

HUMAN RIGHTS VIOLATIONS BY POLICE IN INDIA: A COMPARATIVE CASE STUDY

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ABSTRACT

Custodial Death or Arrest-Related Death refers to the death of a detainee while in police or judicial custody, prison and extends to any harm done during the process of detaining a suspect or accused. When a State takes away the personal liberty of a person, they should hold complete responsibility for the life and physical integrity of that person. Whether it's the police custodies in India or all the way to the west in Minnesota, unlawful or excessive use of force by the police has been more prevalent than ever, this torture does not limit to just physical but also extends to mental and sexual torture. In this paper we've analysed the Indian Legal System's evolution and present situation regarding this issue, we also dealt with the Human Rights Violations with the help of statistics. These cases are not restricted to a Geographical area with high police influence and uneducated or poverty-stricken people, even evolved nations such as the US are not immune to this problem, reminding us the statement "The US is a third world country wearing a Gucci belt." Further in this paper, a detailed analysis of "George Floyd" and "Jayraj and Bennicks" cases along with a comparative analysis has been made, which occurred in the same timeline. We have taken into consideration the Legislative, Judicial and also the public involvement while studying the actions being taken post these unfortunate events. This paper is concluded by mentioning various recommendations and measures from Human Rights Commissions and Judiciary and also our personal suggestions.

INTRODUCTION

From the streets of Minneapolis to the police custodies in India, unlawful use of force by police has been more prevalent than ever such that it has led to end in death, injury and devastation in the suspects. The term “police brutality” can be defined as a civil rights violation where a police officer uses excessive force against a suspect. This includes, bullying, beatings, physical or mental torture, indiscriminate use of riot control agents at protests, damage to property or even causing death.ⁱ Such unlawful use of force by police violates the right to life and personal liberty, right to be free from discrimination and the right to equal protection under the law.

International laws governing police brutality

Various strict international laws and standards were adopted and implemented through the years to govern how and when police can use force. One of the international instruments that deals with police use of force in particular is the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (BPUFF)ⁱⁱ As according to this law, the police officials should only ever use force as a last resort i.e., only when using such force is necessary to protect others or themselves from imminent danger of serious or fatal injury. The basic and utmost obligation of the law enforcement authorities is to protect the right to life of the citizens. However, looking at the increasing number of cases of brutality around the world, it is evident that there has been a wide misuse of power by the officials in uniform who have clearly missed the above-mentioned criteria. For instance, in the USA, Micheal Brown, Breonna Taylor, George Perry Floyd and many other Black people were unarmed. Similarly, in India, during the protests against a bill passed in the legislature, the police subjected several students to torture by entering a university in December, 2019.

The U.N. General Assembly on December 10th, 1948 adopted and proclaimed the Universal Declaration of Human Rights which came into force on January 3rd, 1976. Many countries including developing nations like India are the signatories of the same. It particularly states that that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.ⁱⁱⁱ

Further, the Convention against torture and other cruel, inhuman or degrading treatment was adopted by the UN General Assembly on 10th December, 1984 (marked resolution NO. 39/46).

India signed the Convention on October 14th, 1997. However, the same has not been ratified ever since.^{iv}

Speaking of which, India has a long history of police brutality and custodial torture which in the majority of cases led to the death of the subjects. Police brutality causing custodial violence includes death in the jails where the suspects are extremely vulnerable.^v The police with a view of acquiring evidence and statements from the suspects, indulge in violent investigating procedures causing a permanent mental and physical impact on the suspects.

Current scenario

The recent ground-breaking case of police brutality which has gained massive media attention is the murder of an African-American George Perry Floyd by a white policeman. The entirety of the United States of America erupted into flames over the atrocious and evident racism which is still prevalent till date. This brutal incident led to violent protests, demonstrations and clashes in nearly all the states. The protestors led riots with the slogan “Black lives matter” all over social media over the brutality of police towards their subjects. This incident proves that racism hasn’t gotten worse with time but is getting filmed more often. These protests did not just limit to the United States of America, but people all over the world protested using the same slogan.^{vi}

Not quite later, in June, 2020, a similar but more barbaric case of police brutality came into light when a father and son in Tamil Nadu, India were subject to extreme cruelty and torture in the police custody to such an extent that they succumbed to their injuries. The international attention obtained in the George Floyd case led to bringing these cases to the media attention and people in India began protesting and posting about this case calling the duo, “India’s George Floyds”. Further in this paper, a detailed analysis of both these cases which occurred in the same timeline is provided along with which a comparative analysis of both the cases have been mentioned.

