five custodial deaths happen daily. Let's see some of the cases in sequential order:

- 1) The Bhagalpur blindings incident from 1979 to 1980 when police blinded 31 under-trials by pouring acid into their eyes.<sup>xxi</sup>
- 2) In 1982 The Bombay Police without giving a proper chance to defend or surrender killed Manya Surve a gangster in an encounter. The John Abraham's movie Shootout at Wadala is plotted in this case.<sup>xxii</sup>
- 4) In 2009 an unarmed youth namely Ch Sanjit Meitei was allegedly killed by the Manipur Police in Imphal's Khwairamband Market and later the police reported to recover a pistol from Sanjit. The police also killed a pregnant lady named Thokchom Rabina Devi and held that she was killed in the crossfire.<sup>xxiii</sup>
- 5) In 2015 the Andhra Pradesh police allegedly killed 20 woodcutters in Seshachalam forest.<sup>xxiv</sup>

6) The Jamia Milia Islamia University attack case of 2019, where police attacked student protesters as well as non-protesting students at the college campus and mercilessly charged lathis on them.<sup>xxv</sup>

7) In June 2020 A father and son namely Jeyaraj and Benniks were brutally beaten, tortured, and sexually harassed by the police and even the magistrate whose duty was to investigate the injuries of the duo remanded them where they died.<sup>xxvi</sup>

8) Again on 27 June 2020 a 19-year old heart patient, Sagar Chalavadi died due to lathi-charge outside an SSLC examination center.<sup>xxvii</sup>

9) And recently on the 15th of July 2020, the Guna incident took place where a Dalit family was brutally beaten by police.<sup>xxviii</sup>

And if one looks into these cases deeply, no proper investigation was done in these cases by the government or by the higher police authorities and in almost all the cases, only pecuniary penalties were imposed on the police for their misconduct, and some were transferred and suspended due to the protects. The main reason behind this is the hoax which only immunises the police officials from any charges and hardly imposes criminal charges like imprisonment on the police for such murderous acts.

## CONCLUSION

In this article out of the 3 mechanisms of external police accountability that is the Judiciary, Police Complaints Authority, and National and State Human Rights Commissions. The scholar has elaborately discussed the Judiciary, in which out of the 3 laws i.e. Public law, Private law, and criminal law he has mainly focused on public law and criminal law.

The two main reasons which the scholar finds for the lack of police accountability are:

1. Our laws and the statutes governing the police provide sovereign immunity to them. This immunity narrows the scope of the victims because its immunises the police officials from almost all kinds of liabilities or misconducts and saves them from imprisonment. This is the reason why mostly the punishments for the offending police officers are pecuniary in nature.

2. The judgments by the courts are another reason for lack of police accountability because the only High Courts and Supreme Court are entitled to look into the matter of the police officials as most cases are related to the violation of human rights and fundamental rights. Till date, the

judiciary has only provided pecuniary damages to the victims even in criminal acts, and in public laws, the judiciary mostly held the state vicariously liable for the acts of the police instead of the police himself.

Thus, the researcher would like to recommend the following suggestions based on the research findings which may help in forming an opinion in doing away with the discrepancies of the above law.

1. The cases of police brutality should not only be restricted to the High Court or the Supreme Court, but even lower courts should be given jurisdiction to try these matters and grant compensation. This will indeed remove the burden of the High Court and Supreme Court.
2. The compensation to the victims of police brutality should be awarded in all cases and not only on the violation of the fundamental rights.
3. In cases of police brutality, the state should not be held vicariously liable for the acts of the police officials when the police go beyond the orders given by the state.
4. Under criminal law, the procedural safeguards given to the police must be relaxed as section 197 and 132 of CrPC are often misused to prevent a common man from registering an FIR.
5. Separate Act or special provisions under IPC should be framed thereby defining the extent and liability of the criminal acts by the police.

Thus, fundamental re-evaluation of the policing culture in India is the need of the hour. Now the time has come to shift the policing culture from policing that creates fear in public to policing whose main focus is public service. Justice should not only be done but also seems to be done. So, the legislature should now focus on making laws that maintain justice and are also compassionate towards human rights. There ought to be the extended focus on rights-regarding policing and guaranteeing instant prosecution of errant police officials, without any exception. So that this barbarous policing can be done away with because there's no book to figure out how not to become a victim of police brutality.<sup>xxix</sup>

**ENDNOTES**

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- <sup>vii</sup> THE KERALA POLICE ACT, 2011; ACT 8 OF 2011
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- <sup>xii</sup> AIR 1983 SC 1086
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