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**Police brutality: violation of international human rights law**

**Muskan Mahajan**

## ABSTRACT

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*This paper examines the racism, discrimination and abuse of power in policing with special reference to the police brutality in the United States of America. It sets out frameworks founded in international law and international human rights law relating to anti-discrimination policy and the governance of policing, for protecting fundamental human rights such as the right to life, liberty and freedom from unlawful intrusion by the state. Further, the article explores the barriers for the failure of proper implementation of human rights standards in policing, especially in the U.S. Moreover, the articles emphasize the role of law enforcement officials in uplifting the international standards of human rights. As such this article concludes that law enforcement officials including police have a high responsibility to protect the society and implement law and order, therefore, they should absolutely abide by the national legislation along with the international human rights law to avoid racism, discrimination and brutality.*

## INTRODUCTION

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Human rights are a well-founded subject of international law and international scrutiny, which is binding on all States and their agents, including law enforcement officials. They are derived from the inherent dignity of the human person.<sup>1</sup> Under the principles of Human Rights, law enforcement officials at all times are obliged to know and uplift the standards of international human rights.<sup>2</sup> According to the human rights standards, the ethical and legal conduct of respecting and protecting human dignity and maintaining the human rights of all persons is a high degree of responsibility of the law enforcement officials. This makes it obligatory for these officials to report those laws, codes and set of principles which violate the protection of human rights.

The most important and powerful institution of the government is the police service. Its officers hold coercive powers which are a visible manifestation of state power. On many states, sanctioned use of violence against the citizens the police hold a monopoly. They are authorized to bear arms and, in certain circumstances, can shoot to kill. Further, police officers routinely detain by force, conduct intimate searches of people, their homes and possessions, and conduct covert surveillance on the private lives of people suspected of criminal involvement or intent. While exercising such powers all police officials should rigorously respect the principle of legality, non-discrimination, proportionality and humanity, to respect and obey the international human rights standards.

In order to maintain the international human rights standards, all governments must instruct the law enforcement officials to adopt necessary measures during their basic training and all subsequent training and ensure that national legislation is in accordance with the UN Code of Conduct for Law Enforcement Officials. This makes it obligatory that all police officials enrol themselves in the in-service training program to understand the powers and limitation of the power in their hands. Further, the defence of 'obedience to superior orders' may not be taken to justify serious violations of human rights such as unlawful killing or torture. Therefore, the police have to be familiar with both internal and external complaints and reporting procedures.

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<sup>1</sup> See Universal Declaration of Human Rights, preamble and article 1.

<sup>2</sup> See Code of Conduct for Law Enforcement Officials, United Nations High Commissioner for Human Rights, <https://www.ohchr.org/en/professionalinterest/pages/lawenforcementofficials.aspx>.



Moreover, the police policy and strategies should ensure that all police officials are trained to fully understand their legal powers and the legal rights of the citizens and take into account the requirements to protect and promote human rights. This can be achieved by properly investigating all reports and complaints of human rights violation, by enforcing standing orders incorporating international human rights standards and developing an ethical code of conduct for your police services.<sup>3</sup>

Under all circumstances, these standards should be reflected in national legislation and practice. Regular public reports should be issued in their implementation so that these standards are made available to the general public as widely as possible. The government cannot justify any departure from these standards in the name of a state emergency or any other public emergency. Clearly, the possession and use of powers by police officials require justification and explanation at every stage, thus it can be exercised only in accordance with the international human rights standards.

## **INTERNATIONAL STANDARDS OF POLICING: INTERNATIONAL LAW & INTERNATIONAL HUMAN RIGHTS LAW**

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International law deals with the relationship between subjects of international law. International conventions, international customs and general principles of law recognized by independent nations are the primary sources of international law. Apart from these, an additional source of international law is soft law documents. These documents consist of non-binding instruments established through the resolution of the general assembly. Soft law instruments strengthen the state's commitment to international agreement and reaffirm international norms. In particular, the United Nations Code of Conduct for Law Enforcement Officials (CCLEO) and the Basic Principles for the Use of Force and Firearms by Law Enforcement Officials (BPUFF) are some examples of soft law instruments to law enforcement.

