



The unnecessary force is used by police: Police brutality

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Abstract

Unnecessary force is used by police means police brutality. We can say that harshness, cruelty, ruthlessness, undue violence, and misbehaving made by police towards poor and innocent people affect society. The citizens of the country cannot enjoy human rights as well as fundamental rights. Police are the powerful and administrative body of the state government. They are hired to serve the needy people, resolve conflicts and disputes, provide aid to weaker sections, provide security and remedies and maintain law and order in the society, but officers misuse their power. This article will talk about the History and ancient phase of police in India which means from where it originated (beginning) and the current framework. Further articles describe an analysis of police behaviour in which ways police misuse their power or which type of excessive or physical force is used by the policemen... The article also focuses on the laws related to police brutality, and briefly about controlling, and procedures for complaining to the police.

Keywords: history, current framework, types of police brutality, related laws, and complaints against police

Introduction

The term police is derived from the Latin word "*Politia*", which means state or administration ^[3]. The Police Act, 1861 (5 of 1861) defines the term police in Section 1 reads that the word "Police" shall include all persons who shall be enrolled under this Act ^[4] and the term brutality comes from "*Bruta*" which means severity, harshness, barbarity or fierceness. It is mental or physical intimidation of innocent people in various forms like illegal detention, torture, abuse, physical assault, custodial death, etc. while the roles and responsibility of the officers are to serve the society, control crime protection, maintain law and order, resolving conflicts and disputes between the people, protect fundamental rights, facilitate the movement of people's and vehicles and provide security, etc. Sometimes police brutality occurs when people do not follow law and order and the police use unnecessary force to stop the violence. Sometimes it was based on racial discrimination means discrimination against any person based on caste, color, creed region, religion, sex, etc.

Police brutality relates to the unnecessary force used by policemen. Use of unlawful force such as teasers, batons, pepper spray, and, as well as hitting, choking, throwing a pacifist citizen to the ground, and carnal abuse are all examples of physical police brutality. This can be mental, physical, verbal abuse racial profiling, and false imprisonment.

There are so many countries that have laws for police brutality. It is observed as a severe offence but still, there are many cases where the grievance of citizens or sufferers do not even reach the stage of inquiry. It is too hard to prove whether the police are using unnecessary force or not.

Historical background of police in India.

In this paper, We will discuss the historical background of the police in India before the 19th Century. During the British era, the belief in a separate regular police force did not exist, and considerable time was just after the conception of the rule. In 1774, Warren Hastings enlisted firstly under the Company's rule numerous regulations for police reforms which later concluded in the Police Act of 1861. Sir Charles Napier was made in charge of the execution of the recently assembled territory of Sind. He reorganised the local police system to catch this crime-Ridden and risky area then it could give desired result and function appropriately.

The above police system was established on three tenets.

- a. The police officials are fully segregated from military officials;
- b. police must function as an autonomous body,
- c. Encouraging the Collectors in the release of law and order accountabilities.

The system empowered an Inspector General of Police (I.G.P) who was accountable for the law and order of the whole region. Regions were allocated into districts that were regulated by the head of police authority who is known as S.P (Superintendents of Police) under Magistrates. The Police Commissioner of 1860, who is accountable for the current police system in India cannot change the main declarations.

In the year 1917, the Islington Commission Report first time referred to it as the Indian Police Service. After freedom, Sardar Vallabhbhai Patel who was the first Union Home Minister saw the significance of Civil services in India. In 1949, in the Constituent Assembly, he brought out the implication of having civil services to protect and help the country remain unchanged under an Indian constitution, saying "...the Union will go, you'll not have a united India ^[5] if you are not having a decent All India Service, which has the independence to talk out its mind...". After this, the Indian Police Service was born as an All-India Service.

The ancient phase of the police system

The beginning of police can be traced to the early Vedic time as the Rig and the Atharva Veda remarks specific sorts of crimes known to the Vedic nation. In reality, some of the indications demonstrated the existence of security forces in the Harappa Civilization. Kautilya's arthashastra (310 BC) is a treatise on the criminal justice process. In modern periods it examines like a guide for police. There is a relation to DANVARIKA, Antevansika, Mahamatras, etc.

During the ancient phase, there were three categories of police -Dandapal, durgapal, antpal. Magasthenese and Fa Hein who is the Greek ambassador and Chinese traveller respectively wrote a comprehensive account of the Gupta administration. At that time the highest officers were dandikas and few like Nagar Shreshthi, Rabasika, etc. The criminal judiciary formulated during this era continued for 500 to 600 years. The only difference between Gupta and Mauryan periods is that the Gupta system was decentralised whereas the Mauryan system was centralised. However, the essential structure of the police system of the urban and rural police was similar, appropriately changed by several emperors.

