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"REVISITING INDIA'S ANTI-TORTURE LAWS: EXAMINING INTERROGATIONS AND CUSTODIAL ABUSE"

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ABSTRACT:

India has long grappled with a reputation for custodial abuses, with recent instances of such violations of human rights on the rise. Despite global outcry against police brutality, recent cases of custodial deaths have tarnished the reputation of India's law enforcement agencies. These incidents have sparked a nationwide conversation about the alarming recurrence of police misconduct. As those meant to protect turn into perpetrators, the safety and freedoms of ordinary citizens are consistently jeopardized. This paper aims to delve into the underlying reasons behind the increasing prevalence of custodial deaths and assess the shortcomings in the Indian legal system.

Keywords: *Indian Legal System, police, police brutality, human rights, misconduct*

INTRODUCTION:

The legal framework in India, akin to other democratic nations, is designed to safeguard the rights of its citizens through fundamental rights and various regulations. The three branches of government - Legislature, Executive, and Judiciary - collaborate to uphold these rights, ensuring checks and balances. Within the Executive branch, the police play a crucial role in maintaining societal peace and order at the grassroots level, enforcing laws diligently to prevent crime and disorder. However, despite their vital role, there are instances where the police misuse their authority, often under political influence or for personal gain. Police brutality encompasses not only physical harm but also psychological abuse, with tragic cases sometimes resulting in fatalities. Instances of police officers being disrespectful and verbally abusive towards individuals are unfortunately common, whether encountered at police stations or during routine interactions such as at traffic signals. These occurrences are not unfamiliar to Indian society, with reports

frequently surfacing regarding human rights violations, falsified charges, and fabricated encounters. The term "police" finds its roots in the Latin term and Ancient Greek word "Politia." In the Indian Constitution, crucial elements such as human rights and laws to prevent major crimes are enshrined to ensure social stability. Human rights encompass various fundamental freedoms, including equality, freedom from exploitation, freedom of religion, cultural and educational rights, and access to constitutional remedies. To uphold peace and security, the judiciary was established as the cornerstone of justice, while the responsibility of law enforcement and citizen protection was entrusted to the police. In India, a federal union comprising 28 states and 8 union territories, policing falls under List II of the 7th schedule of the Constitution, designated as the State List. The Police Act of 1861 provides a definition of "police" in Section 1, which encompasses all individuals appointed under its provisions.

The police force serves as the civil authority tasked with upholding law and order within a state, playing a crucial role in maintaining societal stability. Acting as a vital component of the legal system, it serves to protect states from criminal activities while ensuring the rights of citizens are upheld. However, despite its essential function, the police have garnered a negative reputation among the general populace for instances of power abuse and instilling fear rather than fostering a sense of positive protection in society. As Mary Frances Berry aptly stated, "When you have a police officer who abuses citizens, you erode public confidence in law enforcement. That makes the job of good police officers unsafe." Recognizing these challenges, the Supreme Court has advocated for the establishment of a "Police Complaint Authority"¹ to address grievances against police officers at both district and state levels. Unfortunately, there is often a perceived bias within the police force when investigating complaints against their own members. Police brutality in India can be attributed to several factors, including the absence of legislation specifically targeting torture. Another significant factor is the lack of awareness among citizens regarding their rights. As a society, we have also fallen short in our responsibility to educate our children about laws and civic duties, instead instilling fear of the police in their minds. According to the National Campaign Against Torture (NCAT), which collects data from local media reports, 76% of custodial deaths reported last year were allegedly due to torture or misconduct by law enforcement officials. Additionally, 19% of these deaths were classified as suspicious, with police attributing causes such as suicide or sudden illness.²

¹ Prakash Singh v. Union of India (2006) 8 SCC 1

² Mohit Rao, "Indian police use violence as a shortcut to justice. It's the poorest who bear the scars", (CNN Article, Dt. 3rd Dec. 2020)

Following India's independence, several acts pertaining to police forces were enacted, including the Police Forces (Restriction of Rights)³ Act of 1996. Additionally, individual states introduced their own legislation such as The Kerala Police Act of 1963 and The Punjab Police Act of 2007. The All India Services Act of 1951 was established to facilitate the selection of officers for prestigious positions like the Indian Administrative Service (IAS) and Indian Police Service (IPS).