The states while invoking its constitution or other national laws is obliged to fulfil its legal duties under international law. While actual applicability of international law within the domestic system

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<sup>3</sup> See Professional Training Series No.5/Add.3, *Human Rights Standards and Practice for Police*, Office of United Nations High Commissioner for Human Rights, Expanded pocketbook on Human Rights for Police (ISSN 1020-1688), <https://www.ohchr.org/documents/publications/training5add3en.pdf>.

may vary depending on the national legal framework, the state is obliged to bring its domestic legislation in line with international obligations. Furthermore, State will entail responsibility at an international level, if there is any violation under international human rights law by law enforcement officials in the exercise of their duty.

International human rights law (IHRL) and international humanitarian law (IHL) are the two most important areas of international law. Although they have a different scope of application, the common aim is to protect people's life, health and dignity. In 1945, the United Nations was created to promote and maintain peace and security. Its founding instrument is the UN Charter which contains an important commitment to human rights in Article 55.<sup>4</sup> The major instruments that codify human rights at an international level include – The Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). These three major instruments are together referred to as the International Bill of Human Rights.<sup>5</sup> These instruments that are binding on all state parties are increasingly complemented by soft documents that further provide more detailed human rights standards. In addition to CCLEO and BPUFF, as mentioned above, other soft law documents in relevance to law enforcement officials are – Standard Minimum Rules for the Treatment of Prisoners (SMR), Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Victims Declaration).<sup>6</sup>

The state has the responsibility to maintain law and order, peace and security within its territory. Whatever law enforcement philosophies and concepts are adopted by the state should be carried out in a way that respects the state's obligation under IHRL. This means that the domestic legislation and practices undertaken by law enforcement agencies should comply with the provisions of IHRL. Thus, the duty to respect human rights, the duty to protect human rights, the duty to ensure and fulfil human rights and the duty not to discriminate are the prime duty of the state under IHRL. However, the State's in order to fulfil their responsibility, authorizes law

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<sup>4</sup> See Charter of United Nations, United Nations, <https://www.un.org/en/sections/un-charter/un-charter-full-text/>.

<sup>5</sup> See the International Bill of Human Rights, <https://www.ohchr.org/Documents/Publications/Compilation1.1en.pdf>.

<sup>6</sup> *International Rules and Standards for Policing*, ICRC, <https://www.icrc.org/en/doc/assets/files/other/icrc-002-0809.pdf>.

enforcement officials, inter alia, to use force and firearms. The fundamental human rights are likely to be affected by the use of force, i.e. the right to life, liberty and security (UDHR, Article 7; ICCPR, Article 6(1) and Article 9(1)). Therefore, the highest priority must be given to protect these rights while fulfilling law enforcement responsibilities. Law enforcement officials must use force and firearms only as far as it is necessary. When force is used to achieve a legitimate objective, the consequence of such force should not outweigh the value of the objective to be achieved, which would render the use of force disproportionate. Furthermore, these officials need to be fully accountable when they resort to force. If death or injury is caused due to the use of force or firearm then it should be investigated thoroughly (BPUFF Nos 22 and 23).<sup>7</sup> Arbitrary, unnecessary or otherwise unlawful use of force must be adequately reported.

Another important human right which the law enforcement officials should consider is the right to liberty and security of persons which is enshrined in various universal and regional human rights documents. For example, Article 9(1) of the International Covenant on Civil and Political Rights states that no one should be deprived of his liberty except on such grounds and in accordance with such procedures as established by law.<sup>8</sup> In this regard, it is important to bear in mind that the power to arrest and detain a person given by the state to the police officials needs to be carefully regulated by law and exercised in full conformity with international human rights standards. The power to arrest should be exercised only in exceptional circumstances as it is a discretionary power granted to law enforcement officials. Therefore, this discretionary power should be exercised in compliance with the principles such as legality, necessity, proportionality and accountability.