The current framework of police administration

After the year 1860 selection of senior police officers were complete in two aspects are as follows-

1. The British army appointed the officers.
2. Nomination from amongst younger sons of landed gentry in the UK.

The above 2 aspects were repealed in the year 1893. Now a selection of officers was done through a combined competitive exam held in London in which only European citizens could take part, Later Indians too. Currently, In India Combined Civil services exam is conducted Yearly by the Union Public service commission for selection. Article 312 of the Indian Constitution expresses all about the All India Services. According to the Indian Constitution, the police are controlled and regulated by the state. The administrative structure of police forces in India is fairly uniform in all the states of the country like-

- a. Director-General of Police (D.G.P)-Head of the police force in all states.
- b. Inspector General of Police (IG)- Head of the zones which are two or more ranges.
- c. Deputy Inspector General of Police (DIG)-head of range which is formed by a group of district
- d. Superintendent of Police (S.P)- Head of the police force in the district.

Districts are further subdivided into two parts like police stations and circles which are controlled by officers of distinct positions. The police of the district are also divided into 2 parts.

- the Civil police
- Armed police

Where the former mainly controls crime and punishes the offender and the latter controls law and order circumstances and is also reserved district police protected to meet a crisis ^[6].

Types of police brutality

Illegal detention

The term 'illegal' in the phrase refers to unlawful restraint. It is not a measure of whether the victim was restricted to the extent which they discern. Illegal detention refers to restrictions made by police officers to the person without any lawful justification like a valid arrest warrant, probable cause or consent, etc. under a declared lawful power to administer the legal process. It is also called false arrest or imprisonment and is also considered a misfeasance offense.

Illegal detention relates to the government as well as private arrest by police and others and it does not want any type of evil or hatred intention on the victim's part to make him or her guilty for the offense. A citizen may truly believe that they have the authority to make detention and still be found guilty. Policemen, however, are generally immune to illegal detention claims.

Racial discrimination

Racial discrimination means unfair or unlawful treatment of poor people based on caste, color, creed, age, sex, gender, region religion, etc by police authorities. Lower caste people are refused any complaint by police officers.

Article 15, Article 16, and Article 29 of the Constitution of India prohibit discrimination on grounds of "race". Section 153A of the Indian Penal Code (IPC) also refers to "race". India ratified the International Convention on the

Elimination of All Forms of Racial Discrimination (ICERD) in 1968 and vide the Gazette of India notification No. S.O. 2339(E) dated 21 September 2010, the Ministry of Home Affairs made ICERD applicable at the domestic level under the Protection of Human Rights Act (PHRA) of 1993^[7].

Sexual harassment

sexual harassment refers to misconduct or misuse of power by police officers in form of physical or verbal or oral assault.

It refers to the unlawful act to harass a prisoner or any victim.

It's hard to imagine being sexually harassed or assaulted by a police officer, but they have powers of arrest, badges, and guns to aid them in taking advantage of their charges. The tools of their trade enable them to exploit vulnerable members of the public, who might seem coerced to submit to the police officers' advances in hopes to avoid trouble and stay out of jail.

Examples:

- sexual assault during a late-night traffic stop;
- coercive, trap conversations in a parole officer's office;
- rape by a corrections officer.⁸

Wrongful search and seizure

wrongful Search and seizure is a method used in many common and civil law legal systems by which police officers or other authorities and their agents, who, suspecting that a crime has been committed, commence a search of a person's property and seize any relevant proof found in related to the offense.

Few countries have certain provisions in their constitutions that provide the public with the right to be free from "wrongful or unreasonable searches and seizures". This right is generally based on the premise that everyone is entitled to a reasonable right to privacy.

Though specific interpretation may vary, this right can often require law enforcement to obtain a search warrant or consent of the owner before engaging in any form of search and seizure. In cases where proof is seized in a search, that evidence might be refused by court procedures, such as with a motion to suppress the evidence under the banishment or exclusionary rule^[9].

Laws related to police brutality

The department of police is accountable for ratifying law and order in society and protecting public safety with its reputation. India's Preamble clearly shows that no one is above the law (rule of law). Police forces are also unlikely to exercise unnecessary control or abuse their power to intimidate Poors in the grasp of undertaking an inquiry.

India is a quasi-federal country and so the union or central government is until now active in the police organisation. As mentioned in Article 246 of the constitution of India 'Police' comes on the State List of the 7th Schedule, and it is *ultra vires* of the jurisdiction of the particular Government of states to make laws controlling the police in their State. While policing directives have a completely federal structure.

The police administration of India is governed by the 'The Indian Police Act, 1861'. All over India, 28 States and 8 Union Territories have enacted this act. After all, there are many inconsistency or problem that occurs in the police system of India Do take away with these problems, from the year 1978 till 1981 there is eight reports have been emerged by the National Commission of police with the recommendation but no action rise against these reports.

