

POLICE BRUTALITY DURING COVID-19 IN INDIA: A HUMAN RIGHT CONCERN

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Abstract

Human rights violation by police officers is making the onerous process of law enforcement more difficult than ever. Assault on human dignity is inevitable when the law-enforcer becomes the law-breaker. It is also a stroke on law itself as unrestricted police violence hinders effective policing. The attitude of the police officers during lockdown reflects the disjunction and predicament in their job. The dilemma is that on the one side, police officers are expected to stringently handle criminals by the general public, while on the other side, public want police officers to respect and safeguard the human dignity of suspected criminals. Custodial deaths and police brutality is an age old issue in India. Time and again it has been seen that there has been a steady increase in such instances. Covid-19 induced lockdown gave one more chance to the police officers to misuse their powers. Inappropriate guidelines also mislead the police officers up to certain extent. This article analyses the plight of the essential service providers, migrant workers and general public in the hands of the police officers during nationwide lockdown. This article further gives a comprehensive overview of the issues faced by police officers during lockdown. Finally the article provides some suggestions on the basis of the findings.

Keywords: Human rights, Police officers, Police brutality, Covid-19, Lockdown.

1) INTRODUCTION

Police brutality and custodial deaths are not new issues in Indian society. Police brutality comprises of violation of civil rights of people, arbitrary discrimination and exercise of excessive force towards a civilian or public. Custodial death refers to the death of an accused during pre-trial or after conviction by police in police custody, private premises or in a vehicle. Police force are supposed to be the protector of people in society and not perpetrator of crime themselves. Justice N.V Ramana has rightly remarked that "the biggest threat to human rights and bodily dignity is in the police stations in India". He further stated that, "The second, and less talked about, form of police brutality is when the police stands as a mute spectator, and, thus, facilitate violence." This acts are shameful and unconstitutional. Sadly, some people are proud of such acts of the police and justify them.

Prime Minister Narendra Modi announced nationwide complete lockdown on 24th March, 2020 to curb spread of coronavirus. During the first week of the lockdown incidents of discrimination and police brutality had drawn national and international attention. The National Campaign Against Torture (NCAT) monitored the incidents based on the videos and news reports, and concluded that a minimum of 173 persons had suffered police brutality, excluding the cases of mass lathi charge by the Central Armed Police Forces.

The first lockdown was unplanned as the Prime Minister gave a very short notice of four hours only that led to a chaotic situation in the country. The state governments, local administration and the police, undertook various measures to lessen the hardship for people, while conforming with the lockdown conditions. The government failed to realize that mass scale of people especially from marginalized groups, may need to travel inter-states in order to go back to their hometown. While the impacts of this ill-considered lockdown was felt in almost all sectors of Indians society but discriminate policing was one of the worst impacts of the lockdown. The absence of detailed planning and coordination, within and among states, and insufficient delivery of essentials led to confusion. The police force faced public order crisis as thousands of migrant workers were left stranded who desperately wanted to go back to their homes. State governments in an attempt to enforce lockdown deployed their police in large numbers, without sensitizing the police to the upcoming challenges and limit of their enforcement powers. There was no proper guidelines and internal monitoring system for police for use of force against public. Due to the absence of guidance police resorted to the use of penalty provisions against public for “disobeying” their orders. Under such circumstances, where clear instructions and safeguards against police excesses were missing, the use of force by police was inevitable.

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) states that use of force should only be resorted to when strictly necessary. Article 3 of the Code of Conduct for Law Enforcement Officials, provides that law enforcement officials may use force to the extent necessary and not beyond that while performing their duty. Police force must conform with these principles otherwise it will cause gross violation of basic human rights. As India has ratified Universal Declaration of Human Rights as well as the International Covenant on Civil and Political Rights so India has to uphold fundamental rights of people as has been guaranteed by the Constitution. India has not yet formulated protocols and guidelines on use of force based on international standards to guide police action. After assessing the incidents of police use of force during Covid-19 it is evident that the forced used was out of proportion which resulted in violation of multiple human rights including the right to equality, the right to life and liberty and the right to privacy.

After reviewing the limited amount of literature available it has been found that the there is huge scope of research on this area. There is no doubt that there is research gap on police brutality during Covid-19. The previous researchers have not dealt with the issues comprehensively. In this research article the researchers have attempted to provide an overall overview of international and national laws available against police brutality. The existing literatures have not fully dealt with the legal provisions. Analysing the legal provisions will definitely provide some robust solutions. The researchers have used case study method and

secondary data in this research. This research article examines the police excesses during Covid-19 pandemic and the consequent human rights violations. Moreover this article analyses the impact of Covid-19 on mental health of police personnels. Further this article makes recommendations to curb such extra-legal measures of police personnels during any emergency situation.