Other powers of law enforcement officials include the power to search and seizure. These powers cover a wide range of activities, particularly in a criminal investigation. It is important to keep in mind that every individual has the right to a protected sphere without external interference. Therefore, regulation of law in matters of interference by the State and its agent in this sphere is essential. In this regard, Article 17 of the International Covenant on Civil and Political Rights should be considered. It specifically states that no one shall be subjected to

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<sup>7</sup> See Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, United Nations Human Rights Office of the High Commissioner, <https://www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx>.

<sup>8</sup> See International Covenant on Civil and Political Rights, United Nations Human Rights Office of the High Commissioner, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

arbitrary or unlawful interference and everyone has the right to be protected by law against such interference or attacks. This implies that the power of search and seizure should be conducted in accordance with procedures established by law and should not be disproportionate in scope.

## **RACIAL ABUSE AND UNLAWFUL USE OF FORCE BY POLICE IN THE UNITED STATES OF AMERICA**

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The excessive or unnecessary use of force by personnel affiliated with law enforcement duties such as police, on suspects and civilians is termed as police brutality. The term police brutality is sometimes used to refer to various violations of human rights by the police. This might include racial abuse, torture, unlawful arrest, unlawful killing or indiscriminate use of riot control agents at a protest. The use of unlawful force by the police results in deprivation of the right to life guaranteed to people by the international human rights standards. Moreover, such unlawful practices lead to violation of the right to be free from discrimination, the right to liberty and security, and the right to equal protection under the law.

One of the most serious and decisive human rights violations in the United States is police abuse. According to Article 3 of the UN Code of Conduct for Law Enforcement Officials, these officials should use force only when strictly necessary and such an action should be proportionate to the extent required for the performance of the duty. This is also stipulated in the U.N. Basic Principle on the Use of Force and Firearms by Law Enforcement Officials (BPUFF) which provides that the law enforcement officials should restrain the use of force whenever the use of force or firearms are unavoidable and should act in proportion to the seriousness of the offence. The United States Supreme Court in the case *Graham v. Connor*<sup>9</sup>, held that the requirement of ‘reasonableness’ in the United States Constitution's Fourth Amendment on the part of the police applies to all the acts where the law enforcement officials have used excessive force deadly or not in the course of an arrest, investigation or during search and seizure. Similarly, in the case of *Tennessee v. Garner*<sup>10</sup>, the Supreme Court of United States held that under the Fourth Amendment, the law enforcement officer should not use deadly force to

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<sup>9</sup> *Graham v. Connor* 490 U.S. 386 (1989).

<sup>10</sup> *Tennessee v. Garner*, 471 U.S. 1 (1985).

prevent the escape of a fleeing suspect unless there is a reasonable cause to believe that the suspect poses an imminent threat to death or serious injury to the officer or others.

However, the lack of accountability makes it possible for officers who commit human rights violations to escape due punishment. There have been many cases where the police officers used excessive force including unjustified shooting, severe beating, fatal choking and rough treatment in the name of their duty. The police officers deny each of these reports of brutality or explain that the act was an aberration. It is the duty of the administration and criminal system to deter these cases of brutality and abuse by holding the officers accountable instead they exempt them from punishment by granting them immunity. In *Mullenix v. Luna*<sup>11</sup>, the Supreme Court of United States held that a police officer will be entitled to qualified immunity if he shot a suspect during a police pursuit. Furthermore, the court held that prior precedent did not establish that the officers' action was objectively unreasonable. The doctrine of qualified immunity was first introduced by U.S. Supreme Court in the case of *Pierson V. Ray*<sup>12</sup> with the aim of protecting law enforcement officials who acted in good faith from frivolous lawsuits and financial liability. However, starting around 2005, this doctrine has been used increasingly by the courts in cases involving excessive, unlawful or deadly force by police, leading to widespread criticism. It is noted that this doctrine is used as a reliable tool by the administration to let police brutality go unpunished and deny victims their constitutional rights.<sup>13</sup> This means that police officers are fleeing the accountability of violation of human rights by the virtue of this doctrine.

