

LEX SCRIPTA MAGAZINE OF LAW AND POLICY, VOL-2, ISSUE-2
ISSN-2583-8725

LEX SCRIPTA MAGAZINE OF LAW AND POLICY
ISSN- 2583-8725

VOLUME-2 ISSUE-2
YEAR: 2023

EDITED BY:
LEX SCRIPTA MAGAZINE OF LAW AND
POLICY

LEX SCRIPTA MAGAZINE OF LAW AND POLICY, VOLUME-2: ISSUE-2

[COPYRIGHT © 2023 LEX SCRIPTA MAGAZINE OF LAW AND POLICY]

All Copyrights are reserved with the Authors. But, however, the Authors have granted to the Journal (Lex Scripta Magazine of Law and Policy), an irrevocable, non-exclusive, royalty-free and transferable license to publish, reproduce, store, transmit, display and distribute it in the Journal or books or in any form and all other media, retrieval systems and other formats now or hereafter known.

No part of this publication may be reproduced, stored, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other non- commercial uses permitted by copyright law.

The Editorial Team of Lex Scripta Magazine of Law and Policy Issues holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not necessarily reflect the views of the Editorial Team of Lex Scripta Magazine of Law and Policy.

[© Lex Scripta Magazine of Law and Policy. Any unauthorized use, circulation or reproduction shall attract suitable action under application law.]

**VIOLATION OF HUMAN RIGHTS IN POLICE CUSTODY WITH
SPECIAL REFERENCE TO JHARKHAND**

Author: Shivam Kumar Pandey

(Research Scholar, Rashtriya Raksha University)

ABSTRACT

Regardless of any other factor, every individual has certain fundamental rights against the state or any other public authority. Therefore, every member of society has a fundamental right to dignity in all circumstances, including whether they are detained by the police or arrested. The Indian Constitution and several other laws, including the Code of Criminal Procedure, the Evidence Act, the Indian Penal Code, and the Protection of Human Rights Act, all serve to safeguard a person's rights when they are in the custody of the police. Neither substantive nor procedural laws define the word "custody."

Police custody, as used in section 27 of the Evidence Act, does not always imply a formal arrest. In India, with particular emphasis on Kerala, the notion of human rights has evolved and developed, and there have been many different types of human rights abuses committed by police officers at various points in history. There are several things that lead to police violating people's rights, according to human rights campaigners and other nonprofit organizations. Sociological factors like the society's ambivalence toward the use of third-degree methods by the police, economic factors like low pay and poor living conditions, widespread corruption in the police service, pointless political interference in the investigation of crimes, an excessive workload for police personnel without any time limits and no periodic holidays, and pointless pressure from superior officers and the public for quick detection are all factors that contribute to crime.

Keywords: Police Custody, Human Rights, Police Officers, Human rights violation, crime

INTRODUCTION

One of the most significant societal institutions is the police. They are the government's most noticeable representatives. The police station and a police officer¹ happen to be the most appropriate and approachable unit for an individual at a time of need, danger, crisis, and difficulty when he is unsure of what to do or who to contact.² The police are the most approachable, engaging, and vibrant organization in any society. It is only normal for their societal roles, responsibilities, and obligations to be diverse and complex at the same time. In general, the police's dual responsibilities are to uphold the law and preserve order. However, these two obligations have a wide range of implications, leading to a comprehensive list of the police organization's duties, functions, powers, positions, and responsibilities. While giving the police a variety of powers is vital for them to carry out their jobs, it also opens the potential for abuse and subsequent violation of human rights. This article will discuss police powers, instances of abuse of authority, governmental controls, and judicial oversight of police operations.

The Criminal Procedure Code, the Police Act of 1881, and any State Police Acts do not define the term "police". They merely describe the structure and organization of the state police forces. According to *Black's Law Dictionary*, "police" is "the government agency tasked with promoting public safety, sabotaging public order, and sabotaging the discovery of crime". When Sir Robert Peel created the first municipal force in London in the 1820s, the police force as we know it today was born in England. Policing has previously either been carried out by volunteers or soldiers in the military services.³

¹ Author, Human Rights Violations By Police In India: A Comparative Case Study, The Law Brigade Publishers (India) (Sept. 18, 2020), <https://thelawbrigade.com/human-rights/human-rights-violations-by-police-in-india-a-comparative-case-study/>.

² Author, Human Rights Violations By Police In India: A Comparative Case Study, The Law Brigade Publishers (India) (Sept. 18, 2020), <https://thelawbrigade.com/human-rights/human-rights-violations-by-police-in-india-a-comparative-case-study/>.

³ Author, Human Rights Violations By Police In India: A Comparative Case Study, The Law Brigade Publishers (India) (Sept. 18, 2020), <https://thelawbrigade.com/human-rights/human-rights-violations-by-police-in-india-a-comparative-case-study/>.

According to the United Nations Code of Conduct⁴ for Law Enforcement Officials⁵, defines Law Officials as “individuals who are in military troops⁶, who exercise police powers whether they are assigned with police uniform or not, as well as including all those authorities whether they are elected or appointed, who exercise police powers, including the powers of arrest or detention.”⁷ “Any individual or group of individuals appointed by the State with the responsibility and ability to uphold law and order, prevent crime, and conduct criminal investigations can be referred to as "police.”⁸

Imprisonment of a person is performed by police and is the final stage of the Criminal Justice Process. It simply means the curtailment of the liberty of an individual as a punitive measure⁹ for crime committed by him.

The paper focuses on several fundamental principles of treatments of prisoners that are universally recognized. These form minimal principles which are universally acknowledged and include the rights of those incarcerated under unusual circumstances and confinements.¹⁰ In India, progress has been made to reform the prison laws and turning prisons into homes for the prisoners condemned into a fresh start for them. Thus, it is important to comprehend how important it is to treat prisoners with dignity as fellow human beings.

