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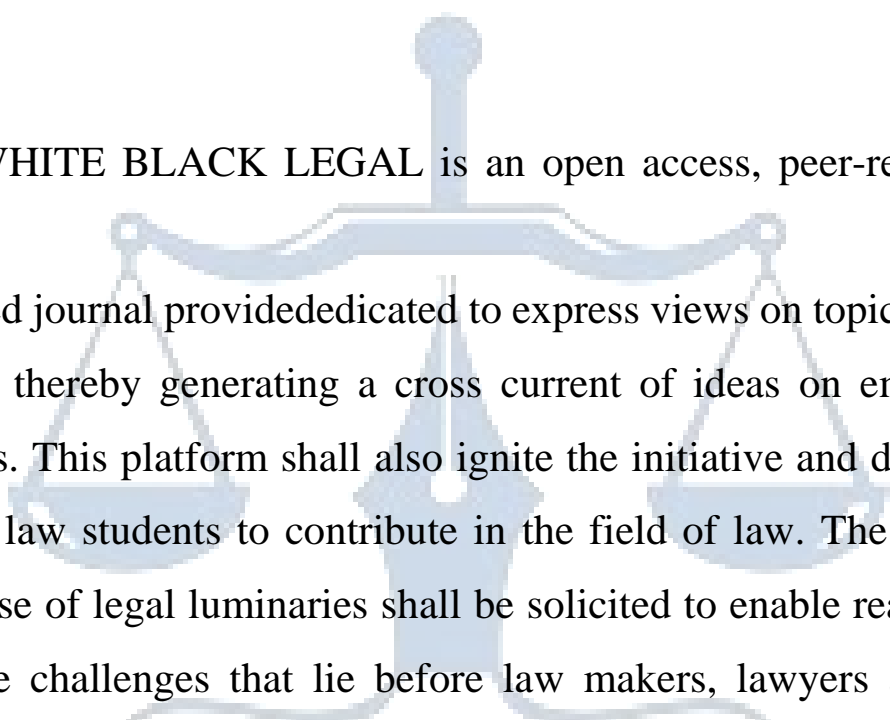


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

JUDICIAL APPROACH TOWARDS ABUSE OF POLICE POWER AND ATROCITIES IN INDIA

AUTHORED BY - AINDRILA BAG¹

Abstract

Police abuse and atrocities remain significant challenges in India, undermining public trust in law enforcement and the principles of justice and human rights enshrined in the Constitution. The judiciary, as the guardian of constitutional rights, has played a crucial role in addressing such abuses, curbing excesses, and establishing safeguards to protect citizens. This abstract examines the judicial response to police misconduct, focusing on landmark judgments, procedural guidelines, and systemic reforms advocated by courts. This study shows that while the courts have played an important role in reducing police misconduct, achieving the desired outcome requires strong implementation of reforms, improved training for law enforcement officers, and ongoing public education about rights. A balanced combination of judicial rulings, legislative measures, and executive accountability is crucial for transforming law enforcement agencies into organizations that prioritize serving the public.

Keywords: *Police Atrocities, Abuse of power, Human Rights, Judicial Approach, Legal Precedents, Reforms.*

INTRODUCTION

The judiciary in India plays a pivotal role in addressing the abuse of police power and atrocities committed by law enforcement agencies. As the protector of constitutional rights, the judiciary serves as a critical check against the misuse of authority, ensuring accountability and upholding the principles of justice, equality, and human dignity.

The judiciary has played a crucial role in addressing police misconduct through its interventions. However, significant obstacles persist, including inadequate enforcement of judicial orders, political meddling, and systemic resistance to reform. The judiciary's responsibility transcends punitive actions; it encompasses establishing a framework for policing practices that prioritize transparency, impartiality, and citizen-centric service delivery.

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JUDICIAL INTERPRETATIONS AND CASE LAWS

The issue of police brutality and the use of excessive force by law enforcement officers is a serious concern globally and particularly in India. Such actions can lead to significant physical harm, injury, or even death of the individuals involved, and they highlight severe human rights violations. Instances of police brutality are blatant violations of human rights, as they often involve torture, unlawful detention, and extrajudicial killings. These actions contradict the fundamental principles of justice, fairness, and the rule of law.²

Right from Jallianwalabagh Massacre in 1919, the Hamshimpura massacre in 1987 to the recent Bennix- Jayaraj custodial death in 2020, India has had numerous cases of police brutality reported over the years.³

LANDMARK CASES ON POLICE ABUSE

1. BHAGALPUR BLINDINGS:⁴

The Bhagalpur Blindings depicts different incidents which took place in between 1979 and 1980 in Bhagalpur, which is situated in the state of Bihar. In this, the police officials blinded 31 individuals, who were still under trial and not yet proven guilty, by pouring acids into their eyes. This incident became famous with the name of Bhagalpur Blindings.

