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**Police Brutality in India During Covid -19 Pandemic**

**Sabari .Ch**

## **ABSTRACT**

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Police machinery is one of the important organs of the state. They play a pivotal role in maintaining law and order. From crime prevention to apprehension of suspects and investigation of crimes innumerable works are assigned to the police. Their help and assistance are needed in varied circumstances. However, the police force in India is also known for its brutal behavior not only against the offenders even on the innocent public. Right from ancient times, to the present pandemic era of COVID-19, police officials are well known for their atrocities. Every police officer cannot be blamed, there are honest and valiant officers who discharge their duties with utmost sincerity, only a set of police officials engage in monstrous and abominable acts. Tough times like lockdown and curfews unveil the despicable power of the police. The whole world is fighting with the COVID-19 situation, adding to the problem; police officials in India are extremely hard on the public. Unlawful use of force should always be curbed; various lockdown phases in India have unlocked police brutality. This article aims at studying the rise in police brutality especially during the COVID era, the liability of lockdown violators, Abuse of powers by police.

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Keywords: *Police, Brutality, Covid-19, Public, Human rights.*

## INTRODUCTION:

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The origin of the word police can be traced back to the Greek term *Politeia* and its Latin equivalent is *Politia*, which means state or administration. There is no precise definition of the term police, various definitions are given to it. The Oxford dictionary defines police as the “Civil force of the State and the prime function of this civil force is prevention of crime, detection of crime and to maintain public order.”<sup>1</sup>

In India, The Police Act of 1861 has no explanatory definition of police, whoever is enrolled under the police Act will come within the ambit of police.<sup>2</sup> Police are the functionaries of the government who are engaged in the protection of people and property, apprehension of wrongdoers, maintaining public order, peace, etc.

To discharge the diversified duties efficiently, numerous powers are endowed upon the police officials. However, they abuse the power to the detriment of the innocent people. Police use their power to torture people, to wreck the lives and properties of the public, to ill-treat the poor and marginalized groups, to violate the rights guaranteed by the constitution.<sup>3</sup> Illegal arrests, custodial deaths, and unjustified use of force against people are extreme forms of brutality exhibited by the police. Marginalized groups, poverty-stricken groups, and minorities are often the victims of police brutality. Brutality is when police officers use excessive force than what is necessary. Custodial deaths are very frequent in India. During the lockdown, there is unbridled use of force by the Indian police. Innocent people are mercilessly beaten with lathis and there are also instances of shooting and custodial deaths during the COVID-19 lockdown. To contain the spread of the virus, the lockdown was announced by the government and the lockdown extended into phases. The movements of the public are restricted and highly regulated. Police are the ones to see that people follow the rules of curfew. People who violate lockdown rules are to be dealt with according to the prescribed law, but the police use excessive force against the flouters, even the people who come out for essential services are beaten up by the police. In India there are various instances of police brutality against the people engaged in important services like vegetable vendors, provision shop owners, even doctors who are also victims of police atrocities.

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<sup>1</sup> Lexico Powered by Oxford, Meaning of Police, available at <https://www.lexico.com/definition/police>, (last visited on Sep 2, 2020).

<sup>2</sup> The Police Act, 1861 (Act 5 of 1861), S.1 (interpretation clause).

<sup>3</sup> Ahmad Siddique, *Criminology, Penology and Victimology*, p.440 (Eastern Book Company, Lucknow, 7<sup>th</sup> edn. 2016).