POLICE ATROCITIES: NATURE AND EXTENT

Due to continued police brutality and torture during the past two decades it seems that custodian of law has become the lawbreakers.¹¹ After the 1980s¹², the police appear to have grown increasingly concerned with the lathi-wielding culture, its violence, and its employment of

⁴ UNHR, Code of Conduct for Law Enforcement Officials, <https://www.ohchr.org/en/instruments-mechanisms/instruments/code-conduct-law-enforcement-officials#:~:text=No%20law%20enforcement%20official%20may,threat%20to%20national%20security%2C%20internal>

⁵ Author, Human Rights Violations By Police In India: A Comparative Case Study, The Law Brigade Publishers (India) (Sept. 18, 2020), <https://thelawbrigade.com/human-rights/human-rights-violations-by-police-in-india-a-comparative-case-study/>.

⁶ Code of Conduct for Law Enforcement Officials, Office of Justice Programs <https://www.ojp.gov/ncjrs/virtual-library/abstracts/code-conduct-law-enforcement-officials>.

⁷ Code of Conduct for Law Enforcement Officials, Office of Justice Programs <https://www.ojp.gov/ncjrs/virtual-library/abstracts/code-conduct-law-enforcement-officials>.

⁸ Author, Human Rights Violations By Police In India: A Comparative Case Study, The Law Brigade Publishers (India) (Sept. 18, 2020), <https://thelawbrigade.com/human-rights/human-rights-violations-by-police-in-india-a-comparative-case-study/>.

⁹ Code of Conduct for Law Enforcement Officials, Office of Justice Programs <https://www.ojp.gov/ncjrs/virtual-library/abstracts/code-conduct-law-enforcement-officials>.

¹⁰ Code of Conduct for Law Enforcement Officials, Office of Justice Programs <https://www.ojp.gov/ncjrs/virtual-library/abstracts/code-conduct-law-enforcement-officials>.

¹¹ Human Rights in India : Hearings Before the Subcommittee on International Organizations of the Committee on International Relations, House of Representatives, Ninety-fourth Congress, Second Session

¹² Police Atrocity, <https://www.legalserviceindia.com/legal/article-4816-police-atrocity.html>.

third-degree tactics as the norm.¹³ The increasing use of oppressive tactics by the police and other atrocities committed by them are examples of human rights breaches.¹⁴

- i. During the Emergency - A satyagrahi was detained by the police in March 1976 during the emergency era, but no charge was ever filed against him.¹⁵ For a few days, he was held in an illegal detention facility where he was tortured with a variety of physical methods, including stamping with boots with heels on his bare body¹⁶, beating with a cane on his bare feet, beatings on the spine, beatings with a rifle while inserting live electric wires into body crevices, burning with cigarettes and candle flames, etc.¹⁷
- ii. In order to avoid leaving any physical evidence of their atrocities on victim's bodies after 1980¹⁸, police have turned to more oppressive methods.¹⁹ Even children suffered at the hands of the cops. Convicts were given to young boys to enjoy, some of them were tortured into impotence, hanging upside down, mercilessly beaten, shocked with electricity, etc. They used brutal tactics to coerce admissions.²⁰
- iii. It is a well-known truth that police brutality and torture are pervasive in India.²¹ When persons are being questioned by the police on suspicion of committing routine crimes, such techniques are routinely utilized. Police utilize harsh physical force against suspects in order to force confessions or for intimidating purposes.²² Although there have also reportedly been a few instances of beating in jails, it is believed that torture has occurred in police stations.

¹³ Police Atrocity, <https://www.legalserviceindia.com/legal/article-4816-police-atrocity.html>.

¹⁴ Human Rights in India : Hearings Before the Subcommittee on International Organizations of the Committee on International Relations, House of Representatives, Ninety-fourth Congress, Second Session

¹⁵ Human Rights in India : Hearings Before the Subcommittee on International Organizations of the Committee on International Relations, House of Representatives, Ninety-fourth Congress, Second Session

¹⁶ Mohit Rao, Indian police use violence as a shortcut to justice. It's the poorest who bear the scars, (Dec. 2, 2020), <https://www.cnn.com/2020/12/02/india/police-brutality-india-dst-intl-hnk/index.html>.

¹⁷ **Human Rights in India : Hearings Before the Subcommittee on International Organizations of the Committee on International Relations, House of Representatives, Ninety-fourth Congress, Second Session**

¹⁸ Mohit Rao, Indian police use violence as a shortcut to justice. It's the poorest who bear the scars, (Dec. 2, 2020), <https://www.cnn.com/2020/12/02/india/police-brutality-india-dst-intl-hnk/index.html>.

¹⁹ Human Rights in India : Hearings Before the Subcommittee on International Organizations of the Committee on International Relations, House of Representatives, Ninety-fourth Congress, Second Session

²⁰ Sneha Mahavar, Human rights violations - iPleaders, IPleaders (June 6, 2022), <https://blog.iplayers.in/human-rights-violations/?amp=1>.

²¹ Mohit Rao, Indian police use violence as a shortcut to justice. It's the poorest who bear the scars, (Dec. 2, 2020), <https://www.cnn.com/2020/12/02/india/police-brutality-india-dst-intl-hnk/index.html>.

²² Mohit Rao, Indian police use violence as a shortcut to justice. It's the poorest who bear the scars, (Dec. 2, 2020), <https://www.cnn.com/2020/12/02/india/police-brutality-india-dst-intl-hnk/index.html>.

- iv. After the 1970s, deaths while in police custody increased significantly.²³ These killings are frequently the consequence of torturing the victim in an effort to get information or teach them a lesson.

