



BRUTALITY-STYLED PANDEMIC POLICING IN INDIA: CONCERNS AND SOLUTIONS

Pushkar Surendra Deo*

ABSTRACT

The COVID-19 pandemic pushed the world to the brink due to its massive infection rate and countries around the world enforced strict lockdowns with a view to prevent the rapid spread of the virus. Enforcement of the lockdown meant prevention of movement of people for which police forces were the state's biggest assets. As frontline warriors, stellar police personnel in all countries, including India, reported for duty and put themselves in harm's way to help the country weather through the pandemic.

India, however, witnessed the dark side of its police force as sadistic policemen engaged in cruelty and brutality under the pretext of enforcing the lockdown. The media was flooded with videos of police personnel using *lathis* against the people which also resulted in deaths. It is indeed a despicable state of affairs to see police personnel resort to violence so easily without second thoughts. Even more disturbing are sights of thousands of migrants, who are struggling to survive, being brutalised by the police.

This paper aims to do a detailed study on police brutality in the country, which has seen an increase since the lockdown was implemented. A doctrinal research methodology would be followed by referring to various cases, papers and U.N. guidelines and solutions would be provided as to when use of force is justified. It would also aim to understand the threat which minorities and migrants face against police excess and aim to answer whether unprecedented situations such as a pandemic justify state action. The paper would also analyze the legal framework behind the use of force and offer a broad conclusion along with possible solutions to reduce excessive use of force by police personnel.

* Student, School of Law, University of Petroleum & Energy Studies, Dehradun.

INTRODUCTION

The Novel Coronavirus disease established itself as a pandemic of epic proportions. Governments have thrown their weight behind research and development and to prevent the spread of the virus. In a world of advanced medicine and technology, Social Distancing has proved to be the most effective way to check the rapid escalation of the virus. The country has been under a stringent lockdown since 25th March 2020,¹ which is now being gradually eased². Apart from essential services such as hospitals, groceries, fuels, police, distribution networks etc. all forms of movement of citizens had been completely banned.

In order to ensure that these measures are enforced, the biggest assets of the Government are law enforcement agencies viz. the local police. Police have an extremely important role to play in both supporting the implementation of public health measures to contain the outbreak and in preventing criminal activities arising from this context.³ In that regard, heavy Police presence was seen in urban areas to curb the movement of people as much as possible. These Police personnel are at no less risk than the health professionals and are the frontline fighters in India's war against COVID-19.

However, in a welfare state such as India, conferring of powers upon the Police to ensure adherence to lockdown measures does not mean that the Police can indulge in use of force against citizens. Recently, videos of Police using barbaric acts and brutally beating up citizens have caught the attention of people.⁴ Even those whose survival depends upon everyday essentials such as migrants etc. are victims of this brutality. Such a toxic lockdown

¹ Karan Deep Singh et al, *India, Day 1: World's Largest Coronavirus Lockdown Begins*, *The New York Times* (Mar. 25, 2020), <https://www.nytimes.com/2020/03/25/world/asia/india-lockdown-coronavirus.html>.

² Rahul Tripathi, *Centre grants more relaxations in Unlock 2 from July 1*, *The Economic Times* (Jul. 01, 2020, 09:25 AM), <https://economictimes.indiatimes.com/news/politics-and-nation/centre-grants-more-relaxations-in-second-phase-of-unlocking-from-july-1/articleshow/76696125.cms>.

³ Interpol, *Interpol issues international guidelines to support law enforcement response to COVID-19*, (March 26, 2020), <https://www.interpol.int/en/News-and-Events/News/2020/INTERPOL-issues-international-guidelines-to-support-law-enforcement-response-to-COVID-19>.

⁴ M.P. Nathanael, *Licensed to beat, abuse and kill*, *The Hindu* (May 18, 2020, 12:05 AM), <https://www.thehindu.com/opinion/op-ed/licensed-to-beat-abuse-and-kill/article31609626.ece>.

culture is highly condemnable. If brutality is not enough, Police authorities went a step ahead and have shot people,⁵ with one person killed due to vicious thrashing.