According to the Indian Annual Report on Torture published by a Human Rights group, a total of 1,731 deaths occurred in 2019, with 1,606 taking place in judicial custody and 125 in police custody. Paritosh Chakma, director of the National Campaign Against Torture, highlighted various torture techniques employed in 2019, including hammering iron nails into the body, inflicting injuries to private parts, electric shocks, branding with hot iron rods, pressing fingernails with pliers, and physically assaulting pregnant women's abdomens, among others.

INTERNATIONAL LAWS TO RESCUE AGAINST TORTURE:⁴

There is a misconception that resorting to torture and abuse during interrogations is an effective means of extracting accurate information from the individual being questioned. However, this belief is misguided, as such tactics can often yield unreliable results and may even backfire. Psychological, emotional, or physical coercion can compel the victim to say anything simply to halt the distressing ordeal, undermining the very purpose of interrogation, which is to obtain credible information. Furthermore, torture is inherently inhumane, as it directly violates the individual's right to life with dignity. To address this issue, legislative bodies worldwide have endeavored to establish comprehensive laws aimed at preventing torture during interrogations. One notable outcome of these efforts is the Miranda Warning. This warning comprises notifications typically issued by law enforcement to suspects in police custody or during custodial interrogations, including informing them of their right to remain silent. By rendering statements obtained under duress inadmissible, these warnings not only deter the use of coercion by police but also ensure that the individual being interrogated is aware of their rights. Such warnings have served as a model for the development of laws in nations worldwide. A prime example of this approach is Section 10 of the Canadian Charter of Rights and Freedoms, enacted in 1982, which mandates that arrested individuals be informed of the reasons for their arrest and grants them the

³ The Police Force Act (Restriction of Rights) vide notification No. G.S.R 1848, 3rd Dec. 1966.

⁴ Mohd Rameez Raza and Ujjwal Singh, INTERROGATIONS AND CUSTODIAL TORTURES: WHY INDIA NEEDS TO RE-ANALYSE ITS LACUNAE OF ANTI-TORTURE LAWS? , (SSRN Article Dt. 16 Aug. 2021)

right to seek legal counsel immediately. Torture and abusive interrogation methods are prohibited under international law, as outlined in key conventions such as the Convention against Torture, the Geneva Convention, and the International Covenant on Civil and Political Rights. These conventions unequivocally forbid the use of torture and mistreatment of prisoners by authorities. However, India lacks a specific legal framework addressing these issues. Despite having ratified and acceded to the Geneva Convention and the International Covenant on Civil and Political Rights, India has yet to fully adhere to the requirements stipulated within these agreements.

INDIAN LEGISLATION: EXISTING LAWS & LACUNAE:

In India, there isn't a dedicated legal framework specifically addressing the issue of torture perpetrated by police officers. Proponents of this stance argue that the existing provisions within the Constitution and criminal laws are deemed adequate to handle instances of torture. The Supreme Court of India has consistently reaffirmed that the Right to Life enshrined in Article 21 of the Constitution includes protection against torture.⁵ This means that individuals have the inherent right to be free from any form of torture or inhuman treatment. As such, Article 21 serves as a cornerstone, providing comprehensive protection against arbitrary actions by the state, particularly during the process of arrest and throughout the duration of criminal proceedings. Therefore, the principles embodied in Article 21 remain pertinent and applicable, ensuring the safeguarding of individuals' fundamental rights in the face of state action.⁶

Concerning protection from torture, Article 20(3) of the Indian Constitution safeguards against self-incrimination. This provision indirectly acts as a barrier against torture, as the main motive for subjecting an accused individual to torture is often to extract a confession. However, this safeguard isn't absolute, as information obtained from such a confession can still be used to support evidence against the accused.⁷ Section 27 of The Indian Evidence Act, 1872 further stipulates that facts uncovered as a result of a confession or statement can be utilized against the accused, potentially allowing torture to persist unchecked in India. Additionally, Article 22(2) of the Constitution aims to prevent torturous practices by imposing a limit of 24 hours on the detention of individuals based on judicial discretion. No one can be detained beyond this period without the authorization of a magistrate.