INTERNATIONAL LAWS ON POLICE CUSTODY

Over the years, a number of stringent international regulations and standards have been approved and put into place to control how and when police can use force.²⁴ The United Nations Basic Principles on the Use of Force and Firearms²⁵ (BPUFF) by Law Enforcement Officials is one of the international agreements that specifically addresses police use of force. According to this rule, police officers may only use physical force as a last resort, that is, when it is absolutely required to defend themselves or others from serious or deadly harm.²⁶ Protecting a citizen's right to life is the law enforcement community's fundamental and most crucial duty.²⁷ However, it is obvious that there has been a widespread misuse of power by the authorities in uniform²⁸ who have obviously overlooked the above-mentioned criterion when considering the rising number of cruelty instances throughout the world²⁹. The Universal Declaration of Human Rights, which became operative on 3 January 1976, was adopted, and proclaimed by

²³ Human Rights in India : Hearings Before the Subcommittee on International Organizations of the Committee on International Relations, House of Representatives, Ninety-fourth Congress, Second Session

²⁴ Ralph Crawshaw, Essential Texts on Human Rights for the Police (3020)

²⁵ UNHR, Basic Principles on the use of force and firearms by law enforcement officials

<https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-use-force-and-firearms-law-enforcement#:~:text=Law%20enforcement%20officials%2C%20in%20carrying,of%20achieving%20the%20intended%20result.>

²⁶ UNHR, Basic Principles on the use of force and firearms by law enforcement officials

<https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-use-force-and-firearms-law-enforcement#:~:text=Law%20enforcement%20officials%2C%20in%20carrying,of%20achieving%20the%20intended%20result.>

²⁷ UNHR, Basic Principles on the use of force and firearms by law enforcement officials

<https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-use-force-and-firearms-law-enforcement#:~:text=Law%20enforcement%20officials%2C%20in%20carrying,of%20achieving%20the%20intended%20result.>

²⁸ UNHR, Basic Principles on the use of force and firearms by law enforcement officials

<https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-use-force-and-firearms-law-enforcement#:~:text=Law%20enforcement%20officials%2C%20in%20carrying,of%20achieving%20the%20intended%20result.>

²⁹ Ralph Crawshaw, Essential Texts on Human Rights for the Police (3020)

the United Nations General Assembly on 10 December 1948. The same has been signed by other governments, including emerging ones like India. No one should be subjected to torture or cruel, inhuman, or degrading treatment or punishment, specifically.³⁰

Additionally, the UN General Assembly enacted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment on December 10, 1984 (resolution No. 39/46).³¹ The Convention was ratified by India on October 14, 1997. But since then, nothing similar has been confirmed.

“The murder of an African American man named George Perry Floyd by a white police officer is the most recent shocking instance of police brutality to get widespread media attention. The heinous and blatant bigotry that is still present today caused the entire United States of America to explode in flames. Violence-filled marches, demonstrations, and riots followed this shocking tragedy in almost every state. With the hashtag "Black lives matter" plastered over social media, protesters incited rioting against police brutality targeting unarmed citizens. This instance demonstrates that, rather than increasing worse over time, racism is being documented more frequently. People from all around the world participated in these demonstrations, not just in those that took place in the United States of America.”³²

A father and son in Tamil Nadu, India, were subjected to great cruelty and torture while in the custody of the police to the point that they died from their wounds in June 2020³³, in a case of police brutality that was comparable but more heinous. People in India started protesting and writing about this issue, referring to the pair as "India's George Floyds,"³⁴ when the George Floyd case gained notice on a global scale.

International Covenant on Civil and Political Rights (ICCPR)

The convention lays specific emphasis on the rights of prisoners. India Ratified the convention in 1979. Article 10 of the ICCPR states that humanity and regard for the inalienable dignity of the human being must be shown to all those deprived of their liberty.³⁵

Unless there are special circumstances, accused people must be kept apart from those who have been found guilty and must receive care unique to those who have not yet been found

³⁰ Ralph Crawshaw, Essential Texts on Human Rights for the Police (3020)

³¹ UNHR, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>.

³² Ralph Crawshaw, Essential Texts on Human Rights for the Police (3020)

³³ Ralph Crawshaw, Essential Texts on Human Rights for the Police (3020)

³⁴ Ralph Crawshaw, Essential Texts on Human Rights for the Police (3020)

³⁵ Sneha Mahawar, Human rights violations - iPleaders, IPleaders (June 6, 2022), <https://blog.iplayers.in/human-rights-violations/?amp=1>.

guilty³⁶. Juvenile suspects must be kept apart from adults and brought to court as soon as practicable.³⁷

The primary goals of treating convicts in the penal system are their reformation and social rehabilitation. Juvenile criminals must be kept apart from adults and treated according to their age and legal standing.

The **International Covenant for Economic , Social and Cultural rights , 1966 (ICESCR)** also voices the rights of prisoners. This means that the international community not only recognizes first generation rights of prisoners but also the second-generation rights that are the main concern of the ICESCR. Both ICCPRC and ICESCR reflect the spirit of the Universal Declaration of Human Rights (UDHR), 1948.

The **UN Standard Minimum Rules for the Treatment of Prisoners, 1955**, which includes 95 rules relevant to prison standards, was another significant international achievement. These extensive regulations have been divided into five categories. The emphasis on respecting convicts' moral and religious beliefs coupled with the concept of non-discrimination has been a fundamental contribution of these guidelines.

The **Fundamental Guidelines for the Treatment of Prisoners International Law's Rights** oriented stance toward prisoners is strengthened by U.N. resolutions from 1990 and 1988, as well as the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Particularly in circumstances of corporeal punishment, these specifically stipulate that inmate be notified of the accusations levelled against them. All people held in custody or imprisoned in whatever capacity must be treated humanely and with respect for their natural dignity.³⁸

Principles For Protection of Humans Under Any Form Of Imprisonment

For the purposes of the Body of Principles:

- (a) "Arrest" means the act of arresting a person on suspicion of the commission of an offense or by the action of an authority.³⁹
- (b) "prisoner" means any person deprived of his liberty without conviction.