2) INTERNATIONAL FRAMEWORK

Article 3 of the Universal Declaration of Human Rights provides that “Everyone has the right to life, liberty and security”. Likewise Article 6(1) of the International Covenant on Civil and Political Rights provides that all humans have an inherent right to life which should be protected by law and no one can be deprived of his life. According to Article 5 of the UDHR, no one can be subjected to torture or inhuman punishment. Further under UDHR right to equality has been guaranteed to everyone. Article 9 of the UDHR states that no one shall be arrested and detained arbitrarily. Similarly, Article 7 of the ICCPR provides that, No one shall be tortured or subjected to cruel, inhuman, or degrading treatment or punishment. No one, in particular, shall be subjected to scientific experimentation without his or her free will. It has also been stated that everyone has the right to liberty and personal security. No one shall be denied personal liberty except in accordance with legal procedure. India is a signatory of the UDHR and ICCPR, so has framed its fundamental rights in conformity with these above mentioned principles. The United Nations Standard Minimum Rules for the Treatment of Prisoners mandates that prisoners shall be given utmost respect and shall be valued as human beings. The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment has been ratified by India. Under article 2 of this convention each state party shall undertake necessary legislative, administrative and judicial measures to curb acts of torture and the prohibition against torture is absolute which shall prevail even during war or any other exceptional circumstances. The UN Code of Conduct for law enforcement officials provide that police officials must honour and uphold the human rights of the people.

3) LAWS PROTECTING POLICE ACTIONS IN INDIA

In article 21 of part III of the Constitution it is provided that no person can be deprived of his life except in accordance with the procedure established by law and the procedure established by law must be fair and reasonable. As per Article 246 of the Constitution of India, ‘police’ and ‘public order’ comes under the State List. Policing in India has a federal structure, so the central government has an active control on police force. A national police force has been established under Article 312 of the Constitution but the use of force by police is not governed by this article. The Indian Police Act, 1861, is the fundamental legislation regulating the conduct of police force in India which most states follow while some states have modulated it.^[1] Several measures for policing reforms have been adopted in the past decades in India. The code of conduct for the police in India provides that police should know and respect the boundaries of their powers and duties. In order to maintain law and order police should techniques of persuasion, warning and advice. In situations where application of force becomes necessary, minimum force should be exercised. The Code of Criminal Procedure 1973:

Sections 132 and 197 of the CrPC provide safeguards to police officers against criminal liability to prevent vexatious litigations. Under section 197 permission is sought from the central government or state government before instituting any case against a police officer. These provisions are sometimes misused by police officers on the pretext that the alleged action was done while discharging official duties so practically it becomes difficult to register a complaint against the accused police officer. However the apex courts of India have always condemned actions in violation of constitutional rights and have taken necessary actions against public servants.

4) LAWS AVAILABLE AGAINST POLICE BRUTALITY IN INDIA

The power of arrest by police is subjected to certain limitations and judicial scrutiny to protect the right to life under Article 21 of the Constitution. According to Section 29 of the Indian Police Act, 1861, any police-officer who is guilty of violation of duty or intentionally neglects any law or regulation or is guilty for acts of personal violence to any person who is in his custody, then he shall be liable to forfeit three months' salary, or to imprisonment up to three months, or to both. In 2006, Police Complaint Authority (PCA) was established to adjudicate complaints against police. Anyone who has become a victim of police brutality can institute a case before the PCA.

The CrPC has various sections which act as a check against arbitrary actions of police. Section 46 of this code empowers a police officer to use "all means necessary" to arrest a person. This provision also authorizes a police officer to use lethal force to effect an arrest of a serious offender. This use of lethal force is not in compliance with international law as international law restricts use of firearms and use of force which can be fatal. Arrest is deprivation of personal liberty of a person so when use of force is required it should be exercised carefully as this section does not authorize use of lethal force against a person who has not committed an offence punishable with life imprisonment or death. According to section 50(1) of the CrPC when a police officer or any other person arrests someone without a warrant then such police officer shall furnish the accused with all the details of the offence and reasons for arrest. The Supreme Court's guidelines in *D.K. Basu v. State of West Bengal*^[2], which provide for rights of an arrested person, have been substantially incorporated by necessary amendments in the CrPC. Section 50-A of the CrPC has made it compulsory for a police officer to inform any friend or relative of the arrested person about his arrest and to make an entry into a register to this effect. An inspection memo and detention memo have to be maintained by a police officer. An inspection memo states whether the accused sustained injuries before being locked up to protect the accused from physical violence during the investigation. A memo of Detention provides information about the incident, with names of witnesses so that police can be deterred from telling a different version of the incident. The victim compensation scheme can also be availed under section 357 A CrPC by the victim for physical injuries^[3]. Under sections 330 and 331 of the IPC a police officer cannot voluntarily inflict hurt or grievous hurt on an accused for the purpose of obtaining a confession. Any such act is a criminal offence under these sections. Police has a duty to investigate the case and solve the mystery but in this process a police officer cannot turn into a criminal himself^[4].