## **HISTORY OF POLICE VIOLENCE IN INDIA:**

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Police machinery existed in India even during ancient times. The police organization and the police officers were given different names during different periods. In India Arbitrary behavior of the police is not a product of the modern state. Police brutality existed in various forms since time immemorial. Even during Vedic period, the police system existed. During the periods of Kautilya, Maurya, Gupta, and Mughals police systems existed. The head of the police department was depicted to be merciless, capricious, cruel and harsh. After East India Company started its commercial activities in India, the police system continued as it existed before. Many changes were made by Lord Cornwallis during 1792. In every district an officer named Daroga was appointed. These officers were known for their brutal and ruthless behavior. During 1843, Charles Napier established a police system based on the Irish constabulary. The Inspector general of police, superintendent of police post was created. After the failed Sipoy Mutiny in 1857, India was taken under the direct control of the British Crown in 1858. A number of legislations were enacted; few important acts were The Indian Police Act 1861, The Indian Penal Code 1860, The Criminal Procedure code 1861. In 1902, the second police commission was appointed, the commission observed that there was corrupt behavior among the officials and there was oppressive behavior by police officials in all levels.<sup>4</sup> Few incidents of police brutality over the years are, the 1919 JallianWala Bagh Massacre, killing of Pravir Chandra Bhanj Deo, the 1980 Bhagalpur acid blinding, the Hashimpura Massacre of 1987, the 1984 Anti-Sikh riots, the brutal attack by police in Manjulai in 1999, 2018 Thoothukudi firings, The Jamia Millia Islamia incident in 2019 and the very recent custodial death of Jayaraj and Bennix on June 2020 in Sathankulam, Tamilnadu.

## **VIOLATION OF LOCKDOWN RULES AND THE LAWS INVOLVED:**

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### **Indian Penal Code:**

Indian Penal Code is one major substantive criminal law that defines various kinds of offences and prescribes appropriate punishments to those offences. Any person who violates the COVID-19 lockdown rules may be held liable under the provisions of the Indian Penal Code. Section 188 of the Indian Penal code makes a person liable for disobeying a lawful order promulgated by a public servant. The violators will be punished with a prison term that may be up to six months or they will be asked to pay a fine amount up to thousand rupees or both prison term plus fine may be imposed

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<sup>4</sup> Ahmad Siddique, *Criminology, Penology and Victimology*, p.443-444 (Eastern Book Company, Lucknow, 7<sup>th</sup> edn. 2016).

on the violator so, it is the mandatory duty of the public to follow the lawful orders issued by the government.<sup>5</sup> Section 269, penalizes the negligent acts that are likely to spread, life-threatening infections diseases.<sup>6</sup> A malignant act by any individual that is likely to spread deadly infectious diseases is also made liable under the penal code.<sup>7</sup> Any person who willfully disobeys the quarantine rules laid down by the government to prevent the spread of any infectious diseases will be held liable under section 271.<sup>8</sup>

### **The Disaster Management Act, 2005:**

The act was enacted to effectively manage the disasters. Under the act, certain offences and the punishment for the offences are listed out in chapter ten. Sections 51 to 60 of the act deals with offences and punishments. Certain acts like obstructing a government officer from discharging his function, refusing to comply with directions of the government, making false claims, circulating false warnings are made punishable.

### **The Epidemic Diseases Act, 1897:**

Preventing the spread of dangerous epidemic diseases is the main object of this Act, any individual who violates the rules, regulations, or order issued under the act is considered to have committed an offence, and the person who disobeys such regulations will be punished under section 188 of the Indian Penal Code.<sup>9</sup>

### **Powers of police and the code of criminal procedure 1973:**

The criminal procedure code is the procedural law that provides for various procedures. When section 144 of the code is invoked, it is the duty of everyone to follow it mandatorily. When people violate the regulations they will be penalized, certain powers are given to the police to ensure that people abide by the rules. Section 129, gives power to the police officer who is in charge of any police station or in his absence any police officer who is not below the rank of sub-inspector of police, to order any assembly consisting of five or more individuals to disperse and it is the duty of

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<sup>5</sup> The Indian Penal Code, 1860 (Act 45 of 1860), S. 188.

<sup>6</sup> The Indian Penal Code, 1860 (Act 45 of 1860), S. 269.

<sup>7</sup> The Indian Penal Code, 1860 (Act 45 of 1860), S. 270.