The Code of Criminal Procedure, under Section 129, permits the use of force against an unlawful assembly of five or more persons on an order of an Executive Magistrate.⁶ Three prerequisites⁷ need to be fulfilled before such an order is made; first, there should be an unlawful assembly with the object of committing violence or an assembly of five or more persons likely to cause a disturbance of the public peace. Second, an Executive Magistrate should order the assembly to disperse. Third, in spite of such orders, the people do not move away. However, the current manner in which is the police is engaging in use of force is deprecating and does not meet even the preliminary threshold which that law requires. The Police, therefore, cannot use arbitrary measures as these result in the blatant violation of the precious right guaranteed under Article 21⁸ of the Constitution of India.

The Right to Life is the most fundamental and inalienable right of any man. The Apex Court in *Parmananda Katra v. Union of India*⁹ had observed that the preservation of life is of the most importance, because if one's life is lost the status quo ante cannot be restored as resurrection is beyond the capacity of man. The right to life granted under Article 21 cannot be enjoyed to its fullest without a corresponding right to human dignity. The ratio laid down in *Maneka Gandhi v. Union of India (Maneka)*¹⁰ still holds the highest constitutional significance that any law purporting to take away a person's right to life must be 'just, fair and reasonable and not 'arbitrary, fanciful or oppressive'. Thus, the use of force by functionaries of the state even in times of public health emergencies can never be justified. Life does not mean a mere animal existence, but it includes something more.¹¹ It includes a right to live with dignity and any inhibition against its deprivation extends to all those limbs

⁵ Anisha Sircarm, *India's Coronavirus lockdown is bringing out the worst in its police force*, Quartz India (March 28, 2020), <https://qz.com/india/1826387/indias-coronavirus-lockdown-brings-police-brutality-to-the-fore/>.

⁶ Code of Criminal Procedure, Act No. 2 of 1974, § 129.

⁷ *Karam Singh v. Hardayal Singh*, 1979 SCC OnLine P&H 180.

⁸ INDIA CONST. art. 21.

⁹ *ParmanandaKatra v. Union of India*, (1989) 4 SCC 286.

¹⁰ *Maneka Gandhi v. Union of India*, (1978) 2 S.C.R. 621.

¹¹ *Kharak Singh v. State of U.P.*, (1964) 1 S.C.R. 332.

and faculties by which life is truly enjoyed.¹² This right to live with dignity includes a guarantee against torture and assault by the State and its functionaries.¹³

IS THE PANDEMIC LAW TO BE BLAMED FOR POLICE EXCESSES?

The Right to Life and its ancillary rights cannot be taken away except according to a procedure established by law¹⁴. As Maneka¹⁵ has established, the mere existence of a “procedure established by law” does not suffice, but such a law must be “just, fair and reasonable” and not “fanciful, arbitrary or oppressive”.

The 123 year old Epidemic Diseases Act, 1897¹⁶ has been invoked by the States to combat the spread of COVID-19. Section 2 of the Act vests the States with wide ranging powers of formulating regulations to control the spread of any epidemic. It is by virtue of Section 2¹⁷ that regulations such as the Uttar Pradesh COVID-19 regulations, Bihar COVID-19 regulations, Delhi COVID-19 regulations etc. These regulations permit the use of force only for the purpose of admitting and isolating a suspected case of COVID-19 and no further¹⁸. Such use of force is ‘reasonable’ and necessary as they are proportionate to the legitimate aim.

Nonetheless, none of these regulations allow use of force for ‘punishing people’ violating lockdown norms. Therefore, the actions of the police are excesses and are not at all justified. Even in absence of any law licensing haphazard use of force, police officers can take recourse to Section 4¹⁹ of the Act, which gives immunity to public servants if their actions were in good faith ‘under the Act’. The phrase ‘under the Act’ has a very wide ambit and does not

¹²*Ibid.*

¹³D.K. Basu v. State of West Bengal, (1997) 1 SCC 416.

¹⁴*Supra* note 8.

¹⁵*Supra* note 10.

¹⁶ Epidemic Diseases Act, Act No. 03 of 1897.

¹⁷ *Ibid.*, § 2.