³⁶ International Covenant on Civil and Political Rights, Refworld (Dec. 19, 2016), <https://www.refworld.org/legal/agreements/unga/1966/en/17703>.

³⁷ International Covenant on Civil and Political Rights, Refworld (Dec. 19, 2016), <https://www.refworld.org/legal/agreements/unga/1966/en/17703>.

³⁸ International Covenant on Civil and Political Rights (ICCPR), EHRC (Mar. 11, 2024), <https://www.equalityhumanrights.com/our-work/our-human-rights-work/monitoring-and-promoting-un-treaties/international-covenant-civil>.

³⁹ United Nations Human Rights on Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988.

(c) "imprisoned person" means any person deprived of his liberty by reason of conviction.

(d) "Detention" means the condition of persons detained as defined above.

(e) "Imprisonment" means the status of persons in custody as defined above.⁴⁰

(f) The words "judge or other authority" means a court or other authority under the law whose status and tenure must provide the strongest guarantees of competence, impartiality, and independence.⁴¹

Principle 1 - All persons subject to any form of arrest or detention must be treated humanely and with respect for human dignity.⁴²

Principle 2 - Arrest, arrest or detention shall be carried out only in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.

Principle 3 - There shall be no prohibition or abatement of any human rights under any form of arrest or detention recognized or existing in any State⁴³ in accordance with law, treaties, regulations or custom on the grounds that this Body of Principles does not recognize it. rights or that he is less aware of them

Principle 4 - Any form of arrest or detention and all proceedings affecting the rights of persons under any form of arrest or detention shall be controlled, or subject to effective control, by a court or other authority.⁴⁴

Principle 5 - These terms shall apply to all persons within the territory of any State, without distinction of any kind, such as race, color, sex, language, religion, or religious belief, political or other opinion, nationality, race, or social origin. , property, birth, or other status. Measures used under the law and designed only to protect the rights and special status of women, especially pregnant women and nursing mothers, children and young people, the elderly, sick or disabled people will not be considered discriminatory.⁴⁵ The necessity and application of such measures shall always be subject to review by a court or other authority.

⁴⁰ United Nations Human Rights on Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988.

⁴¹ United Nations Human Rights on Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988.

⁴² United Nations Human Rights on Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988.

⁴³ United Nations Human Rights on Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988.

⁴⁴ United Nations Human Rights on Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988.

⁴⁵ United Nations Human Rights on Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988.

Principle 6 – “No person under any form of detention or imprisonment should be subjected to torture or cruel, degrading treatment or punishment. No situation may be used as a reason for torture or other cruel, humiliating, or degrading treatment.”⁴⁶

Principle 7 – “States must prohibit by law any act that conflicts with the rights and duties contained in these principles, make any such act subject to appropriate sanctions and conduct impartial investigations into complaints. Officials who have reason to believe that a violation of this Code has occurred or is about to occur will report the matter to their higher authorities and, when necessary, to other relevant authorities or bodies empowered to review or correct. Any other person who has reason to believe that a violation of this Code of Conduct has occurred or will occur will have the right to report the matter to the relevant authorities and to other relevant authorities or authorized bodies. with power to review or amend.”⁴⁷

Principle 8 – “Detained persons will be treated in accordance with their state of non-convict. Accordingly, if possible, they will be kept separate from the detained persons.”

Principle 9 – “The authorities that arrest a person, keep him in custody or investigate a case will only use the powers given to them under the law and the use of these powers will depend on the findings of the court or other authority.”

Principle 10 – “Anyone arrested will be informed at the time of their arrest of the reason for their arrest and will be informed immediately of any charges against them.”

Principle 11 – A” person may not be detained without being given an effective opportunity to be heard promptly by a court or other authority. The arrested person will have the right to defend himself or to be assisted by a lawyer according to the law. The person detained and his counsel, if present, shall receive immediate and full communication of any order of detention, and the reasons thereof. A judge or other authority shall be empowered to appropriately review the continued detention.”

Principle 12

1. “It shall be duly recorded:
 - (a) Grounds for arrest.

⁴⁶ United Nations Human Rights on Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988.

⁴⁷ United Nations Human Rights on Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988.

- (b) Time of arrest and transportation of the arrested person to the place of detention and of his first appearance before the court or other authority.
 - (c) The identity of the law enforcement officers involved.
 - (d) Accurate information about the place of detention.”
2. “Those records must be transferred to the detained person, or his attorney, if any, in the manner prescribed by law.”

Principle 13 – “Any person at the time of his arrest and at the beginning of his arrest or detention, or immediately thereafter, shall be provided by the authority responsible for his arrest, detention, or imprisonment, respectively with information and an explanation of his rights and how to exercise them. he has such rights.”

Principle 14 – “A person who does not sufficiently understand or does not speak the language used by the authorities responsible for his arrest, detention or detention has the right to receive immediately in a language he understands the information mentioned in article 10, article 11, section 2, article 12, article 1, and article 13 and to have assistance, free of charge, if there is a need for an interpreter.”⁴⁸

HISTORY OF HUMAN RIGHT VIOLATION BY POLICE IN INDIA

Police brutality and in-custodial torture have a long history in India, with the majority of victims dying as a result. Death in jails, where detainees are particularly vulnerable, is one example of police brutality resulting in custodial violence.⁴⁹

Since ancient times, police have frequently violated human rights. Its roots may be found in the Islamic era when Muslim monarchs openly discriminated against Hindus. Under their control, the police were brutally repressive of the populace and corrupt.⁵⁰ Even when the British assumed control of the governmental system, the same tyranny and corruption persisted.⁵¹ People were subjected to different sorts of torture in order to extract money. Even after India gained independence, this culture of disregarding human rights and treating individuals with little to no regard persisted. The third degree was the sole type of investigation used since authorities were not trained in scientific investigation. It was used to coerce people into making

⁴⁸ United Nations Human Rights on Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988.