5) POLICE EXCESSES AND HUMAN RIGHTS ISSUES DURING COVID-19 IN INDIA

i) Police violence against general public

The general public suffered a lot of police violence. As per news reports many incidents of police violence occurred during lockdown. People were lathi charged by police. The police justified their actions in the name of punishment for violation of Covid-19 protocols. Police easily resorted to physical violence without any regret. Common people were perplexed when unjustified violence was used for mere reasons. Mostly people stepped out to procure essential medicines and grocery items but the police used force without asking them the reasons behind coming out of home quarantine. Such irrational actions cannot be tolerated under any circumstances be it during lockdown or any other time.^[5]

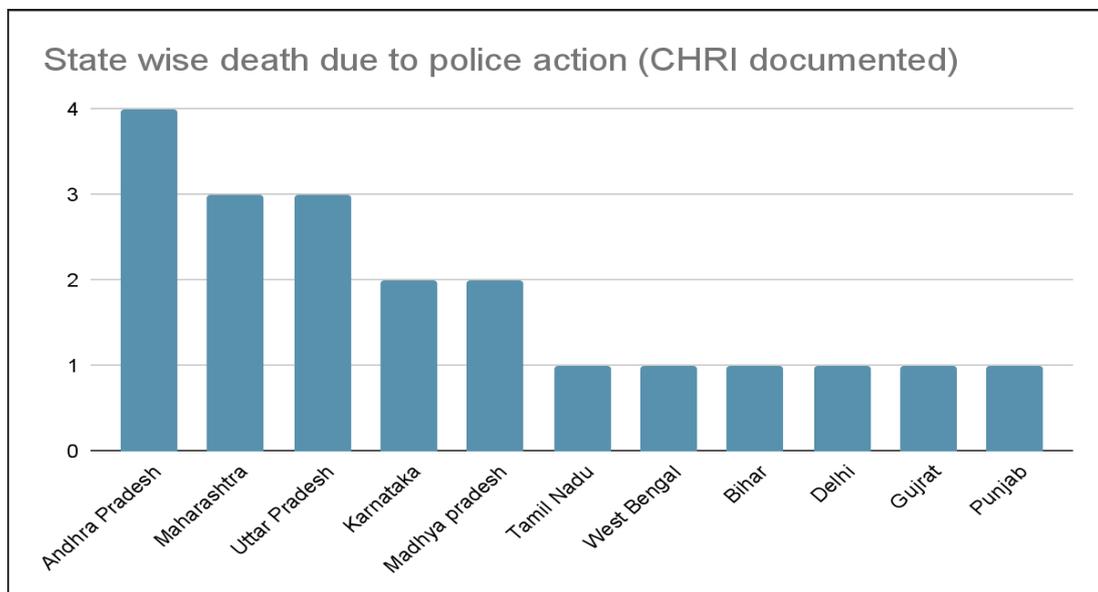


Figure I

According to the report of the Commonwealth Human Rights Initiative (December 2020) there had been around 20 death cases due to police violence during the lockdown in India. Some died in police custody and some succumbed to the injuries.

ii) Police brutality against essential service providers

The Ministry of Home Affairs laid down the list of essential service providers on 24th March, 2020. These included defence, public utilities, police, civil defence, fire and emergency services, electricity, water, sanitation, hospitals, medicine shops, nursing homes, ambulance etc, groceries, diary products, banking services, units manufacturing essential commodities, home delivery services, agricultural activities, animal husbandry, social services, self-employed services and many more. The Commonwealth Human Rights Initiative reported 24 instances of police brutality on essential service providers. Uttar Pradesh recorded the highest

number of cases. The police excess involved oral abuse, unlawful detention, arrest, threats of stripping, registering false cases and imposition of fine.^[6]