¹⁸ Uttar Pradesh Epidemic Disease Covid-19 Regulations, 2020, Regulation 11; The Bihar Epidemic Diseases, COVID-19 Regulation, 2020, Regulation 11; The Delhi Epidemic Diseases COVID-19 Regulations, 2020, Regulation 11 & Regulation 14.

¹⁹ *Supra* note 16, § 4.

only include regulations made under Section 2. To construe ‘under the Act’ it is necessary to understand the object of the Act, which is:

An Act to provide for the better prevention of the spread of Dangerous Epidemic Diseases.

The police officers can therefore be granted immunity if they are able to prove that their actions were necessary to ‘prevent the spread of Dangerous Epidemic Diseases’. Summarizing, the haphazard use of force by the police is not overtly sanctioned by the Epidemic Diseases Act or under the regulations but the police can be granted immunity under the Act itself. The law therefore focuses on public interest while omitting any procedural safeguards against excessive State action²⁰. The ratio in *Maneka*²¹ was based on a simple proposition: an arbitrary law is no law²². The absence of procedural safeguards against excessive use of force makes the Act violative of Article 21.

PROTECTING MINORITIES AND MIGRANTS FROM POLICE BRUTALITY

While it is true that every section of the society is prone to police brutality in the current situation, the minorities, particularly the Muslim community, face the highest risk. An alarming 2019 report by Common Cause and Centre for Study of Developing Societies has shown that 14% of the police personnel feel that Muslims are ‘very much’ naturally prone to committing crimes and 36% feel that Muslims are ‘somewhat’ naturally prone to committing crimes.²³ This highlights that such deeply entrenched prejudices could play a dominant role in the exploitation of marginalised communities in the current times. The signs of violence and Islamophobia are already visible with the recent incident in the town of Betul in the State of Madhya Pradesh where a lawyer was brutally thrashed by the police because he had a beard and was thought to be a Muslim.²⁴ In the backdrop of the lockdown implementation were the

²⁰ Harleen Kaur, *Can the Indian legal framework deal with the COVID-19 pandemic? A review of the Epidemic Diseases Act*, Bar and Bench (Mar. 27, 2020, 01:35PM), <https://www.barandbench.com/columns/can-the-indian-legal-framework-deal-with-the-covid-19-pandemic-a-review-of-the-epidemics-diseases-act>.

²¹ *Supra* note 10.

²² Zia Mody, *10 judgments that changed india* 43 (1st ed., Penguin Books 2013).

²³ Common Cause, *Status Of Policing In India Report 2019*, 111 (2019), https://www.commoncause.in/uploadimage/page/Status_of_Policing_in_India_Report_2019_by_Common_Cause_and_CSIDS.pdf.

²⁴ Ajoy Ashirwad Mahaprashasta, *Madhya Pradesh Police Apologise for Beating Lawyer; ‘We Thought You Were Muslim,’ They Say*, *The Wire* (May 20, 2020), <https://thewire.in/communalism/madhya-pradesh-lawyer-police-betul>.

massive protests against the Citizenship Amendment Act, 2019 enacted by the Parliament. In an attempt to curb the protests, police had resorted to high-handedness and brutally assaulted university students and activists.²⁵ The violence is still fresh and the police can conduct targeted assaults against Muslim community using the present situation as a pretext.

The report showed a similar trend of predisposition of police personnel towards Dalits. A distressing number of police personnel from Karnataka, Uttar Pradesh, Maharashtra and Uttarakhand believe that Dalits are highly likely or likely to be naturally prone to commit crimes.²⁶ With such a disturbing mind-set, it can only be imagined what the police force would do if it were given a free hand. The 2018 edition of the same report commenced with an unsettling note: “Police establishments across India continue to function largely in the same casual and repressive fashion as the colonial masters had envisioned.”²⁷

Aside from minorities, the situation being faced by the migrants of the country is appalling. With barely a four-hour notice from the Prime Minister, the migrant workers, the real aam-aadmi of the country were left without jobs, income, house, food within the first week of the lockdown.²⁸ Dr. Amitabh Kundu a Distinguished Fellow at the Research and Information system for Developing Countries pegged the total number of migrants to be, based on the 2011 Census, 450 million.²⁹ Living a hand-to-mouth existence with the only desire to go to their homes, it is so inhumane on part of the police to lathi-charge such migrants without even a shred of empathy. What needs to be understood is that you cannot stay at home if you don't have a home, you cannot be expected feed your families if you have no income. The police forces have completely abdicated the principle of legality in the exercise of exceptional powers granted due to the present situation.