Although international human rights strictly prohibit any form of racial discrimination. Yet racism and other forms of discrimination have found their place into law enforcement and justice systems around the world. In the United States, people are now standing against police violence and racism due to increase in various cases on police brutality. Police of such a big country is failing to meet even the most basic international human rights standards. The police brutality in the United States is associated with racial profiling. According to the American Civil Liberties Union (ACLU), racial profiling is the practice followed by law enforcement officials of targeting individuals for suspicion of crime based on the individual's race, religion or national

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<sup>11</sup> *Mullenix v. Luna*, 577 U.S. (2015).

<sup>12</sup> *Pierson v. Ray*, 386 U.S. 547 (1967.)

<sup>13</sup> Andrew Chung, Lawrence Hurley, Jackie Botts, Andrea Januta, Guillermo Gomez, *Special Report: For cops who kill, special Supreme Court protection*, Reuters (May 8, 2020, 3:33 PM), <https://web.archive.org/web/20200612051417/https://www.reuters.com/article/us-usa-police-immunity-scotus-specialrep-idUSKBN22K18C>.

origin.<sup>14</sup> Moreover, the leadership of the police department and police union tends to be primarily white. Also, there is a perception that the victim of police brutality is often people who belong to relatively powerless groups such as racial or cultural minorities. As a result, a portion of the population may perceive the police to be oppressors.

Recently, the issue of police brutality saw a surge in public response following the killing of George Floyd in Minneapolis. On May 25, 2020, George Floyd, an African American man was killed in Minneapolis after being arrested for allegedly using a counterfeited bill.<sup>15</sup> The white police officer had knelt on Floyd's neck for several minutes after he had already been handcuffed and was lying down on the ground. Floyd had complained about unable to breathe prior to being on the ground. This brutal act of the police officer ultimately took the life of Floyd. His death triggered worldwide protest against police brutality, police racism and lack of police accountability. As this protest spread across the United Nations and the world, the human rights experts renewed their condemnation of racial discrimination and excessive use of force prevailing in the American criminal justice system. Many authorities in American cities imposed extended curfews and protested against the police and military who used tear gas and rubber bullets.<sup>16</sup> It is reiterated by regional and universal human rights monitors that America must take serious action against the law enforcement officials to stop excessive use of force, address discrimination and inequality, and avoid immunity provided to police officers for extrajudicial killings.<sup>17</sup>

Although the U.S. has a long history of police violence and abuse, there has been a lack of collection of data and reporting system which makes it difficult to accurately depict the scope of the problem.<sup>18</sup> For example, a study of the number of killings between 2005 and 2015 discovered

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<sup>14</sup> *Racial Profiling: Definition*, ACLU, <https://www.aclu.org/other/racial-profiling-definition?redirect=racial-profiling-definition>.

<sup>15</sup> *Two police bodycam videos in killing of George Floyd released*, Tampa Bay Times (11 August 2020), <https://www.tampabay.com/news/2020/08/10/two-police-bodycam-videos-in-killing-of-george-floyd-released/>.

<sup>16</sup> Agnes Callamard, *Police in the U.S. are abusing tear gas and rubber bullets in possible violations of international law*, The Washington Post (June 2, 2020 at 12:09 a.m.), [https://www.washingtonpost.com/opinions/2020/06/01/police-us-are-abusing-tear-gas-rubber-bullets-possible-violations-international-law/?utm\\_campaign=wp\\_opinions&utm\\_medium=social&utm\\_source=twitter](https://www.washingtonpost.com/opinions/2020/06/01/police-us-are-abusing-tear-gas-rubber-bullets-possible-violations-international-law/?utm_campaign=wp_opinions&utm_medium=social&utm_source=twitter).

<sup>17</sup> *UN Human Rights Chief urges "serious action" to halt US police killings of unarmed African Americans*, United Nations Human Rights Office of the High Commissioner, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25910&LangID=E>.