<sup>8</sup> The Indian Penal Code, 1860 (Act 45 of 1860), S. 271.

<sup>9</sup> The Epidemic Diseases Act, 1897 (Act 3 of 1897), S. 3.

the individuals to disperse immediately if they do not disperse, The police officer can use force to disperse them.<sup>10</sup> Each state has its own manuals and it provides how much of force shall be exercised by the police. The code does not provide that police can use excessive force on innocent people. Police officials are cruel to people who come out to buy essential commodities during the fixed period when allowed to come out.

There are certain advantages to police officers. Certain sections of the code provide protection to the police officers so that they can discharge their functions without fear, but the police officers use it to their advantage to commit cruelty against the public. The prosecution cannot be initiated against the police officers without the previous sanction from the concerned government for any act done under section 129 of the code.<sup>11</sup> If they acted in good faith no action can be taken against them. Police are public servants, and the courts cannot take cognizance of any act done by the police officers while discharging their official duties, in order to take cognizance previous sanction is mandatory.

While analyzing the legal provisions, it is very clear that the police officers are not authorized to use unjustifiable force against the public stepping out during legally fixed hours for essential services is allowed, and police cannot use force against them. When people wander in streets without any purpose, they can be booked under the sections mentioned above, even in these cases police cannot use excessive force, but in India, there are incidents where innocent people are beaten by police without any just cause.

### **INCIDENTS OF POLICE BRUTALITY DURING A LOCKDOWN:**

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Many people have witnessed police brutality; several videos are shared on social media displaying police violence. In a number of cases, where the victims died, police claimed that the death was due to other causes like stroke, cardiac arrest, accidents, etc. only in a few cases, actions are initiated against the officers.

#### **The plight of Migrant workers:**

The migrant workers are one of the most affected groups because of the pandemic with no work, food, or a proper place to stay. Many of them started reverse migration back to their native. With

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<sup>10</sup> The Code of Criminal Procedure, 1973 (Act no 2 of 1974), S. 129.

<sup>11</sup> The Code of Criminal Procedure, 1973 (Act no 2 of 1974), S. 132.

no transport facilities, the workers are traveling by foot. On their way they are subjected to countless torture by the police, for example in Uttar Pradesh, the migrant workers were made to crawl on the road for not following lockdown rules. Many migrant workers were detained and tortured by the police for seeking travel arrangements so that they could return home. In Andhra Pradesh, the workers were lathi-charged for leaving the shelter homes. Throughout India, migrant workers were maltreated and attacked by police.

### **Police violence against essential service providers:**

Essential services are allowed for fixed periods even during the lockdown. However, the police did not fail to torture those who are involved in essential services. A pickup truck driver carrying potatoes was shot in the leg by the police. The victim driver shah alleged that he was shot because he refused to pay a bribe.<sup>12</sup>

In Delhi, police constable Rajbir damaged and overturned vegetable carts during the lockdown and he was later suspended for his misconduct. In Jamia Nagar Delhi, meat shop owners were beaten by police for opening the shops. The meat, fish, and other shops were allowed to be open yet the shop owners were beaten.

Bilal Ahmed Wani, an assistant storekeeper working in the food supplies department was beaten with lathis on his way to work. He was mercilessly beaten even after showing his identity card. There are many incidents where milk, vegetable, paper delivery persons were attacked by police.

### **Police brutality against people on public duty:**

COVID or normal times the services of Firemen, Doctors, workers of electricity board, sanitation workers, and Telecom service providers are very essential, yet they are not spared from the clutches of police brutality. Even after establishing their identity and work, they were beaten by the police. In Jammu and Kashmir, the officer of the Block development council was arrested and harassed by police. In Maharashtra, Priyanka Rathod, a female health assistant, working as a surveyor, under the National urban health mission was brutally attacked on the head by a police officer named Prabha Pundge. The victim was admitted to the hospital and had stitches. The act of police was condemned

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<sup>12</sup> Tamanna, Covid-19 lockdown: dreadful cases of police brutality, available at <https://www.inventiva.co.in/stories/tamanna/covid-19-lockdown-dreadful-cases-of-policebrutality/>. (last visited on Sep 6,2020)

as she ill-treated a person deputed on public duty. Steps were taken to initiate proceedings against the police officer.