⁵ D.K. Basu v. State of West Bengal, 1 SCC 416 (1997); See also: Joginder Kumar v. State of U.P., 4 SCC 260 (1994); Nilabati Behera

⁶ Sheela Barse v. State of Maharashtra, 2 SCC 96 (1983).

⁷ Pakkirisamy v. State, 8 SCC 158 (1997).

Similar provisions can be found in Section 57 of the Criminal Procedure Code (CrPC), where the Judicial Magistrate is tasked with overseeing instances of torture through a medical examination. Any mistreatment of the accused must be documented by the Magistrate after inspecting their body, and the cause of any injuries is to be investigated.⁸ However, this procedure overlooks injuries that are not outwardly visible but still adversely affect the mental well-being of the accused. One notable example of such a practice is sleep deprivation.

HISTORY:

The origins of brutality within armed forces and armies stretch far back into history, dating back to ancient times. Kings and emperors historically maintained armies both to protect their empires and populace, yet these same forces often instilled fear among the people. The evolution of the police system can be traced from the era of Kautilya through the Mughals and ultimately to the British colonial period.⁹ Pre-British examples are often omitted, as the socio-political context differed significantly, with the king or ruler often regarded as a divine authority. Today's police system bears the closest resemblance to the British model, with many aspects, including attire and practices, being inherited from that period. It's worth noting that during the British era, the police force consisted primarily of Indians, and significant legislation such as the Police Act of 1861 was enacted under British rule. During the British colonial period, civil and criminal courts were established, along with Faujdari Thanas and Chowkies, which are still referred to as police stations in India today. Under British rule, the police were notorious for instilling fear among the population. They often resorted to severe physical torture, known as third-degree methods, against those who spoke out against British authority. This included tactics such as electric shocks, genital mutilation, branding with hot irons, beatings, and applying salt to wounds. People subjected to such inhumane treatment were also forced into slave labor, even within the confines of British-run jails like the infamous Andaman and Nicobar Cellular Jail.¹⁰ While these methods are no longer commonly employed, they are still considered available for use "when necessary." The Jallianwala Bagh massacre, which took place on April 13, 1919, stands as a stark illustration of police brutality. The incident resulted in the deaths of 380 individuals, though some historians speculate that the actual death toll may have been even higher, with numerous others sustaining injuries. General Dyer, acting on orders, orchestrated this brutal act with the intention of setting

⁸ A. K. Sahdev v. Ramesh Nanji Shah, Cri.LJ 2645 Bom (1998)

⁹ Pragati Sen, "Get complete information on Police Organisation of the Mughal Empire" article on preservearticles.com

¹⁰ Robyn Wilson "Inside Cellular Jail: the horrors and torture inflicted by the Raj on India's political activists." (Independent, Dt. 11th Aug. 2017).

a fearful "example" for other Indians. Prior to this event, in 1895, tensions flared between Hindus and Muslims during the Ganesh Visarjan procession near the Sai Masjid in Old Dhule Township, Maharashtra. In response to the ensuing communal clashes, the police resorted to opening fire on the crowd, resulting in numerous casualties and injuries. This incident has since led to the temple being referred to as "Khooni Ganpati," a name that persists to this day.¹¹

Following Independence, one of the initial instances of police brutality occurred during the Angamaly firing incident on June 13, 1959, resulting in the deaths of seven individuals and many more sustaining injuries due to police gunfire.¹² The Universal Declaration of Human Rights (UDHR) was formally adopted in 1948, while the International Covenant on Civil and Political Rights came into effect in 1976. These developments marked significant early efforts towards safeguarding human rights following India's independence.