This incident was widely discussed and criticized by the Human Rights organizations. The Bhagalpur blinding case had made criminal jurisprudence history by becoming the first in which the Indian Supreme Court ordered compensation for violation of basic human rights.

2. HASHIM PURA MASSACRE:⁵

On 22nd May, 1987, Hashim Pura Massacre took place. It is an incident of mass murder which took place in Meerut, in Uttar Pradesh, in India during the 1987 Meerut Communal Riots which occurred from March to June in 1987 which resulted in the death of 350 people. It is claimed that 19 police officers collected 42 Muslim youths

² Amandeep Kaur, Dr. Sugandha Passi, "Legal Accountability of Police in India: An Analysis", 7 IJNRD 1807 (2022).

³Police Atrocity, available at: <https://www.legalserviceindia.com/legal/article-4816-police-atrocity.html#:~:text=Police%20atrocity%20is%20defined%20as,%2C%202008%2C%20para.1> (last visited on May 17, 2024).

⁴ Anil Yadav v State of Bihar 1982 (2) SCC 195.

⁵ Zulfikar Nasir & Ors v State of Uttar Pradesh & Ors, CRL.A. 574/2015 & Crl.M.A.No. 8003/2015.

from the Hashim Pura locality, took them to the outskirts of that place and shot them and dumped their body in the nearby irrigation canal. After few days, their bodies were discovered as it was floating in the canal. The 19 men were accused but later they were released on bail.

Delhi HC sentences 16 ex-policemen to life imprisonment.

3. RUDAL SHAH VS. STATE OF BIHAR:⁶

In this case, the petitioner was acquitted on June 30th 1968 but was released from jail only on Oct. 16th 1982 when court intervened. The Supreme Court directed the Bihar Government to pay compensation of Rs. 30,000/- to the petitioner who remained in the jail for 14 years even after acquittal because of the irresponsible behavior of the state.

4. SAHELI VS. COMMISSIONER OF POLICE:⁷

The Supreme Court in this case directed the Delhi Administration to pay Rs.75, 000 as an exemplary compensation to the mother of a 9-year-old who died due to sexual assault by the police.

5. NILABATI BAHERA VS. STATE OF ORISSA:⁸

The petitioner, the mother of the accused son came to know that her son was found dead near a railway track, which was later found to be that he was beaten to death while in police custody. The Supreme Court awarded Rs.1.5 Lakh as an interim compensation.

6. D.K. BASU VS. STATE OF W.B:⁹

This case holds an immense significance in India as it establishes crucial guidelines to prevent custodial torture and protect the fundamental rights of individuals in Police custody. Also it was held that, "Custodial death is perhaps one of the worst crimes in a civilized society governed by the rule of law."¹⁰

The Supreme Court issued the following directions and guidelines in all cases of arrest and/or detention:

- (1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

⁶ (1983) 4 SCC 141.

⁷ 1990 AIR-513.

⁸ 1993 AIR 1960. 1993 SCR (2) 581

⁹ (1997) 6 SCC 642.

¹⁰D. K. Basu v. State of West Bengal, (1997) 6 SCC 642, available at: <https://www.drishtijudiciary.com/landmark-judgement/code-of-criminal-procedure/dk-basu-v-state-of-west-bengal-1997-6-scc-642> (last visited on May 17, 2024).

- (2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest a memo shall be attested by at least one witness who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.
- (3) A person who has been arrested or detained and is being held in custody in a police station or interrogation center or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
- (4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
- (5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon he is put under arrest or is detained.
- (6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
- (7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer affecting the arrest and its copy provided to the arrestee.
- (8) The arrestee should be subjected to medical examination by trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.
- (9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.”¹¹

7. SUNIL BHATRA v. DELHI ADMINISTRATION:¹²

It was alleged that the torture inflicted by a prison warden to extort money from the victim through his visiting relatives. The Court appointed amicus curiae¹³, submitted the report after visiting the prison and revealed that the prisoner had suffered severe anal injuries due to the insertion of a rod into that area, resulting in inhumane torture.¹⁴

It was held that the integrity of mental and physical personality is an important right of a prisoner and must be protected from all sorts of atrocities until fair procedure is complied with.¹⁵

8. KISHORE SINGH VS. STATE OF RAJASTHAN¹⁶:

The case involves a habeas corpus petition filed on behalf of three prisoners who were kept in solitary confinement with cross-bar fetters for extended periods ranging from 8-11 months in Jaipur Central Jail on grounds like loitering, insolent behavior etc. The Court held that keeping prisoners in solitary confinement and putting fetters violates their fundamental rights under Article 21¹⁷. The Supreme Court held that the use of “third degree violence”¹⁸ is violative of Article 21 of constitution of India.¹⁹ Prison authorities cannot take such punitive actions without complying with principles of natural justice like giving the prisoners a hearing.²⁰

¹¹ D.K. Basu vs. State of West Bengal, available at: <https://districts.ecourts.gov.in/sites/default/files/circular16092015.pdf>. (last visited on May 17, 2024).