NGO workers, General public were also victims of police brutality. Instead of filing a case against the lockdown violators, police themselves rendered justice by beating up the public.

### **Custodial Death of Jayaraj and Bennix:**

Jayaraj and his son Bennix were arrested by Thoothukudi police. It was reported that the shop was kept open after the permissible hours. Both of them were arrested and grievous injuries were inflicted upon them by the police. Later they were taken to the hospital. It was also alleged that they were sexually assaulted. Both father and son died at the hospital. This incident caused nationwide outrage. Charges were made against the police who were involved in the custodial death. The National Human Rights Commission and the Judiciary took serious note of it. The case at present is given to the Central Bureau of Investigation. Police have no authority to brutally attack the arrested person. In this case, there was no resistance by the victims, yet they were beaten to death. It is mandated under the code of criminal procedure that the police should not subject the arrested person to unnecessary restraint; only minimal restraint should be made to prevent escape.<sup>13</sup> Section 50 of the code of criminal procedure contemplates that an arrested person should be informed about the grounds of arrest and his right to bail.

In order to ensure, transparency in the working of police officials, the Apex court has laid down certain guidelines to be followed by the police in the event of arrest in *Joginder Kumar V. State of U.P.*<sup>14</sup> and *D.K. Basu V. state of West Bengal.*<sup>15</sup> In *D.K. Basu's* case, the Apex Court observed that 'custodial deaths are work crimes in civilized society', torturing the arrested person is a violation of his human rights. The right to life and liberty<sup>16</sup> is an inherent right guaranteed by the constitution. Custodial torture, custodial deaths are flagrant violations of rights enshrined under Article 21. In *Nilabati Behera alias Lalita Behera V. State of Orissa*,<sup>17</sup> the Supreme Court held that police authority is endowed with important responsibilities and they must not misuse it. Custodial deaths are against the right enshrined in article 21.

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<sup>13</sup> The Code of Criminal Procedure, 1973 (Act no 2 of 1974), S. 49.

<sup>14</sup> (1994) 4 SCC 260.

<sup>15</sup> (1997) 1 SCC 416.

<sup>16</sup> The Constitution of India, art. 21.

<sup>17</sup> AIR 1993 SC 1960.

## **INTERNATIONAL DOCUMENTS PROHIBITING POLICE BRUTALITY:**

All the international documents are in favor of the protection of human rights. The universal declaration of human rights (hereinafter mentioned as UDHR), 1948, recognizes important human rights like the right to life and liberty.<sup>18</sup> Torture, cruelty, inhuman or degrading treatment, is prohibited under article 5 of UDHR. Article 9 of UDHR prohibits unjustified arrest and detention.

The international covenant on civil and political rights (hereinafter mentioned as ICCPR), 1966, recognizes that all humans have an inherent right to life.<sup>19</sup> Article 7 of the ICCPR prohibits inhuman degrading treatments; Article 10 of ICCPR provides that persons who are deprived of their liberty through lawful means should be treated with humanity.