⁴⁹ Ralph Crawshaw, Essential Texts on Human Rights for the Police (3020)

⁵⁰ Robert J. Bowers, Nature of the Problem of Police Brutality, 14 Clev.-Marshall L. Rev. 601 (1965).

⁵¹ Robert J. Bowers, Nature of the Problem of Police Brutality, 14 Clev.-Marshall L. Rev. 601 (1965).

confessions or declarations.⁵² There were many other forms of physical punishment, including scorching with cigarettes, cane beating, boot stamping, burning with naked flames, and more.⁵³ One occasion when serious human rights breaches occurred was during India's Emergency. Even the lowest ranking police officers were granted extensive authority. Numerous crimes against humanity were carried out at this time against the impoverished, students, teachers, etc. One such instance was a student who was killed by torture in a police camp.

The severity of the torture that was inflicted on victims grew throughout the 1980s. Even during the investigations of common offences like stealing, people were tortured. People from the weaker social groups were frequently subjected to torture. In the 1980s, people were tortured using various techniques, such as burning, hanging upside down, and harsh beatings that damaged limbs. The sole penalty meted out to the official was a brief suspension or transfer when inquiry revealed that a definite death caused by police torture was in custody.⁵⁴ The use of torture methods became considerably more oppressive after the 1980s.⁵⁵ The techniques used did not make the victim permanently scared. Hundreds of people were tortured and killed extrajudicially in the late 1980s. This has occasionally happened to persons who were just held as extortion targets or simple suspects in minor offences.⁵⁶ Tortured victims were dumped in fields or bodies of water.

NATIONAL LAWS ON POLICE CUSTODY (INDIA)

National Human Rights Commission

The national human rights commission is dealing with any incidents of custodial deaths, torture, molestations, or rapes as well as any other cases that have been brought to its notice Suo moto or otherwise.⁵⁷ The Indian Human Rights Commission has released a "manual on

⁵² Author, Human Rights Violations By Police In India: A Comparative Case Study, The Law Brigade Publishers (India) (Sept. 18, 2020), <https://thelawbrigade.com/human-rights/human-rights-violations-by-police-in-india-a-comparative-case-study/>.

⁵³ Author, Human Rights Violations By Police In India: A Comparative Case Study, The Law Brigade Publishers (India) (Sept. 18, 2020), <https://thelawbrigade.com/human-rights/human-rights-violations-by-police-in-india-a-comparative-case-study/>.

⁵⁴ Asian Law & Public Policy Review, "Human Rights Violations By Police In India: A comparative Case Study" available at: <https://thelawbrigade.com/human-rights/human-rights-violations-by-police-in-india-a-comparative-case-study/?amp>

⁵⁵ Sneha Mahawar, Human rights violations - iPleaders, IPleaders (June 6, 2022), <https://blog.iplayers.in/human-rights-violations/?amp=1>.

⁵⁶ Sneha Mahawar, Human rights violations - iPleaders, IPleaders (June 6, 2022), <https://blog.iplayers.in/human-rights-violations/?amp=1>.

⁵⁷ Police Custody And Human Rights Violations In India, (Jan. 26, 2022), <https://www.nujssacj.com/post/police-custody-and-human-rights-violations-in-india>.

human rights for police personnel" that discusses the suggested principles and actions that police officers should take both during and after an arrest (when the detainee is in the custody). Although these commissions have looked at and released evidence about the police's use of torture while in custody, a thorough pragmatic study has not yet been carried out.

Kerala's human rights commission has made several recommendations and proposals to the government, according to its yearly reports.⁵⁸ Due to the commission's constitution, it only has a recommendatory duty, but it also has a dual role in raising public awareness of human rights issues and providing corrective action for any human rights violations that may occur.

An enhanced pocketbook on Human Rights Standards and Practice for the Police has been released by the Office of the United Nations High Commissioner for Human Rights. Human rights activists are crucial in assisting communities in addressing human rights violations because they support numerous national and international organizations that are looking into such cases.⁵⁹ They assist these organizations by interviewing victims, particularly those from disadvantaged backgrounds, and they also speak out against police brutality and justifications. Recent examples of this include the "George Floyd" Case and the "Jeyaraj and Bennix" (Tamil Nadu) Case.⁶⁰

Modern Prison Manual

in 1957 The Government of India created an All-India Jail Manual Committee, which published its findings in 1960, to create a jail manual. This continues to serve as the cornerstone of prison administration in India. The Union Home Minister established a Working Group⁶¹ in 1972 to provide recommendations for jail administration in India.⁶² A much-needed national policy on prisons and a classification of prisons housing various kinds of offenders were recommended by the group.

The "Government of India established the Committee on Jail Reforms under Justice Mulla in 1980 to evaluate the laws, rules, and regulations for safeguarding society and rehabilitating convicts. In 1983, the Mulla Committee turned in its final report. The issues raised by the Committee and the reforms it proposed are still relevant today and dominate discussions on prison reform in India. It made the argument that the government had a responsibility to provide

⁵⁸ Ralph Crawshaw, *Essential Texts on Human Rights for the Police* (3020).

⁵⁹ Ralph Crawshaw, *Essential Texts on Human Rights for the Police* (3020).

⁶⁰ Asian Law & Public Policy Review, "Human Rights Violations By Police In India: A comparative Case Study" available at: <https://thelawbrigade.com/human-rights/human-rights-violations-by-police-in-india-a-comparative-case-study/?amp>

⁶¹ (Mar. 12, 2015), https://www.mha.gov.in/sites/default/files/2022-09/PRV1_41TO80%5B1%5D.pdf.