It is therefore need of the hour to implement effective steps to ensure that minorities and migrants are protected during this period. Migrant workers are nothing short of a backbone of

²⁵ Hannah Ellis-Petersen, *India protests: students condemn 'barbaric' police*, The Guardian (Dec. 17, 2019, 11:29AM), <https://www.theguardian.com/world/2019/dec/17/india-protests-students-condemn-barbaric-police>.

²⁶ *Supra* note 23 at 120.

²⁷ *Common Cause, Status Of Policing In India Report 2018*, 11 <https://www.tatatrusts.org/upload/pdf/spir-2018-common-cause.pdf>.

²⁸ Navmee Goregaonkar, *Deserted Demeaned and Distressed: The lot of Migrant Workers in the Delhi-Haryana Region*, THE WIRE (May 29, 2020), <https://thewire.in/rights/migrant-workers-delhi-haryana-lockdown>.

²⁹ Akram Hoque, *A review on India's Migration Issue, Immigration Policy and Solutions*, The Policy Times (April 19, 2019), <https://thepolicytimes.com/a-review-on-indias-migration-issue-immigration-policy-and-solutions-i-prof-amitabh-kundu-i-ris/>.

the country. In the face of mismanagement by the government, it was indeed a welcoming move by the Supreme Court when it took suo-moto cognizance of the problems and miseries of migrant workers³⁰ and passed a slew of directions including free transport by train or buses and provision of adequate food, water and medical supplies. The NHRC while taking suo-moto cognizance of the plight of migrant workers had made an important observation that any shortcoming on the part of the government agencies cannot be covered under excuse of unprecedented situation amid countrywide lockdown.³¹ Courts also would need to be vigilant against possible state excesses even in such unprecedented situations.

THE WAY FORWARD: WHEN TO USE FORCE?

It is also incomprehensible on our part to completely prevent the police from using force. Incidents have been reported throughout the country where medical professionals, volunteers have been attacked and assaulted³². The Hon'ble Supreme Court in *Anita Thakur & Ors. v. Govt. of J&K and Ors.*,³³ while observing that unruly groups are now being seen as an appendage to Indian democracy, accepted that use of reasonable force is justified in certain cases. It observed that on one hand, law and order needs to be restored and at the same time, it is also to be ensured that unnecessary force or the force beyond what is absolutely essential is not used and reiterated that Policemen are required to undergo special training to deal with these situations.³⁴

³⁰ In re: Problems and Miseries of Migrant Labourers, Suo Moto Writ Petition (Civil) No. 6/2020.

³¹ National Human Rights Commission, *NHRC notices the Chief Secretaries of Gujarat and Bihar, chairman, railway board and union home secretary on media reports of hardships to labourers on board misdirected special trains, devoid of water, food and basic facilities causing sickness and death*, (May 28, 2020), <https://nhrc.nic.in/media/press-release/nhrc-notices-chief-secretaries-gujarat-and-bihar-chairman-railway-board-and>.

³² Anurag Dwary, *On Camera, COVID-19 Health Staff Attacked, Chased Away in Madhya Pradesh's Indore*, *NDTV* (Apr. 2, 2020, 06:03 PM), <https://www.ndtv.com/india-news/coronavirus-lockdown-india-on-camera-health-workers-attacked-in-madhya-pradesh-indore-2-doctors-inj-2204649>.

³³ *Anita Thakur & Ors. v. Govt. of J&K and Ors.*, (2016) 15 SCC 525.