Convention against torture and other cruel, inhuman, or degrading treatment or punishment (hereinafter mentioned as torture convention), prohibits any form of torture either physical or mental. The torture convention explicitly states that torture cannot be justified even during a public emergency or internal political instability or war.<sup>20</sup> It is obligatory on the part of the state parties to make acts of torture punishable under their respective criminal laws.<sup>21</sup>

The United Nations code of conduct for enforcement officials provides various principles that the enforcement officials have to abide by; one of the important duties is to serve the community and exhibit required responsibility.<sup>22</sup> It is their duty to respect and protect human dignity.<sup>23</sup> Officials must use force only to a limited extent when required while discharging their duty.<sup>24</sup> Article 5 of the code of conduct for law enforcement officials prohibits torture and other degrading punishments against individuals by police officials. Superior orders cannot justify acts of torture. The health of the persons under custody is the responsibility of the officials. Immediate medical assistance should be provided when required.<sup>25</sup>

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<sup>18</sup> The Universal Declaration of Human Rights, 1948, art. 3, G.A Res.217 (III), U.N.Doc.A/Res/217 (III) (Dec 10, 1948).

<sup>19</sup> The International Covenant on Civil and Political Rights, 1966, art. 6, G.A Res. 2200A (XXI) (16 Dec, 1966).

<sup>20</sup> Convention against Torture and other Cruel, Inhuman or Degrading Punishment, 1984, art. 2, G.A Res 39/46 (10 Dec, 1984).

<sup>21</sup> Convention against Torture and other Cruel, Inhuman or Degrading Punishment, 1984, art. 4, G.A Res 39/46 (10 Dec, 1984).

<sup>22</sup> Code of Conduct for Law Enforcement Officials, 1979, art.1, G.A Res 34/169 (17 Dec, 1979).

<sup>23</sup> Code of Conduct for Law Enforcement Officials, 1979, art.2, G.A Res 34/169 (17 Dec, 1979).

<sup>24</sup> Code of Conduct for Law Enforcement Officials, 1979, art.3, G.A Res 34/169 (17 Dec, 1979).

<sup>25</sup> Code of Conduct for Law Enforcement Officials, 1979, art.6, G.A Res 34/169 (17 Dec, 1979).

## **SUGGESTED REFORMS BY THE COMMISSIONS AND THE SUPREME COURT GUIDELINES:**

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A number of commissions were appointed throughout the years for reforming the police system. All the commissions gave elaborate recommendations. Many commissions dealt with police brutality and suggested recommendations to end police brutality in India and make the police organization more transparent.

The National Police Commission: The commission came up with a total of eight reports between the years 1977 to 1981. Each report dealt exhaustively about the reforms needed in police machinery. The first report emphasized the need for a judicial inquiry into cases involving custodial rape of women, custodial deaths and also establishing district inquiry authority. The second report highlighted the need for reclassification of functions and duties attributed to the police officials and stressed that they must work strictly abiding by the law. The third report stressed the responsibility and response of police towards the weaker sections of our society. The fourth report dealt with registration of first information report, not turning down victims by non-registration of F.I.R and other critical matters relating to investigation and the commission also recommended measures to reduce the use of third-degree treatment against the accused. The fifth report gave suggestions for good policies while recruiting police personnel and also those officers who are not showing response to training must be eliminated. It also highlighted the partial behavior of police, brutal and ruthless behavior, and corruption among police, which caused a strained relation between them and the public. The subsequent report dealt with the need for establishing a commissioner system, procedure to be followed during communal riots. The seventh report suggested certain norms for the stations, re-organization of police structure, and establishing a committee. The eighth report is important as it is about police accountability. It suggested that the immunity provided to the police under section 132 and section 197 of the code of criminal procedure should be withdrawn, and also the old Police Act should be replaced with a new one.<sup>26</sup>

The Gore committee was appointed to review elaborately the procedures relating to the training of police officials, right from lower to superior level police officers. The Riberio committee (1998) suggested various reforms with regard to police Machinery. It advocated for the establishment of the Police Performance and the Accountability commission so that the police officers shall be made

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<sup>26</sup> Commonwealth Human rights initiative, Selected recommendations of National Police Commission, Available at [https://humanrightsinitiative.org/old/publications/police/npc\\_recommendations.pdf](https://humanrightsinitiative.org/old/publications/police/npc_recommendations.pdf) (last visited on sep 2, 2020)

more accountable to the laws, in addition, the commission suggested for a police complaints authority in districts and recommended for certain procedures for the selection of Director General of Police.