⁶² (Mar. 12, 2015), https://www.mha.gov.in/sites/default/files/2022-09/PRV1_41TO80%5B1%5D.pdf.

prisoners with respectable living conditions and expressed a humane viewpoint on prison changes, which up until this point had mostly focused on security issues.⁶³ The Justice Krishna Iyer Committee⁶⁴, which took a similar stance in 1987, underlined the situation of women inmates and stressed the need to hire more women in management and the police services to promote a gender-sensitive approach to prison administration.” Later, the National Police Commission recommended in 1977 that the 200-year-old Police Act of the eighteenth century be replaced with a new Police Act in order to update the legal system. ⁶⁵

Indian Prison System: Challenges

In certain jail facilities, the saturation rate was discovered to be higher than 100%, and in other severe situations,⁶⁶ it reached a proportion of more than 500% of the overall capacity⁶⁷. The poor living conditions within jails are made worse by the overcrowding, which results in serious human rights abuses against detainees. Every element of an inmate's daily life is impacted by the subpar living circumstances, including the food, cleanliness, etc. The prisoner is thrown headfirst into a struggle with the strains of jail life at a time when they are already suffering from societal pressures. The prisoner's physical and mental condition subsequently deteriorate. This predicament is made worse by inadequate jail programming. the absence of adequate legal representation and abuse of power by staff members who occasionally prey on the prisoner's reliance and place unreasonable demands ahead of meeting their basic necessities, such food, even to the point of asking for sexual favors⁶⁸. The staff also engages in corruption and extortion, which frequently helps the wealthy convicts who have the support of extensive crime networks.

The rich prisoners enjoy all kinds of luxuries whereas the poor are discriminated against because of lack of credit patronage.⁶⁹ The Mulla Committee had therefore stressed safeguarding the rights of the economically backward inmates with much emphasis.⁷⁰ The staff

⁶³ Asian Law & Public Policy Review, “Human Rights Violations By Police In India: A comparative Case Study” available at: <https://thelawbrigade.com/human-rights/human-rights-violations-by-police-in-india-a-comparative-case-study/?amp>

⁶⁴ Asian Law & Public Policy Review, “Human Rights Violations By Police In India: A comparative Case Study” available at: <https://thelawbrigade.com/human-rights/human-rights-violations-by-police-in-india-a-comparative-case-study/?amp>

⁶⁵ Asian Law & Public Policy Review, “Human Rights Violations By Police In India: A comparative Case Study” available at: <https://thelawbrigade.com/human-rights/human-rights-violations-by-police-in-india-a-comparative-case-study/?amp>

⁶⁶ (Mar. 12, 2015), https://www.mha.gov.in/sites/default/files/2022-09/PRV1_41TO80%5B1%5D.pdf.

⁶⁷ Mar. 12, 2015), https://www.mha.gov.in/sites/default/files/2022-09/PRV1_41TO80%5B1%5D.pdf.

⁶⁸ Mar. 12, 2015), https://www.mha.gov.in/sites/default/files/2022-09/PRV1_41TO80%5B1%5D.pdf.

⁶⁹ Mar. 12, 2015), https://www.mha.gov.in/sites/default/files/2022-09/PRV1_41TO80%5B1%5D.pdf.

⁷⁰ Mar. 12, 2015), https://www.mha.gov.in/sites/default/files/2022-09/PRV1_41TO80%5B1%5D.pdf.

that do not indulge in corruption face problems as well due to the inadequacy of human training. Because of these issues, the convicts are not ready to reintegrate into society when they are released.⁷¹ It undermines the prisoner's reformation, which is the primary goal of today's penal facilities. The prisoner's health also suffers a great deal. When compared to general populations, it has been found that the rate of illness incidence in prison populations is significantly higher.

Judicial Approach in Violation of Human Rights in Police Custody

- i. Right to Fair Investigation - The Supreme Court reaffirmed in *Babubhai v. State of Gujarat* that the fundamental rights protected by articles 20 and 21 of the Indian Constitution include fair inquiry as well as a fair trial. Thus, the Supreme Court firmly stated in cases of *Abdul Rehman Antbulay and Babubhai* that a rapid investigation is essential to a speedy trial and that the police cannot postpone the investigative process without violating the accused's constitutional rights. Without it, the constitutional right to a quick trial would serve no function at all.
- ii. Arrest - The third report of the National Police Commission claims that the ability to make arrests is one of the main ways that police corruption occurs and that over 60% of the arrests they make are pointless and unjustified.⁷² As noted by the Supreme Court in many cases, the police do not follow the procedural guidelines established by the Criminal Procedure Code and the Indian Constitution, even when an arrest is warranted. In *Bhim Singh v. State of Jammu and Kashmir*⁷³, the petitioner, an MLA, was kept in police custody after being arrested and purposefully barred from attending the legislative assembly session. The Supreme Court determined that the police officers behaved willfully, and as a result, the court granted the petitioner compensation.
- iii. Handcuffing - The police often think that handcuffing is necessary to make the arrest, and they do consider the shame and disgrace the individual in handcuffs suffers, as well as the reputational damage to his family. The Supreme Court ruled in *Prem Shankar v. Delhi Administration*⁷⁴ that handcuffing is presumptively

⁷¹ Mar. 12, 2015), https://www.mha.gov.in/sites/default/files/2022-09/PRV1_41TO80%5B1%5D.pdf.

⁷² *Joginder Kumar v. State of UP* (1994) 4 SCC 260, para 12

⁷³ (1985) 4 SCC 730

⁷⁴ 1980 SCR (3) 855

inhumane, unjustified, and excessively severe and that it should only be tolerated in exceptional cases when there is a plausible fear that the detainee may escape.

- iv. Fake Encounter - Another instance of flagrant human rights breaches by the police is when they murder people arbitrarily and with great cruelty during fake encounters. The Supreme Court ruled in *People's Union for Civil Liberties v. Union of India*⁷⁵ that two people were killed in a fake encounter by Imphal police, clearly violating their right to life as protected by Article 21 of the Indian Constitution, and that the defense of sovereign immunity does not apply in such circumstances. The defendants of each of the dead received rupees 1,000,000 in compensation from the court.