Medical professionals and vegetable vendors suffered a lot. Medical professionals were harassed and physically assaulted even after furnishing identification proof. Police overturned the carts of vegetable vendors several times, which led to financial loss and wastage of fresh vegetables and thus impacted the only means of livelihood of the vendors during lockdown. Mitu Puhan, a vegetable seller from Odisha, was beaten with a pipe as he was late in closing his shop as a result his hand got fractured. The slamming of vegetable carts was a culpable action and such incidents should have attracted appropriate actions against the guilty police officers. Other essential service providers such as journalists, bus driver and sanitation worker were beaten up. Dr. Syed Maqbool and another doctor had awful experiences with the police. Dr. Maqbool, was driving to the hospital for an emergency on 23 May 2020. Police stopped his car and beat him with a baton even after Dr. Maqbool disclosed his identity. Police detained him for eight hours and threatened to strip naked and confiscated his phone. The police on condition returned the phone by stating that the doctor must not reveal this incident to anyone. Further the police threatened to bring false charges against the doctor for which he can be sentenced to imprisonment for a period of ten years. Then the police even tried to tarnish the image of doctors by saying that doctors are thieves and they prescribe duplicate medicines. The doctor's brother had to submit a bond for his release.^[7]

Custodial Death of Jayaraj and Bennix

One gruesome case of custodial death during lockdown is the case of Jayaraj and his son Bennix. They were arrested by Thoothukudi police as they kept their shop open beyond permissible hours. After arresting them the police inflicted serious injuries upon them. They were admitted to the hospital. It was even alleged that they went through sexual assault. Both father and son succumbed to the injuries at hospital. This incident provoked nationwide resentment against police brutality. The National Human Rights Commission and the Judiciary took the matter seriously. The case was given to the CBI for investigation. The police are not vested with the authority to commit unjustified violence against arrested persons. In this case no resistance was put up by the victims, inspite of that they were subjected to inhumane battering which led to their death. Under the CrPC it is provided that the arrested person should not be unnecessarily restraint by the police. The Madras High Court suo moto took up the matter and ordered the Superintendent of Police, Thoothukudi, to submit a status report of the case after due inquiry. Further the apex court dismissed the plea of an accused cop to Transfer trial of the case from Tamil Nadu to Kerala.^[8] The Supreme Court has laid down some guidelines to ensure transparency and accountability of police officials which the police must adhere to at the time of arresting any person as held in D.K. Basu v. state of West Bengal, AIR 1997. In D.K. Basu case the apex court observed that "in a civilized society custodial deaths are sheer work crimes". The apex court in Prakash Singh v. Union of India, 2006, issued certain directions to reform the police organization. Among all the directives the most significant directive is the establishment of a Police Complaints Authority that will contain abuse of power by the police and will held them accountable for their actions. The Soli Sorabjee committee

was appointed for framing new Model Police Act in 2006. The new model Police Act is yet to come in force. Even after the directives being issued by the Supreme court there is no substantial decrease in police brutality.

iii) The plight of Migrant worker

India's migrant workers population is huge and so they were badly affected by the lockdown. The sudden announcement of lockdown left migrant workers stranded in their place of work with no public transport, means of sustenance, and cold government response. On top of that workers had to embark on a tedious journey to reach their homes on foot throughout the lockdown period. The police were allotted a crucial duty to respond to the stranded workers crisis. The Ministry of Home Affairs in an order dated 29th March required the District Senior Superintendent of Police to take necessary steps to provide temporary shelter, food and essential facilities, to stranded workers. The central government after some time provided *shramik* trains, to facilitate smooth travelling of migrant workers. The police played certain crucial role during lockdown and involved in the process of registration of workers, distribution of forms at relief camps, food distribution and dissemination of necessary information about the whole procedure of registration and returning back to their home states.

As per reports there had been two instances where policemen sexually assaulted women workers during this period. In Himachal Pradesh, a migrant woman lodged a complaint against a police constable for sexually assaulting her while giving her ration. Sometimes police forced people to hop, crawl and squat. Police coerced two people to crawl and squat. A Constable in Uttar Pradesh compelled two young workers to hop and crawl on the road on 25th March 2020 on their way back to Bareilly from Gwalior. One video from Jammu released on 26th March, revealed that two people were made to crawl from one side of a road to the other. In Andhra Pradesh, the police stopped around 300 laborers and whipped them with canes.