The Padmanabhaiah committee was convened to look into the training, functions, and duties of police and also to inquire into police behavior. The ministry of home affairs constituted the padmanabhaiah committee in 2000, important issues dealt by the commission was the criminalization of police, police accountability. The commission went in-depth into the major issues of Rape, murder, and other brutal acts committed by the police. The commission addressed the increasing police brutality and deviance in India and gave suggestions to curb brutality.

Later the Malimath committee was constituted, the committee suggested that the image of police must be improved in the eyes of the public, and also there should not be any political interference on the officials. It suggested various reforms regarding police functions.<sup>27</sup>

### **The Supreme Court guidelines:**

The Apex court in Prakash Singh V. Union of India<sup>28</sup>, issued important directions and changes to be made in the police organization. Establishment of the state security commission was the first one, the second one is the constitution a board named as police establishment board to check up on external influences. The most important directive is to establish a police complaints Authority to curb misuse of power by the police officers and ensure that they are accountable for their actions. The duty of all the authorities is to deal with the complaints made by the public against the officers. The court further ordered that there should be a separation of the investigation wing and law and order wing. The Soli Sorabjee committee was appointed and the committee came up with the new model police Act.<sup>29</sup>

The Supreme Court issued directives in 2006; however, there is no decline in police brutality. Police continue to harass and torture people without any fear of punishment.

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<sup>27</sup> Girjesh Shukla, *Criminology Crime Causation, Sentencing and Rehabilitation of victims*, P 139-140, LexisNexis, Haryana, 2013.

<sup>28</sup> (2006) 8 SCC 1.

<sup>29</sup> Girjesh Shukla, *Criminology Crime Causation, Sentencing and Rehabilitation of victims*, P 139-141, LexisNexis, Haryana, 2013.



## **CONCLUSION:**

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It is no doubt that police are overburdened with work, but that does not justify their brutal acts against innocent people. Though various limitations are imposed to keep a check on police deviances, they continue to abuse their power whenever they find a chance. COVID -19 Pandemic is one such chance to the police officials. Certain police officers started using excess and unjustified violence and force against the public during the lockdown. In the name of discharging their official duty, police officers have taken law in their hands and started punishing the lockdown violators. Brutality has reached an extremity that many people were grievously hurt and shot by the police. Few people have even lost their lives because of police brutality.

## **SUGGESTIONS:**

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1. Making police officers accountable for their brutal acts is very important.
2. Proper training, right from the period of recruitment is very important. Inculcating the importance of fundamental freedoms and human rights should be made mandatory during the training.
3. Filling up the vacancies and recruiting more officers might prove useful, as the burden of workload can be reduced.
4. Proper functioning of the police complaints authority might prove useful in controlling the brutal behavior of the police. The punishment of guilty police personnel can be ensured if the authority works in an effective manner.
5. The immunity given to the police officers under section 132 and 197 of the criminal procedure code, 1973 should be withdrawn, in cases of custodial deaths and other extreme cases of brutality.
6. The law commission of India (113 reports) on its report 'Injuries in police custody, suggested for insertion of a new section in India evidence Act, 1872, when a police officer is prosecuted for custodial death, the court may presume that the injuries inflicted on the victim are by the officer under whose custody the victim was present. Adding this provision will be helpful in rendering justice as it would be difficult for the prosecution to prove beyond reasonable doubt as custodial deaths occur where outsiders are not present. Other police officers do not come forward to give evidence against one of their own.

7. Any police officer using unwarranted force against an innocent public should be dealt with strictly.
8. The commonwealth human rights initiative has come up with certain guidelines to curb police atrocities. The guidelines are framed to ensure enforcing lockdown without violating the rights of people. The guidelines may be adopted to reduce police harassment.