There are mainly two types of laws under which complaints can be filed against police brutality.

a. Public law

public laws for police administration have originated from the Indian Constitution. In the third part of the constitution, breach of constitutional or fundamental rights are given, the courts have perpetually held the police force and State liable for brutality under the above law and drawn compensation and punishment against the state as well as police officers.

b. Criminal law

In Criminal law CrPC, 1973 furnishes procedural safeguards to police and government agents for criminal liability to stop vexatious or displeasing litigation against Police and government servants who perform the functions of civilians. Section 197 of the code of criminal procedure and more precisely section 132 of the code of criminal procedure under this section police system liable to be protected.

Case laws

- *Rudal Shah vs the State of Bihar*^[10] This case is related to unlawful detention by police, petitioner filed a habeas corpus writ under Article 32 of the Indian Constitution asking for release and remedy. The apex court held that the state government should pay damages of rupees 30,000 for violation of Article 21 and Article 22 of The Indian Constitution.
- *Saheli vs Commissioner of police*^[11] This case is related to the death of a 9 years old child due to excessive or unnecessarily beating of Indian police.

The Court permitted Delhi Administration to take necessary action to award damages of rupees 75000 to the mother of the deceased.

- *Nilabati Behra vs the State of Orissa* ^[12] This case is related to custodial death, the petitioner filed a writ petition under Article 32 of the constitution of India for his son who has died in police custody because of police brutality.
The honourable court held that 1,50,000 rupees of monetary damages were provided to the Neelabati Behra.
- *The state of Maharashtra vs Ravikant Shankarappa Patil and organisations* ^[13] This case is related to unlawful handcuffing and parading on the street of a person by a police officer.
The Supreme court held that the Government of state has to give a claim of Rupees 10,000 to the victim Ravikant, however, the court thought about the liability of claim over the state government or individual police because police doing his official duty although officer exceeds his limit police could not be made personally liable.
- *P.P. Unnikrishnan v. Puttiyottil Alikutty* ^[14] This case is related to illegal Custody, the victim is locked into jail without any case and tortured for at least four to 4 days by police.
The Supreme court held that the scope of Section 197(1) of CRPC is that "There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty." ^[15]
- *A.v janki Amma vs Union Of India* ^[16] In this case, the honourable court held that if the violation of fundamental rights is guaranteed under Article 21 of the Indian Constitution, the public officials, police, and state are liable for damages (compensation).

How to Complaint against the police department of India

When police officers join the police forces, at that time they take a pledge that firstly they will serve and protect the people of the whole society and community and provide aid to weaker sections and maintenance of law and order but sometimes police officers use excessive or unnecessary force which converted into brutality, for that the apex court has direct and conducted Police Complaint Authority (PCA). This PCA beholds complaints of the public against Police officers.

The PCA is essentially a panel that is controlled by a former judge who hears the complaint cases of lawlessness, misconduct, or brutality of the police officers. The PCA has its self powers to consider the victim's complaints to solve the cases of police brutality and this authority is totally free from police.

A complaint can be filed by victim's any family member, relative or friend, etc.

Now see what are the documents required to complain under PCA.

- If any injury was done to the victim due to police brutality then he does a medical test and attaches a medical report with a complaint.
- As evidence, add a picture of the injury that has been done to the victim.
- If a victim has filed a complaint to higher officials of police and received any response then they can add a copy of that complaint.
- Evidence of a per-day note diary.

When the victim can file a complaint to Police Complaint Authority

- Rape can occur in police detention.
- Custodial death
- Grabbed the house or property of the victim by a police officer.
- Illegal detention
- Torture and blackmailing by the police officers.

Complaint process

The process of the complaint is offline, so complaints are filed by hand. The following things are mentioned in the complaint against the police

1. Complaints name
2. Complaints address
3. Details of contact
4. write all about your problems in the complaint and describe the duration and all about the suffering.
5. Name of the police officer who did the brutality.
6. Mention witness name if anyone.

After all the above things are done then all paperwork is delivered to the Police Complaint Authority (PCA) with the related district ^[17].

Conclusion

In this above analysis, I would sum up that I will take out the picture of misuse of power by some officers of the police department in India. It is very horrible which badly affects the community and society. People of the weaker or poor section genuinely face the kinds of brutality as I above mentioned and described types of

brutality how police unnecessarily use their power like illegal detention, custodial death, discrimination, handcuffing, criminal harassment, torture, unlawful search, and seizure, infringement of rights, etc. There is a need to alter the behaviour of police officers. In some circumstances, some people create problems for the police. The use of the power of police is alright but in a limited way, power cannot be converted into brutality. In the above paper, I will specifically talk about Public law, criminal law, and precedent-related to this law. And a Completely Complaint process against police.

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