³⁴ *Ibid.*

At the international stage, there is considerable amount of guidance provided by the United Nations and allied agencies pertaining to use of force by police. The most fundamental and internationally recognized principles³⁵ need to be adhered to:

- (i) Necessity: Resorting to force when absolutely necessary and only to the extent required for performance of duties. The use of lethal force and firearms should be avoided as far as possible, after all non-violent means have been exhausted. However, force may be used in (i) Self-Defence (ii) defence of others against any threat of death or serious injury (iii) prevention & suppression of crime (iv) arresting anyone presenting a danger to the society, by way of spreading the infection.
- (ii) Proportionality: The force used must be proportional to the objective being sought to be achieved. Before resorting to lethal force, a clear warning in that regard should be communicated to the concerned person or group of persons.
- (iii) Precaution: Reasonable precaution must be adopted to prevent loss of life.
- (iv) Non-Discrimination: Police officials must respect the fundamental and human rights of every person irrespective of race, religion, sex, socio-economic status etc. and understand the real threat which lower class citizens, migrants and refugees face.

In the U.N. Human Rights Guidance on the Use of Less-Lethal Weapons by Law-Enforcement,³⁶ it is categorically stated that baton or lathi should not be used against any person who is neither engaged in nor is threatening violent behavior as such use likely to amount to cruel, inhuman and degrading treatment or even torture.³⁷ Here the actions of migrants attacking police officials though not completely justified, the situation must be understood from their perspective. Even The International Covenant on Civil and Political Rights (ICCPR)³⁸ has, under Article 4, recognized the rights of States to take stringent

³⁵ United Nations Human Rights Special Procedure, *Mandate of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Killings*, (Apr. 2, 2020), <https://www.ohchr.org/Documents/Issues/Executions/HumanRightsDispatch1.pdf>.

³⁶ U.N. Human Rights Office of the High Commissioner, *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement(2020)*, https://www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf.

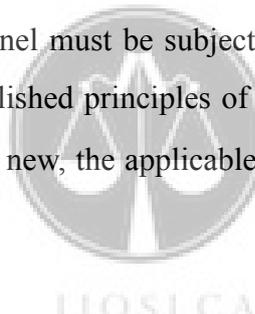
³⁷ *Ibid* at 24.

³⁸ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, (Last visited at June 4, 2020). <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>

measures in emergent situations where the life or existence of a nation is threatened, subject, to Article 6, which guarantees Right to Life and Article 7, which states that no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.

At the national level, in its Consolidated Revised Guidelines,³⁹ the Ministry of Home Affairs has specifically provided that violators are liable to be penalized as per the provisions of Section 51 to 60 of the Disaster Management Act, 2005 and under Section 188 of the IPC, 1860. Rather than resorting to the use of force, except in extreme situations governed by the aforementioned four principles, violators should be penalized. Conviction has a lasting effect on the reputation and future prospects of any person. Therefore, the established statutory penalties could have a greater deterrence effect against potential violators.

The Supreme Court of India has very validly observed that if the functionaries of the State engage in law-breaking, it is bound to breed contempt for law which would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchism.⁴⁰ Police personnel must be subject to strict control and must exercise restraint in accordance with the established principles of legality and preservation of human rights. While COVID-19 pandemic is new, the applicable human rights norms are not. Right to life must be implemented.



CONCLUSION: WHAT WE NEED TO CHANGE

The recent acts of brutality by police personnel are just a series of such excesses which have been continuing for long without implementation any effective mechanisms to curb them. The Supreme Court has time and again denounced police brutalities in at least five landmark judgments.⁴¹ As recently as in *Monica Kumar v. State of U.P.*,⁴² the Apex Court observed the

³⁹ Government of India, Ministry Of Home Affairs, *Guidelines on the measures to be taken by Ministries/ Departments of Government of India, State/ UT Governments and State/ UT Authorities for containment of COVID-19 in the country upto 31 'Way*, 2020.(May 17, 2020), https://www.mha.gov.in/sites/default/files/MHAOrderextension_1752020_0.pdf.

⁴⁰ *Supra* note 13.

⁴¹ *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746; *Rudul Sah v. State of Bihar*, (1983) 4 SCC 141; *Joginder Kumar v. State of U.P.*, (1994) 4 SCC 260; *D.K. Basu v. State of W.B.*, (1997) 1 SCC 416; *Anita Thakur v. State of J&K*, (2016) 15 SCC 525.