HISTORY OF HUMAN RIGHT VIOLATIONS BY POLICE IN INDIA

Human Right Violations by the police have been prevalent since ages. It has its initial traces in the Islamic rule where Hindus were openly discriminated by the Muslim rulers. The police under their rule were corrupt and extremely oppressive towards the public. The same oppression and corruption were practiced even when the British took over the political responsibilities. Revenue was collected from people through various forms of torture. This culture of neglecting human rights and treating people with little to no regard continued even after India got its independence. There was no training given to officials in scientific investigation, so the only method of investigation resorted to was the third-degree. It was used to extract confessions or to force them to make statements. There were various techniques of physical torture some of them being burning with cigarettes, beating the bare body with cane, stamping bare body with boots, inserting live wires into crevices etc ^{vii} The Emergency period in India was one of the times when there were grave violations of human rights. Wide powers were given to even the lowest rank of police officials. During this period various atrocities were committed on poor people, students, teachers etc. In one such case a student was tortured to death in a police camp.

In the Eighties the graveness of the torture inflicted on people increased. People were tortured even during the investigations of ordinary crimes like theft. The Indian Press reported one such case where a suspect of theft was beaten till his legs were broken in Varanasi. Torture methods were mainly used on people from weaker sections of the society like the tribals, harijans etc. The methods of torture during the eighties included hanging upside down, severe beating until limbs are broken, burning etc. After inquiries when it was found that a certain death was in custody due to police torture the only punishment given to the official was to be suspended for a few days or transferred. ^{viii}

After the Eighties the torture techniques grew to be even more repressive, these techniques did not leave any scar on the victim. A young boy named Munna described his experience of torture at the police station saying that they had beaten his legs up until they were swollen and wrapped a bandage around his head to pass electric shocks through it. ^{ix} Towards the late eighties hundreds of people were tortured and executed extra judicially. In some cases, this was done to mere suspects of small crimes or to people detained only for the purpose of extortion. ^x People killed by torture were thrown in waterbodies or fields.

CAUSES OF HUMAN RIGHT VIOLATIONS BY THE POLICE

1. Background of the Victim- It is time again proven that people from poor and marginalised sections of the society are taken undue advantage of by the police as they feel that this sector is a soft target. Race, Gender, Colour, Caste plays a major role in this.
2. Political Interference and Corruption- Political Influence is one of the main reasons for improper methods of investigation, torture and killings. Police officers are often made to obey the instructions of the ruling party irrespective of its lawfulness, this prevents the police department from being independent and impartial. In addition to this due to minimum wages provided to police they are tempted to earn income through unlawful sources. Corruption leads to two problems, lenient enforcement of law towards the people in power and human right violations of the weaker section.
3. Poor Investigation System- Police are not given the training on using scientific methods of investigation, the only method they are aware of is third-degree. The equipment and facilities required to conduct scientific investigation is also not provided. In most cases crime scenes are investigated by junior officers or constables who have zero knowledge about scientific investigation.
4. Problems in Statutory Provisions and Judiciary- There are no clear guidelines laid down to regulate the actions of police. Hence there is an assumption that police are immune from being charged with anything.^{xi} One of the main problems is that the Police Administration itself has been given the responsibility to regulate police actions. Therefore, the chances of prosecuting a police who has committed a crime are very less as both the criminal and judge belong to the same department. There are high rates of acquittal of police in cases of custodial death, even if punishment is awarded it is not proportionate to the harm caused which gives confidence to officials that they can get away with anything
5. Poor Inspection of Lock ups- There are obligations through international standards^{xii} to regularly inspect and supervise lock ups and these obligations have not been met with.
6. Faulty Medical Reports- Medical reports for post mortem are often found to be faulty as they are written under political pressures. Personnel to conduct post mortem are not trained well.^{xiii} Reports are written long after the post mortem is conducted. This

ultimately gives police personnel the confidence that crimes committed by them will be covered up.