POLICE BRUTALITY VS HUMAN RIGHTS IN INDIA:

Since Independence, such occurrences persist, and to this day, the police force is notorious for its acts of cruelty and violence against suspects, undertrials, and detainees. Some individuals are apprehended or brought in without warrants to police stations. Instances of police brutality are observable globally, but this discussion concentrates solely on India due to the prevalence of such behaviour being particularly high here compared to other parts of the world. Suspects or detainees, including minors, women, and the elderly, are not spared from experiencing torture while in police custody. Notably, the highest number of custodial deaths, totalling 27, were reported in Andhra Pradesh.

India, being a signatory to the Universal Declaration of Human Rights, affirmed its commitment to upholding the principles enshrined in this international instrument. Additionally, by acceding to two covenants in 1979, India further demonstrated its dedication to promoting and protecting human rights on a global scale.

In 1993, the Vienna Declaration and Programme of Action reinforced the idea that human rights and fundamental freedoms are intrinsic to all individuals, regardless of their nationality, ethnicity, or other characteristics. This declaration underscored the universality and indivisibility of human

¹¹ Dhaval Kulkarni, "How communal conflict led to the birth of Ganesh Utsav", (Hindustan Times, Dt. 22nd Aug. 2022).

¹² Fr Joyce Kaithakottil "Remembering the Angamaly police firing" (The Indian Express, 12th June 2009)

rights, emphasizing that they are not privileges bestowed by governments but are inherent to all human beings by virtue of their humanity.

Following these international commitments, the Indian government took steps to address human rights concerns domestically. The establishment of the Human Rights Commission under the Protection of Human Rights Act, 1993, marked an important milestone in this regard. The primary objective of this commission was to hold law enforcement agencies, including the police, accountable for any instances of misconduct or violations of human rights.

However, despite the creation of the NHRC, there were limitations to its effectiveness. While the commission played a valuable role in data collection and research related to human rights issues, it lacked substantial authority to enforce its recommendations. This meant that while the NHRC could make suggestions and highlight cases of human rights abuses, it did not have the power to independently investigate complaints against the police or other authorities. As a result, its impact in holding law enforcement agencies accountable for human rights violations was somewhat limited. The NHRC was primarily established to gather reports and monitor human rights violations, particularly those involving law enforcement agencies like the police. However, despite its mandate, the NHRC has faced challenges in fulfilling its responsibilities effectively. One significant issue is the lack of binding authority, which means that the commission cannot enforce its decisions. Furthermore, there have been instances where the Central government has rejected the data provided by the NHRC, casting doubts on the accuracy and reliability of the information.

Moreover, the data collected by the NHRC may not accurately reflect the true extent of human rights abuses, especially in rural areas. In many cases, people in rural communities may not be fully aware of their rights or may face barriers in reporting violations. Additionally, several states have not established their own human rights commissions, further limiting the scope of reporting and accountability mechanisms at the state level.

In summary, while the NHRC serves an important role in monitoring human rights violations, its effectiveness is hampered by its lack of binding authority, challenges in data accuracy, and gaps in coverage, particularly in rural areas and states without their own human rights commissions. Addressing these issues would be essential in strengthening human rights protections and accountability mechanisms across India.

The National Police Commission was established by the Indian National Congress with the objective of scrutinizing and reforming the police system to ensure its effectiveness both as a law enforcement agency and as a safeguard of citizens' rights. Its primary mandate was to propose measures and structures to address the abuse of police powers and the manipulation of the police by politicians. Between 1979 and 1981, the commission submitted eight reports to the government, all of which were disregarded. In these reports, the NPC recommended the creation of a "Criminal Justice Commission" and the establishment of separate investigation units tailored to the needs of marginalized communities such as scheduled tribes and scheduled castes. Additionally, the National Police Commission recommended that individuals should not be handcuffed for any bailable offense unless specifically ordered by the court. The NPC also advocated for transparency in the operations of the police force. In its final report, it proposed the removal of protections afforded to police personnel under sections 132 and 197 of the Code of Criminal Procedure of 1973 (CrPC).¹³

As of 2020-21, the National Human Rights Commission (NHRC) has received a staggering number of complaints, exceeding 11,000, pertaining to alleged human rights violations by law enforcement agencies, particularly the police. Uttar Pradesh (UP) emerges as the state with the highest number of grievances, comprising nearly half of the total complaints received. Specifically, UP accounted for 5,338 complaints during the period up to January 15, 2020-21, topping the list of states with the highest reported incidents. Following UP, Delhi registered 940 complaints, Tamil Nadu 575, Assam 562, and Haryana 408, with Karnataka recording 175 such cases within the same timeframe.