⁴² *Monica Kumar v. State of U.P.*, (2017) 16 SCC 169.

ill-functioning of police personnel had created a sordid state of affairs in the country. The Court went on to say that it had yet to see the humane face of the police. It is an accepted fact that COVID-19 is going to be the new normal for the years to come. Therefore, police sensitization programs need to be implemented to help the police better perform their duties. COVID-19 has helped us realize the immense benefit technology possesses. The Indira Gandhi National Open University and the National Human Rights Commission have already launched an online advanced program on human rights⁴³ and now is the apt time makes sure that such courses are developed en masse.

However, it is fallacious to put the blame completely on the police forces. It is undoubtedly true that Indian police forces are massively overburdened and stressed. Even in such a precarious situation, police personnel have been regularly reporting for lockdown duty. As humans, even they are under an immense threat of infection by the virus. Their resolve and dedication is unparalleled and needs to be recognized. They are in close contact with the people, even when the country is in a lockdown. Police personnel are engaged in duties for as long as 12 hours per day, with about 81% percent of them working more than 8 hours a day.⁴⁴

Psychological problems also lead to a rise in brutality. There is an urgent need to understand the issue of mental health amongst police personnel. In an alarming news, the State Psychologists Association has asserted that out of over 500 calls per day, 15-20% are medical practitioners, municipal staff and police officers.⁴⁵ Only effective assistance can lead to effective service.

Police personnel, especially the lower ranks which are the most numerous, are ill-trained.⁴⁶ Their salaries and perks are extremely low with little job security which leads to corruption.⁴⁷ That police personnel are not even being provided basic requirements such as Personal Protective Equipment (PPE) kits, Masks, gloves etc. is evident from the fact that thousands of

⁴³ National Human Rights Commission, *NHRC-IGNOU online training programme on human rights for Police Personnel launched*, <https://nhrc.nic.in/press-release/nhrc-ignou-online-training-programme-human-rights-police-personnel-launched>.

⁴⁴ *Supra* note 23 at 46.

⁴⁵ Neha Madaan, *Healthcare workers, cops on edge seek assistance*, T.O.I (May 1, 2020, 04:52 PM), <https://timesofindia.indiatimes.com/city/pune/healthcare-workers-cops-on-edge-seek-assistance/articleshow/75481667.cms>.

⁴⁶ Sonal Marwah, *A Heavy hand: The Use of Force by India's Police*, 3 Issue Brief 1 (Aug. 1, 2012).

⁴⁷ *Ibid*.

police personnel have been infected and dozens have succumbed to the infection⁴⁸. Police personnel also have to worry about their own families and have to face the social stigma when they return home after a hard day at work. Police are under immense burden even today when most of the country is staying inside their homes. Therefore, only sensitization programs won't solve the problem. A complete structural overhaul of the police system suited to the present needs requires to be brought about. This could include adding extra perks, hiking salaries, ensuring their safety by distributing PPE kits along with sensitization. By far the most important measure is ensuring that police personnel are well trained to constructively combat such situations. When the policeman can expect that he would be adequately compensated and taken care of, only then can he focus on his job and perform it effectively.

It was an unenviable task to keep 1.3 billion people in a lockdown, and that is exactly what the police forces were charged to do. However, police personnel have proved that come what may the situation, they will continue to be the frontline defenders of the country. Furthermore, social drives can be conducted by the police to penalize people such as assisting in food drives, providing monetary assistance to migrants, assisting in relief work etc. Such measures would also assist in bridging the gap between the rich and poor of the society, as the privileged would be involved in the service of the oppressed and the downtrodden. It should be our resolve to keep our police establishments on the forefront of the fight against COVID-19.

“When the Rule of Law disappears, we are ruled by the whims of men.”

~ Tiffany Madison

⁴⁸ Press Trust of India, *COVID-19 kills 30 Maharashtra Cops, About 3,000 infected: Minister*, NDTV (June 7, 2020, 10:43 PM), <https://www.ndtv.com/india-news/coronavirus-india-over-30-maharashtra-cops-died-of-covid-19-so-far-2-562-infected-2242190>.