Apart from these there are other reasons like the social economical and mental factors. Social and family life of an official place a major role, for instance if he is an alcoholic leading to poor decision making. Police Officials are one of the least paid government employees, which prompts them to give into corruption. Psychological Reasons like sadism, sexual weakness, hatred towards people are some reasons for police violence.

CASES REPORTED AND ACTION TAKEN AGAINST POLICE

As per the records of National Human Rights Commission, in the year of 2019, a number of 1,723 deaths occurred due to torture in police custody and judicial custody combined. The number of deaths due to torture in police custody alone were 117^{xiv}. Therefore, the number of custodial deaths in the year of 2019 were recorded at an alarming rate of over five persons per day. Deaths in police custody occur mainly due to torture by the police personnel. As per the records of National Campaign Against Torture, in the year of 2019, out of 125 death, 93 occurred in police custody due to alleged torture and foul play, police claimed that 24 persons out 125 committed suicide or died due to illness while the death occurred under suspicious circumstances, and the reasons for 5 deaths were unknown.^{xv} The majority of the victims that died in police custody belong to the poor or marginalised section of the society, reason being that they are an easy target. Out of the 125 deaths that occurred in police custody, 75 persons belonged to the minority groups i.e almost 65% of the total deaths.

Deaths in Police Custody Reported in India in 2019^{xvi} (Table 1)

Name of the State	No. of deaths
Uttar Pradesh	14
Tamil Nadu	11



Punjab	11
Bihar	9
Madhya Pradesh	9
Gujarat	8
Delhi	7
Odisha	7
Jharkhand	6
Chhattisgarh	5
Maharashtra	5
Rajasthan	5
Andhra Pradesh	4
Haryana	4
Kerala	3
Karnataka	3
West Bengal	3

Jammu & Kashmir	2
Uttarakhand	2
Manipur	2
Assam	1
Himachal Pradesh	1
Telangana	1
Tripura	1

One of the main reasons for inflicting torture in the above cases is to extract confessions or gather information from suspects of petty crimes like theft. Another reason is to extract bribe from the suspects or his/her family members. Method of torture in the above cases include slapping, kicking with boots, beating with sticks, pulling hair, hammering iron nails in the body, applying roller on legs, burning, hitting private parts, applying chilli powder on private parts, etc.

Action taken against police

In the past years, the rate of conviction of police officers for torturing and killing people in police custody has been very low. A lot of factors play a role in this, but one of the main reasons is that the law itself safeguards the acts of the police. Section 197 of Criminal Procedure Code states that if a government officer commits a criminal offence in the discharge of his duty, he cannot be prosecuted without a prior sanction of the Central or State Government.

The National Records of Crime Bureau in its Crime in India Reports from the year 2005 to 2018 recorded that a total number of 500 cases were reported for death or disappearance of people who were in police custody, out of these only 281 cases were registered, 54 personnels were charge sheeted but not a single conviction.

NRCB recorded that in the year 2018, a total of 70 deaths in police custody were reported and out these 9 personnels in 3 cases were only arrested without even a charge sheet being filed against them, neither were they convicted later on. In 3 cases of torture and injury in police custody, one personnel was arrested but no conviction.^{xvii} In the same year across the country, 89 cases were filed for violation of human rights by police, out of these 40 were arrested, only 26 were charge sheeted, and none convicted.^{xviii} Further out of 70 deaths in police custody in 2018, only in 27 cases mandatory judicial enquiries were conducted.

According to the information under Right to Information Act, from the year 2015 to 2019, the National Human Rights Commission received a total number of 211 fake encounters carried by police in India. Compensation was only provided in 25 cases; however, no punishment was awarded to the personnels.

ENDEAVOURS TO PREVENT HUMAN RIGHT VIOLATIONS

Action taken by Judiciary

The inhumane acts of the police officers include harassment and impetuous behaviour towards the accused during the arrest procedure. The supreme court in the case of **Joginder Kumar v. State of U.P.**^{xix} opined that no individual can be arrested without an investigation about the bonafides and genuineness of a complaint given and only after a responsible belief and a reasonable satisfaction can any such arrests be made and not merely on a suspicion. The court in this judgment considered the ‘doctrine of personal liberty’.