The data reflects a troubling reality of ongoing human rights transgressions within the country. The cases handled by NHRC's Investigation Division from April 2019 to March 2020, encompassing instances of police and judicial custodial deaths, as well as fact-finding investigations, amounted to a substantial 801,912 cases. This concerning trend indicates a persistent infringement of fundamental human rights, despite India's 76 years of independence. It underscores the urgent need for systemic reforms to address the underlying issues contributing to such violations and ensure the protection of citizens' rights and dignity.

Police brutality isn't confined to India; it's a global issue. In 2021, United Nations experts urged

¹³ Reports available at [npc_recommendations.pdf](https://www.npc-recommendations.pdf) (humanrightsinitiative.org)

an end to police brutality worldwide, particularly highlighting the United States, cautioning against the severe repercussions stemming from such violations of human rights and the rule of law. The Human Rights Council has emphasized the crucial importance of public trust in law enforcement agencies, underscoring that their effective functioning hinges on their adherence to human rights, fundamental freedoms, and human dignity.

Former IPS officer Meeran Chadha Borwankar advocates for swift punishment for errant officers, emphasizing the need to demystify the police. Echoing this sentiment, Chief Justice of India, C. V. Ramana, voiced concerns over the gravest threats to human rights and bodily integrity being prevalent within police stations.¹⁴

These statements collectively illustrate the persistence of police brutality, necessitating acknowledgment and reform. India requires comprehensive police reforms to safeguard the rights of thousands of citizens and ensure accountability for police misconduct. The current police system appears to prioritize serving powerful and corrupt politicians over the interests of citizens. Instances of police overreach and deliberate infringement upon the human rights of innocent civilians underscore the urgent need for change.

CONCLUSION:

Since gaining independence, India has made significant strides in reforming its police force and operations, yet there remains considerable ground to cover. Police brutality has persisted since before independence, with many cases involving law enforcement officials violating human rights or constitutional rights. Despite numerous recommendations from various courts, committees, and organizations, little progress has been achieved in curbing police brutality.

The directive issued by the Supreme Court in the Prakash Singh case has not been effectively implemented at the grassroots level. Additionally, the Justice Thomas Committee, tasked with addressing this issue, expressed dismay over the states' apparent indifference toward reforms. One of the major obstacles lies in the lack of trustworthiness of the data provided by the police in cases of police brutality, necessitating a change in this regard.

¹⁴ Dhananjay Mahapatra, "Threat to human rights and bodily integrity is highest in police stations: CJI Ramana", (Times of India, Dt. 9 th Aug. 2021).

Furthermore, existing laws and statutes grant immunity to police officers, thus limiting the recourse available to victims, as this immunity shields policemen from prosecution and imprisonment. This systemic issue poses a significant challenge to addressing police brutality effectively.

Here are some suggestions based on research:

- Victims of police brutality should be awarded compensation in all cases, and accountability should be shifted from the state to the individual police officials responsible.
- Specific laws or provisions within the Indian Penal Code should be established to address criminal acts committed by police officers.

It is imperative to transform the prevailing policing culture in India and develop a law enforcement system that prioritizes aiding and serving the nation's citizens. Lawmakers must redirect their efforts toward safeguarding the fundamental rights of citizens and enacting new legislation to uphold justice. As the largest democracy globally, our primary objective should be to ensure that every citizen enjoys the basic human rights guaranteed by the Constitution, thereby putting an end to police brutality.