There were also incidents of police battering migrant laborers specially those who belonged to lower caste in shelter homes and quarantine centers. In Bihar, when workers complained against stale food and inadequate facilities at the quarantine centers they were beaten by the police. These incidents occurred in many districts of Bihar which led workers to suffer severe physical injuries. One worker even lost his hands due to police violence. All these incidents point that common people were unsafe in the hands of police during lockdown and that the police mercilessly abused their power. The Supreme Court on a writ petition emphasized on the need for welfare of migrant workers and to achieve this the police must show some humanitarian approach in dealing with the workers. The apex court further stated that the police have obligation to monitor the welfare activities of the workers.^[9]

6) ISSUES FACED BY POLICE PERSONNEL

The pandemic not only highlighted the miseries suffered by the public in the hands of police officers but also pointed out the faults in the policing system in India. According to the Status of Policing in India Report 2019, the police forces in all the states have some drawbacks. These frailties apart from worsening the working conditions of police within the system has also

reduced the institution's accountability and credibility. The lockdown rules were as unprecedented for the police personnel as for public, however the former had the responsibility of enforcing these rules. Thus, an over-stretched system had to spread itself as much as possible to discharge an expanded bulk of duties. Some police personnel reported that they faced many difficulties to enforce the countrywide lockdown. Majority of the police personnel viewed shortage of staffs as a major hurdle in efficiently performing their duties. During the lockdown the police personnel had to perform their regular duties such as crime control, maintaining law and order, registering FIRs along with execution of dynamic lockdown rules. They had no option to choose between their regular duties and additional duties during lockdown. Further there was lot of pressure on the police force from government to ensure compliance with lockdown guidelines. Due to the absence of approved practices, they used their discretion in arbitrary ways. Police personnel also went through a lot of psychological stress due to limited leisure time and confusion as to performance of duty which led to unexpected results. They showed their wrath to the public unnecessarily and thus violated the human rights of the citizens. It is to be noted that both positive and negative consequences followed from police actions during the lockdown. Several police personnel stood beside the people in need and helped them in all possible ways in getting access to food and necessary medicines. Thus, to a great extent, they used this opportunity to improve their image in front of public.^[10]

7) FINDINGS AND SUGGESTIONS

- i) The extensive immunity that is provided under section 132 and 197 of the CrPC to public officers need to be withdrawn in cases of excessive police violence and custodial death.
- ii) The 113th Law commission of India report on custodial torture has recommended addition of a new section (Section 114B) in the Indian Evidence Act, 1872. Under this section in the case involving prosecution of a "police officer for custodial death, the court may presume" that the officer under whose custody the victim was kept inflicted injuries on the victim. Insertion of this section shall render justice as it is generally a tough job on the part of the prosecution to prove custodial deaths without any doubt in the absence of proper witnesses while other police officers refrain from giving evidence against their fellow police officer.
- iii) It has been observed that most of the issues relating to policing during the lockdown were prevalent in Indian society from long ago. The pandemic only underlined the issues. These shortcomings of police practices need to be reformed through fundamental structural changes.
- iv) The working conditions of the police need improvement. Resources should be equally distributed of across rural and urban areas. As seen during the pandemic loudspeakers were the only mode of communication between police and public. Technology was used for invigilation only instead of developing techniques of communication during this period.
- v) Training of vital mechanisms to police personnel should be initiated to tackle law and

order situation during emergency circumstances. To achieve this objective police force need to have transparent communication with the general population in an extraordinary situation so that people can repose their faith on police and feel secured.

- vi) Counselling programmes should be arranged regularly to assist the police personnel to cope up with their stress so that they could show sympathetic attitude to the accused persons.
- vii) State-level departmental inquiries must be done from time to time into reported incident of police brutality and ill-treatment.
- viii) A Standard Operating Procedures should be framed by experts to regulate use of force by police that should be reasonable and in proportion to the degree of admonishment required for a particular offence.

8) CONCLUSION

It is evident beyond doubt that police are under immense pressure of work but this does not back the brutality exhibited by them on innocent citizens. Although there are certain checks and balances against abuse of powers by police but it is seen that they continue to misuse their power in defiance of established rules and guidelines.

During Covid-19 lockdown some police officers used excessive and unjustified violence on the on common people while doing their duties. Police officers punished the law violators themselves in defiance of laws. Violence committed by police was so extreme that people suffered grievous hurt and few people died. The frontline staffs comprising of health sector workers and police force are great resources to combat any public health emergency.

The pressing and urgent need of the time is recognition of the value and worth of frontline workers, and make progressive provisions for their safety and well-being. The risk factors that vitiate all legislative efforts such as work overload, unfavourable work environment, less incentives, improper guidelines must get priority in policy-making to enhance police efficiency and alleviate their self-esteem.

At the same time it is also necessary that public are aware of their rights and duties during an exigency and they are empowered with certain immediate remedial measures when they face unjustified police violence.

For instance, creation of a special unit which would respond to such violence upon dialing emergency number by sending immediate help to that area. Installation of cctv at every market place and public place shall aid in monitoring police actions. This will be beneficial for society at large.

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