The Lahore High Court in the cases of **Sunder Singh v. Emperor**^{xx} and **Amolak Ram v. Emperor**^{xxi} the stated the importance of the legal access of an accused both while in custody and during the defence at the trial. The Supreme Court in the cases of **Sunil Batra v. Delhi Administration**^{xxii} and **Prem Shankar Sukla v. DeIhi Administration**^{xxiii} reacted against the

usage of handcuffs unless where a necessity arises and stated its usage as “barbarity hostile to our goal of human dignity and social justice”

The Supreme Court in the case of **D.K. Basu v. State of W.B.**^{xxiv} stated that custodial torture is a calculated assault on human dignity and condemned any such actions by the police. The court also observed that "Custodial violence, including torture and death in the lock-ups, strikes a blow at the rule of law...". In the case of **Kishor Singh v. State of Rajasthan**^{xxv} strict restrictions were passed against the usage of force by the police officers including the denouncing the three-degree methods which are commonly used for the purpose of confessions.

Yeshwant Vishnu Chandrachud in 1985 noted that the government has to amend the law in the case of custodial deaths and shift the ‘burden of proof’ to the accused police officers. The then chief justice of India made this observation after witnessing several cases of acquittals of the accused due to the lack of evidence. **Prakash Singh vs Union of India**^{xxvi} the Supreme Court in its 2006 order states that every state and centre should setup authorities to lay down guidelines and measures on police complaints (amongst other issues).

In the case of **Sheela Barse v. State of Maharashtra**^{xxvii} the Supreme Court made several directions and suggestions to the State Government to prevent the recurrence of police torture. Such as: The city and sessions’ judges making unannounced visits to the police stations, magistrates inquiring the detainees about their experience in the police custody. Immediately after the arrest, the detainees should have the knowledge of all his/her rights through the pamphlet provided by the police station in their local language and also the relatives of the same must be informed about the arrest.

Justice Bhagwati in the case of **Khatri v. State of Bihar**^{xxviii} talks about the ‘Right to Compensation’ in case of custodial torture also mentioned in Para 5, Article 9 of the International Covenant on Civil and Political Rights 1966. The **supreme court** gave several directions to protect the Fundamental Right to Life and Personal Liberty (in case of detainees)- such directions include- Medically examining and making a record of the same in the station house diary and presenting the same in front of a magistrate along with the detainee. In case of a remanded detainee, the medical check-up has to be done once in every three days and a police and complain box has to be provided in every police lock up and the keys of the same should be with the officer-in-charge and the complaint and the detainee must be presented before the

magistrate and the magistrate should give a reasonable judgement to the same complaint. In case of a female detainee, she should not be arrested before sunrise or after sunset and should be accompanied by a female officer and should have a separate lockup from the male detainees. The directions also state that the state government should follow the guidelines and measures given in the committee's report (the committee being constituted with the Home secretary, law secretary and director general of police).

Human Rights Commission

The national human rights commission is taking strict and immediate remedial measures to deal with the custodial deaths, tortures, molestations or rapes and all other cases brought to its attention through suo moto or otherwise. The human rights commission of India has published a 'manual on human rights for police officers' which talks about the suggestive guidelines and measures which should be followed by the police officers during the process of arrest and after the after the arrest (when the detainee is in the custody). though such commissions have studied and published information regarding the custodial torture by the police a detailed pragmatic study is yet to be conducted.

The annual reports of **Kerala's human rights commission** show that it's making numerous recommendations and suggestions to the government. It plays a dual role of spreading awareness about human rights to the general public and also giving remedial measures against any such actions of human right violation due to the structure of the commission it just plays a recommendatory role.

The Office of the **United Nations** high commissioner for human rights has published an expanded pocket book on Human Rights Standards and Practice for the Police. **Human Rights Activists** play a significant role in helping the community in facing the human rights violation as they help various organisations nationally and internationally who are investigating into such cases like interviewing the victims especially the ones from vulnerable backgrounds and they also voice their opinions against police brutality and excuses, the recent examples for the same are 'George Floyd' Case and 'Jeyaraj and Bennix' (Tamil Nadu) Case.

COMPARATIVE CASE STUDY - INDIA AND USA

Police Brutality has been prevalent in the USA and India since ages. About 1000 civilians are killed each year by law enforcement officers. In this comparative study we will be examining the recent cases of police brutality in the USA and India. The death of a father and son in judicial custody in India and the death of black man who was killed by U.S police officials in broad daylight has sent shockwaves across the globe. The similarities and/or differences in both these cases will be analysed.