Constitution has guaranteed following rights to the arrested individuals:

- i. Right to know the grounds of arrest - An arrested individual must instantly understand the reason for denying him liberty in order to determine whether the arrest was lawful or not and to prepare for his defense. According to Article 22, the arresting authorities must inform the individual being held of the reason for their arrest as quickly as possible. The supreme court ruled in *Re Madhu Limaye* 1969 CLJ 1440 that the requirements of article 22 are intended to give the arrested individual the earliest chance to clear up any error, misinterpretation, or misunderstanding on the part of the authorities who conducted the arrest. He is given the chance to get ready and to hire a lawyer to represent him in court.
- ii. Right to consult a lawyer - Article 22 of the constitution guarantees anybody who has been arrested the right to consult with counsel. In the *D.K. Basu* case, the supreme court set guidelines stating that an arrested person may request permission from the police to speak with an attorney. It states that, albeit not during the questioning, the arrested person may be allowed to consult with his counsel.
- iii. Right to be produced before a magistrate - Failure to produce the prisoner before a magistrate as required by Article 22 (2) may subject the police officer to liability for illegal detention under section 340 of the Indian Penal Code. The Supreme Court said in the case of *Khatri v. State of Bihar* 1981 SCR (2) 408 that the state and its police agencies must rigorously ensure that the constitutional and legal obligations

⁷⁵ AIR 1990 SC 513

to show an apprehended individual before a judicial judge within 24 hours of the arrest are adhered to. The court further added that the prohibition against detention without remand is a very beneficial provision that allows the magistrate to monitor the police investigation. It is essential that the magistrate try to enforce this requirement and, where it is found to have been disobeyed, come down hard on the police.

HUMAN RIGHTS VIOLATION IN POLICE CUSTODY WITH REFERENCE TO JHARKHAND

Every person is endowed with easy human rights the minute they are born. These rights are unalienable and ubiquitous. These rights are not granted via the law but are inherited via everyone due to their humanity. Human rights are not a brand-new notion and have been taken up in several ancient texts which includes the Vedas, Manu smriti, Arthashastra, and specific scriptures that talk human rights. Individual rights were asserted in several written texts including the Magna Carta (1215), the French Declaration of Man and Citizens (1789), and the United States Bill of Rights (1791). In the 20th century, the United Nations became based in 1945, following World War II. After 3 years, the Universal Declaration of Human Rights (UDHR) became given to the sector in 1948, with 30 Articles granting global validity and reputation to human rights⁷⁶. Human rights are emphasized in a whole lot of global agreements, treaties, covenants, and country legislation.

Presently, there may be a near-typical agreement that everyone human beings, regardless of status, are entitled to three easy rights. Certain civil freedoms and political rights are endowed to them, the easiest of these is the right to lifestyles and liberty. Throughout all our activities, human rights articulate the need for peace, justice, impartiality, mutual recognition, tolerance, and human dignity. When we talk about rights and liberties, we're expressing the concept that everyone human being has difficulty respecting morality and justice as well. To shield human rights, one ought to guarantee that human beings are treated decently and humanely. Violation of the most vital human rights, on the alternative hand, includes denying women and men their moral entitlements. Disregarding human rights, in some ways, includes treating human beings as lesser mortals and now no longer so properly as specific people of society, unworthy of

⁷⁶ Jharkhand Human Rights Violations Report, <http://sanhati.com/excerpted/17315/>.

recognition and decency. It is unlucky that even after alternating in government (since 2019) there were instances of police torture on tribals⁷⁷ and Dalits⁷⁸ through the police and in maximum of the instances the sufferers are not even paid right reimbursement and neither motion has been initiated in opposition to the accused cops.⁷⁹

Significantly, a delegation of the Jharkhand Janadhikar Mahasabha⁸⁰ had submitted a letter addressed to Jharkhand DGP Niraj Sinha via IG human⁸¹ rights Akhilesh Jha for spark off motion on alleged human rights violations with the aid of using police in those districts with precise instances.⁸² There were instances of police torture on harmless tribals⁸³ withinside the clothing of Maoist operations and additionally incidents of custodial torture have come to the fore,” the letter through the Mahasabha alleges.⁸⁴

The letter cites times of custodial torture through Garu thana authentic in Latehar district on a tribal Anil Kumar Singh allegedly in the police station on prices of Maoist sympathizers on February 23, 2022⁸⁵, and later launched day after today from the police station after the police claimed that he became picked through mistake.⁸⁶

“Even an FIR has now no longer been lodged in opposition to the cop even as the sufferer is not able to paintings because of ache suffered all through custodial torture,” the letter alleges.⁸⁷

⁷⁷ Animesh Bisoe, Jharkhand DGP seeks report on alleged human rights violation, The Telegraph Online, (Apr. 22, 2022).

⁷⁸ Animesh Bisoe, Jharkhand DGP seeks report on alleged human rights violation, The Telegraph Online, (Apr. 22, 2022).

⁷⁹ Animesh Bisoe, Jharkhand DGP seeks report on alleged human rights violation, The Telegraph Online, (Apr. 22, 2022).

⁸⁰ Animesh Bisoe, Jharkhand DGP seeks report on alleged human rights violation, The Telegraph Online, (Apr. 22, 2022).

⁸¹ Animesh Bisoe, Jharkhand DGP seeks report on alleged human rights violation, The Telegraph Online, (Apr. 22, 2022).

⁸² Animesh Bisoe, Jharkhand DGP seeks report on alleged human rights violation, The Telegraph Online, (Apr. 22, 2022).

⁸³ Animesh Bisoe, Jharkhand DGP seeks report on alleged human rights violation, The Telegraph Online, (Apr. 22, 2022).

⁸⁴ Animesh Bisoe, Jharkhand DGP seeks report on alleged human rights violation, The Telegraph Online, (Apr. 22, 2022).