<sup>18</sup> Kanya Bennet, *One Year Later: We Still Don't Know How Many Shot by Police*, ACLU (18 May 2020, 9:30 AM), <https://www.aclu.org/blog/criminal-law-reform/reforming-police/one-year-later-we-still-dont-know-how-many>

thousands of police killings, however, only 54 police officers were charged with a crime and a majority were acquitted.<sup>19</sup> In 2019, report of the Inter-American Commission on Human rights (IACHR) documented the forms of police violence against people of African descent in America and examined the widespread racial disparities in the American criminal justice system.<sup>20</sup> The report concluded that the United States has failed to adopt preventive measures and has been unsuccessful in training its police forces to perform their duties appropriately. Consequently, the use of force on racial bias and unjustified killings of African Americans have frequently prevailed in the country.

United States of America has not only been called out by the human rights bodies for its failure to control and address police violence against African Americans in U.S., but also the international obligations that the country must comply with. Being the member of an organization of the American States and the UN Member States, the U.S. has obligations under the American Declaration on the Rights and Duties of Man, commonly known as American Declaration and the Universal Declaration of Human Rights. Moreover, as it is a party to the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the U.S. must ensure and abide by the principle of legality, necessity, and proportionality; protect the right to life; ensure access to justice and effective remedies; and, safeguard protesters' rights. Additionally, with the ongoing situation, it is necessary that U.S. acts with due diligence and considers article XVIII and XXIV of the American Declaration which includes a responsibility to prevent, investigate, punish, and provide reparations for potential police abuses. By being consistently conscious about the international obligations towards them, the U.S. can ensure adequate investigation and prosecution of police abuse.

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shot-police?redirect=blog/criminal-law-reform/reforming-police-practices/one-year-later-we-still-dont-know-how-many-shot.

<sup>19</sup> See Thousand Dead, Few Prosecuted, The Washington Post, <https://www.washingtonpost.com/sf/investigative/2015/04/11/thousands-dead-few-prosecuted/>.

<sup>20</sup> See African Americans, Police Use of Force, and Human Rights in the United States, Inter-American Commission on Human Rights (IACHR), <http://www.oas.org/en/iachr/reports/pdfs/PoliceUseOfForceAfrosUSA.pdf>.

## CONCLUSION AND RECOMMENDATIONS

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Law enforcement officials play an important role in serving and protecting society and uplifting law. This role of the law enforcement officials remains valid in all situations including in times of civil unrest, armed conflict or other forms of violence. Therefore, these officials have a high level of responsibility, who are required to fulfil their duties in absolute respect to the applicable domestic, national and international law. Moreover, they have to comply with international rules and standards while contributing effectively to peace, security and stability in the society.

As noted in the article, complying with international human rights standards while maintaining law and order is the most important duty of the police. Some of the instruments directly relevant to the work of policing include the United Nations law enforcement, criminal justice and human rights instruments such as UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Standard Minimum Rules for the Treatment of Prisoners, UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

A detailed guideline has been provided by Amnesty International on the use of force by law enforcement which clearly states how the police and other law enforcement officials can improve their practices around the world.<sup>21</sup> Some of the key recommendations for law enforcement officials are –

- The power of the police to use force and firearms must be adequately regulated by law.
- The principle of ‘protect-life’ must be enshrined in law and lethal force should only be used when there is an imminent threat to the life of the officer or others.
- If the use of force by the police results in death or injury then impartial and detailed investigation should be carried out.
- During peaceful assemblies the police should not resort to using of force, if some protestors engage in violent actions, this does not turn the otherwise peaceful protest

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<sup>21</sup> See Use of Force, Guidelines for implementation of the basic UN principles on the use of force and firearms by law enforcement officials, Amnesty International (August 2015), [https://www.amnesty.org.uk/files/use\\_of\\_force.pdf](https://www.amnesty.org.uk/files/use_of_force.pdf).



into a non-peace assembly. Therefore, police should ensure that those who remain peaceful can continue protesting.

Furthermore, regarding an increase in police brutality in America, it is suggested that the government should introduce training for all involved in the administration of justice including police and other law enforcement officials. This is a necessary step to combat racial discrimination and related violence. Such training should cover international human rights standards set out in various UN instruments. Also, these principles should be included in the working rules, regulation and criminal justice system. Hence, it is concluded that International Human Rights Law is the basic law which uplifts the rights of all individuals and should be respected and applied in all acts of law enforcement officials.