Jayaraj and Fenix (India)

P. Jayaraj (62) and his son, Benicks/Fenix (29) were admonished for keeping their mobile phone and accessories shop open for fifteen minutes beyond the curfew imposed by the state government during the COVID-19 outbreak. It was alleged reported by the eye-witnesses that on June 18 at around 7:30 p.m, the Thoothukudi Sub-Inspector Balakrishnan arrived at their store and asked Benicks to shut down their shop to which he agreed. It was alleged that Jeyaraj had badmouthed the officers which angered them, following which, Jeyaraj was held by the collar and hauled into the police jeep and was arrested. Benicks rushed to the police station shortly after, to witness his father being slapped around by the policemen. When he sought to intervene the same, he was taken into custody and thrashed. It was stated that the policemen physically assaulted Benicks and inserted a baton into his anus due to which he was bleeding profusely. Jeyaraj was kicked on his chest multiple times.^{xxix}

According to the reports, the two had rectal bleeding which was so uncontrollable that they had to change loincloths for over seven times while they were being taken to the judicial magistrate. Due to the pandemic situation, both of them were made to stand about 50 metres away from the magistrate who remanded them to judicial custody. It was noted that the magistrate did not examine them for injuries like he was supposed to do. The magistrate booked them under Sections 269 (Action likely to Spread Disease), 188 (Disobedience to order duly promulgated by public servant), 506 (Criminal Intimidation) and 353 (use of force against a public servant) of the Indian Penal Code and were lodged in a sub-jail. Eventually, due to the profuse rectal bleeding, neither of them could pass stools or urine and their stomach began to bloat. They were taken to the hospital after their condition worsened. Benicks succumbed to his injuries at 8:30pm on June 22 and his father passed away the next day.^{xxx}

Following this incident, thousands of people in Ernakulam in Thoothukudi district came to the streets to pay their respects. The protests took to social media where #JusticeForJayarajAndFennix and #JusticeForJayarajAndBennix were trending. Several political figures and celebrities expressed their condolences regarding the same. Following the massive publicity and protests online, the district police suspended Inspector Sridhar, sub-inspectors Balakrishnan and Raghuganesh and two other police constables. All the police personnels in the Sathankulam police station were also transferred. Later, the sub-inspectors and the police constables have been arrested.

The Madurai bench of the Madras High Court along with the Tamil Nadu State Human Rights Commission have taken suo moto cognizance of this offence and have even demanded a report from the police officials. After calling all the charges into question by a CCTV footage, the Court has mentioned that there are enough and sufficient grounds to charge the responsible officers with murder. The Tamil Nadu government has also provided the family of the deceased with compensation of twenty-five lakh rupees and government jobs. The case has also been transferred to the CBI for further investigation. It was further noted that Former SP Ramagopalan who was the SP of Thoothukudi during the alleged custodial death, was under compulsory wait/ vacancy has been posted in the Cyber Police Department on August 12th by the Home Department in a shuffle of police officers while the case is still being investigated by the CBI.

One of the underrated and un-reported aspects of this case is the caste angle to the violence. Various allegations were made that the caste rivalry played an important role in the violence implication.^{xxxii} The Sub-inspector Raghuganesh who was the prime suspect for instigating violence on the duo has allegedly played a major role in the caste related fights in Tamil Nadu. During the Parliamentary and local body elections, there were fights and extreme rivalry between two castes namely, Konars and Nadars. The Sub-Inspector Raghuganesh was a Konar and allegedly started attacking other communities, especially Nadars. As per a letter signed by the presidents of three panchayats and other trade union leaders, it was stated that Raghuganesh has instigated the youth of the Konar community to destroy homes of the people belonging to other castes. It is alleged that Jayaraj and Benicks belong to the other community- Nadars, which brings the doubt of the existence of caste rivalry involved in this case.

George Perry Floyd (USA)

George Floyd (46), a black man, was arrested by Minneapolis police officials for allegedly passing a \$20 counterfeit bill on 25th May 2020. Officer Derek Michael located George in a car, handcuffed him and instructed him to get into the car. In the process of disaccording that he would feel claustrophobic in the backseat, he fell on the ground and officer Chauvin placed his knee on George's neck for 8 minutes 46 seconds, though George had stopped moving within the first 6 minutes. It was alleged that George constantly stated that he couldn't breath and that he would get into the car. The rest of the officers did not try to prevent his actions and only intervened with the bystanders. Later when he was taken by the ambulance, George Floyd had been pronounced dead by the Hennepin County Medical Center.