⁸⁵ Animesh Bisoe, Jharkhand DGP seeks report on alleged human rights violation, The Telegraph Online, (Apr. 22, 2022).

⁸⁶ Animesh Bisoe, Jharkhand DGP seeks report on alleged human rights violation, The Telegraph Online, (Apr. 22, 2022).

⁸⁷ Animesh Bisoe, Jharkhand DGP seeks report on alleged human rights violation, The Telegraph Online, (Apr. 22, 2022).

The letter cites the case of a 50-year-antique tribal Sanjay Majhi allegedly being implicated withinside the Gomia police station in Bokaro district on fake costs of being worried in Maoist incident in 2014.⁸⁸

He turned into alleged through the police of sporting a coin's award of Rs 1 lakh and threatened of attachment of property.

The letter additionally cites the instances of killing of Brahmadev Singh, a tribal in Piri thana location of Latehar district, allegedly in a fake stumble upon through police on suspicion of being Maoist supporter and the loss of life of a Dalit, Chakkan Bhuiyan allegedly because of beating through police in April 2021 in Chouparan in Hazaribagh district.

The letter mentions beating of eleven tribals through the CRPF withinside the Khuntpani block of West Singhbhum district allegedly for being Maoist supporters and nevertheless now no motion has been initiated in opposition to the CRPF officials.

The letter additionally mentions troubles in schooling due to putting in place of the CRPF camps in colleges in far off regions and rampant misuse of the UAPA and sedition legal guidelines in opposition to tribals and claims that "86 UAPA instances had been lodged in 2020" even after ex trade in authorities withinside the state.⁸⁹

A human rights outfit has urged the National Human Rights Commission (NHRC) to intervene into the increasing cases of alleged custodial torture in Jharkhand.

Arvind Avinash has asked the NHRC to take on the spot motion on alleged boom in police brutality in Jharkhand and talked about that during not one of the above instances an FIR has been registered so far. He has requested the rights panel to intrude in imparting repayment to the sufferers and sign in an FIR together with departmental enquiry towards the accused officials. Arvind Avinash has also written to Jharkhand chief secretary Sukhdeo Singh with copies to the director-general of police and inspector-general of police (prisons) about the rising cases of custodial torture in the state and cited the same incidents.⁹⁰

⁸⁸ Animesh Bisoe, Jharkhand DGP seeks report on alleged human rights violation, *The Telegraph Online*, (Apr. 22, 2022).

⁸⁹ Jharkhand DGP seeks report on alleged human rights violation, *The Telegraph Online*, December 21, 2022.

⁹⁰ Human rights outfit urges NHRC to intervene into 'custodial torture', *The Telegraph Online*, December 21, 2022.

CONCLUSION

When a person dies while in custody, or in the process of being held by authorities, it is referred to as a death in custody. The detaining authority should safeguard the life and bodily integrity of each detainee when the state takes away their freedom. However, despite a continuous increase in police brutality instances, there have never been any rewards for the same until lately. The fundamental issue is that following such fatalities, most of them are either not recognised or purposefully altered by the forensic investigators to seem as though they were natural deaths, which presents a hurdle for accountability.⁹¹ Sudden and unexpected death in custody is commonly associated with allegations of police misconduct⁹², media speculation, rumours, and intense community concern but no effective results are brought by the same and no country is immune to this rapidly growing problem.

The formation of an effective, ethical, and professional police force is necessary to give common folks a sense of security and to address their complaints. The results of numerous commissions and committees, the complaints received by the human rights commissions, the stories recorded by the press, and the experiences of regular people on the street all point to the reality that such a police force does not exist in India. Police reform is clearly necessary and urgent. Police reforms must be actively pushed in two ways at once. One is to create statutory institutional frameworks that will guarantee that state governments' oversight of their police forces results in police performance that is strictly compliant with the law. In other words, the police are responsible for establishing and upholding the rule of law, not politics. It would be necessary to protect them from unauthorised outside control and influence and grant them functional autonomy to break with previous and current conventions. Once functional independence is granted to the police, they must be held responsible for the wrongs they do. The accountability systems in place need to be reinforced and enhanced.

Many significant committees, starting with the Mulla Committee, have been established to examine the state of prisons in India and recommend⁹³ improvements, including the Malimath Committee⁹⁴, the Justice Krishna Iyer Committee⁹⁵, and most recently, the Justice Roy

⁹¹ Human rights outfit urges NHRC to intervene into 'custodial torture', *The Telegraph Online*, December 21, 2022.

⁹² Robert J. Bowers, Nature of the Problem of Police Brutality, 14 Clev.-Marshall L. Rev. 601 (1965).

⁹³ ClearIAS Team, Prison reforms, ClearIAS (Feb. 6, 2023), <https://www.clearias.com/prison-reforms/>.

⁹⁴ ClearIAS Team, Prison reforms, ClearIAS (Feb. 6, 2023), <https://www.clearias.com/prison-reforms/>.

⁹⁵ ClearIAS Team, Prison reforms, ClearIAS (Feb. 6, 2023), <https://www.clearias.com/prison-reforms/>.

Committee (2018). The changes, however, have been implemented, though required political⁹⁶ must bring about evident change. Governments must value and appreciate the potential of prisoners as members of our society⁹⁷ who may contribute to the future, give adequate correctional and reformative treatment, to recognise the value of every human life⁹⁸.

⁹⁶ ClearIAS Team, Prison reforms, ClearIAS (Feb. 6, 2023), <https://www.clearias.com/prison-reforms/>.

⁹⁷ ClearIAS Team, Prison reforms, ClearIAS (Feb. 6, 2023), <https://www.clearias.com/prison-reforms/>.

⁹⁸ ClearIAS Team, Prison reforms, ClearIAS (Feb. 6, 2023), <https://www.clearias.com/prison-reforms/>.