State of Minnesota filed a case in the 4th Judicial District Court against Derek Michael Chauvin for murder, human rights violation and use of excessive force while his colleagues have just been fired. Initially he had just been charged with third-degree murder and second-degree manslaughter. When Attorney General Keith Ellison headed this case, he amended the compliant by charging Mr. Chauvin with second-degree murder with the support of additional evidence. Ex-officers Thomas Kiernan Lane, Kueng J. Alexander and Thao Tou NMU have been charged with aiding and abetting second-degree murder (unintentional while committing a felony) and aiding and abetting second-degree manslaughter (culpable negligence creating unreasonable risk).

Autopsy Report by the Hennepin County Medical examiner's office concluded the death as a homicide and stated the cause of death as 'cardiopulmonary arrest' and further added that the recent methamphetamine usage, fentanyl intoxication and natural diseases (hypertensive and coronary heart disease) have complicated the police officers' restraint, subdual and neck compression. The family members disputed any such health issues and usage of the said drugs. An independent examination by two different forensic doctors concluded the death as homicide and have not identified any health issues of the deceased and stated the cause of death as "mechanical asphyxia"

The state of Minnesota had recently filed a motion for joinder which is looking up in favour of the State considering that this is in the interest of justice, it may help with a speedy trial as they had been charged with the variation of the same offence and the fact that the defendants did

not opt for an antagonistic defence and not to mention the impact on the mental health of the victim's family if, they had to attend various trials. George Floyd Estate filed a suit against the City of Minneapolis and the four ex-officers who had been charged for his death, for civil rights violation and usage of excessive force and the lack of police training. Recently the court had set bail for ex-officer Chauvin at \$1.25 million.

The above two cases will be compared on the basis of four aspects, reason for violence by police, action taken against the police officials, reformatory action taken by states, public reaction to the incidents.

The US has a long history of discriminating against the black. According to a report, the rate of black men being killed by police is twice as high as white men.^{xxxii} NCAT recorded that in India, it is a fact that the majority of victims in cases of police brutality belonged to the marginalized sections of the society. Out of the deaths of 125 persons in 124 cases in police custody documented by the NCAT in 2019, 76 persons or 60.8% belonged to the poor and marginalised communities.^{xxxiii}

In the case of Jayaraj and Fenix, the victims belonged to a community called 'Nadars' and the Police Official belonged to 'Konars'. There has always been a conflict between both these communities in Tamil Nadu which in turn played a major role in the brutal treatment of the victims by the officials. The discrimination against black people in the US has been prevalent since ages, George Floyd was a black man and the police officials were white. Therefore, it is alleged that the race of the victim has been a factor for the police official to take such a brutal step.

Jayaraj and Fenix were arrested on June 19, and died on June 22nd and 23rd. The Madurai Bench of Madras High Court took suo moto cognizance of the case, suspended the two senior inspectors and after inquiry, noted that there were sufficient grounds to register a case against police officials in the matter. The case was later transferred to the Central Bureau of Investigation for further investigation. The other personnel involved in the case were transferred. George Floyd was killed on May 25th 2020. On May 29th, the officer involved was charged with third-degree murder and second-degree manslaughter which was later upgraded to second-degree murder. The other police personnel in this case were charged with aiding and abetting second -degree murder and manslaughter. In comparison, the U.S criminal justice system is much more efficient as the accused officer was charged with the crimes within

four days of the incident, while on the other hand in India, the investigation is still in process and no charges have been filed. It is to be noted that the conviction rate of police officers in cases of brutality is very low in both India and the USA. In the U.S around 988 people are killed by police officials in the past year^{xxxiv}, out of these, 110 officers have been charged with murder, and only 42 were convicted. This is the same in India, where in 2018, 70 deaths were reported and only 9 officers were arrested, none of them were either charge sheeted nor arrested later on^{xxxv}.

Therefore, whether there will be conviction in the above cases is yet to be seen.

In terms of reformative action taken by authorities in the respective countries, Texas has begun changing their police policies. Texas' Mayor Turner signed an executive order on police reforms which requires de-escalation techniques and limits no-knock warrants, it also restricts choke holds and specifically forbids kneeling on a person's neck. Dallas requires police officers to intervene when they see another officer use excessive force. After the Jayaraj- Fenix case, 80 police officers were taken off duty for behaviour therapy.

When the news of George Floyd being killed by a police officer reached people, there were widespread protests and rallies all over the USA, while in India, people only in the state where the incident occurred showed up on roads to pay respect to the deceased. This shows lack of awareness and negligent attitude of the people.

On a general note, right to privacy is taken more seriously in the U.S, during an interrogation if a person refuses to answer a question, the interrogation is stopped immediately and even if the police breaks a law during interrogation, the entire evidence that flows from it is quashed. On the other hand, in India, if a person refuses to answer they are beaten up blue and black. One reason behind this is the lack of legal awareness among the public. These cases are being intensely followed by the whole world and hoping to set an example for the police violation cases, the law enforcement and the society.

CONCLUSION AND SUGGESTIONS

A death in custody refers to the death of an individual while in prison, under arrest or in the process of being detained by authorities. When the state takes away a person's liberty,

responsibility for their protection should be taken by the detaining authorities, who should guarantee the life and physical integrity of each detainee but while there was a steady growth rate for police brutality cases there were no awards for the same until recently. The main problem is that after such deaths, most of them are either not identified or intentionally manipulated to look like they were natural deaths by the forensic investigators which is a challenge for accountability.

Sudden and unexpected death in custody is commonly associated with allegations of police misconduct, media speculation, rumours, and intense community concern but no effective results are brought by the same and no country is immune to this rapidly growing problem.

Places where there is a huge influence by the police system, most of these cases are settled outside court with fear or pressure and even when settled in court the punishment is not as severe. Below are a few suggestions to improve our current situation and transparency of the investigation process-

India needs to have a separate “anti-torture law” to deal the police brutality case instead of treating them as homicide which raises an opportunity for the police to get away from the same using the provision CRPC Section 46 which is the right to private defence.

India needs to realise that its high time to ratify the United Nations Convention against Torture (UNCAT) or enact a national law against torture despite the Law Commission of India submitting the draft Prevention of Torture Bill, 2017 for enactment by the parliament in October 2017. Actions already taken should be strictly followed.

Comprehensive custody record- There should be a single custody record for each arrested person with every single detail about the arrest, health and mental condition, lawyer consultations, details of people who visit him, food offered, personnel who conducted the interrogation, duration of interrogation, request made by detainee during interrogation, signature of the detainee. Recording Interviews- Statements of suspects and arrested persons should be recorded in an electronic medium and sealed in front of him, this way right to freedom from torture and ill treatment are protected^{xxxvi} during interrogation.

Though several commissions have been introduced to deal with the police torture cases, they are neither helpful nor very functional, the same is done regarding the guidelines and procedures already given by the courts such as the DK Basu case. There are several other guidelines given by the NHRC and ICRC for the investigation procedure of the custodial death cases which should be given much more recognition be taken into consideration.

Though the USA is much more advanced it is facing this problem with the same intensity which reminds us of the statement “The US is a third world country wearing a Gucci belt”.

The accountability by the police should be increased, there has to be more victim and witness protection/relocation facilities as most of the cases go undetected or unaccounted for due to the fear of the officers which deals with them helping their colleagues. There has to be adequate training for these police officers and should also incorporate courses which deal with the magnitude of such brutality cases and how to deal with the same when they witness it. To cut down police funds and shift the budget towards the health benefits of the black residents, increase the community control over the police departments and other such actions.

Such violence has become a symbol of strength and a tool for oppression throughout the world, this violence is not just limited to physical but also mental and sexual. We have reached a curve where refusal by the legislation to take any action is not accepted nor merely giving financial compensation to the victim’s family to compensate for their inadequacy. Above we have analysed two such cases (George Floyd and Jayraj & Bennix) to identify the actual result and impact of the government actions, the judgment of these cases holds power to set an example to such problems and helps take these nations a step towards the right direction.

ENDNOTES

ⁱ Emesowum, Benedict, *Identifying Cities or Countries at Risk for Police Violence*, 21 JAAS 2, 269–281 (2016)

ⁱⁱ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (27 August 1980)

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