¹² 1978 4 SCC 409.

¹³ amicus curiae noun, available at: <https://www.merriam-webster.com/dictionary/amicus%20curiae>, (last visited on May 17, 2024).

¹⁴ Sunil Batra Case, available at: <https://lawbhoomi.com/sunil-batra-vs-delhi-administration/#:~:text=The%20Court%20in%20Sunil%20Batra,after%20conviction%2C%20are%20infringed%20upon.> (last visited on May 16, 2024).

¹⁵ *Ibid.*

¹⁶ 981 AIR 625 1981 SCR (1) 995 1981 SCC (1) 503.

¹⁷ The Constitution of India, art.21.

¹⁸ Third degree violence, available at: <https://dictionary.cambridge.org/dictionary/english/third-degree> (last visited on May 16, 2024).

¹⁹ The Constitution of India, art.21

²⁰ Violation of Human Rights by Police Authorities, available at: https://www.legalserviceindia.com/legal/article-61-violation-of-human-rights-by-police-authorities.html#google_vignette (last visited on May 15, 2024).

9. STATE OF MAHARASHTRA VS. RAVI KANT PATIL:²¹

An uncharged prisoner was forced to march through the streets while being handcuffed, bound, and waiting for trial. The State Government was mandated by the Supreme Court to pay the victim Rs 10,000 in restitution. The question of who should pay the compensation the individual police or the State was debated by the court in this case. In light of the vicarious responsibility, the court stated that even if the police officer exceeded his authority and that he had behaved in an official capacity, it was unlikely that he could be held personally accountable.²²

10. PEOPLE'S UNION FOR CIVIL LIBERTIES VS. UNION OF INDIA:²³

The Supreme Court held that killing of two people in fake encounter by Imphal police was clear violation of right to life guaranteed by Article 21 of the Constitution of India²⁴ and defence of sovereign immunity does not apply in such cases. The court awarded rupees 1,00,000 as compensation for the defendants of each of the deceased.

11. BENNIX AND JAYARAJ CUSTODIAL DEATHS:²⁵

'In Tamil Nadu, Bennix and his father Jayaraj were arrested for allegedly violating COVID-19 lockdown rules. They were subjected to severe torture while in custody, leading to their deaths.

The Supreme Court on Tuesday declined to grant bail to two police officers accused in the custodial death case.²⁶

12. R.G. KAR MEDICAL COLLEGE DOCTOR RAPE AND MURDER CASE:²⁷

'The Supreme Court of India took *suo moto* cognizance of the alleged rape and murder of a trainee doctor at R.G. Kar Medical College and Hospital in Kolkata on August 18, 2024. The court took action because the case raised serious questions about the safety of doctors and medical professionals.'²⁸

²¹ AIR 1991 SC 871 (Singh Bench)

²² Amandeep Kaur, Dr. Sugandha Passi, "Legal Accountability of Police in India: An Analysis", 7 IJNRD 1808 (2022).

²³ AIR 1997 SC568

²⁴ The Constitution of India, art.21.

²⁵ Police Atrocities: Jayaraj and Fenix case, available at: <https://www.legalserviceindia.com/legal/article-11989-police-atrocities-jayaraj-and-fenix-case.html>. (last visited on April 20, 2024).

²⁶ SC Declines Bail to Two Cops in Sathankulam Custodial Death Case, available at: <https://thewire.in/law/tamil-nadu-sc-declines-bail-to-two-cops-in-sathankulam-custodial-death-case#:~:text=They%20died%20a%20few%20days%20later%20in%20a%20hospital.&text=New%20Delhi%3A%20The%20Supreme%20Court,Sathankulam%20of%20Tamil%20Nadu's%20Tuticorin>. (last visited on May 17, 2024).

²⁷ *Suo Moto* Writ (Crl) No.2/2024

²⁸ Supreme Court Takes *Suo Motu* Case Over RG Kar Hospital Doctor's Rape & Murder; Hearing On Aug 20, available at: <https://www.livelaw.in/top-stories/supreme-court-takes-suo-motu-case-over-rg-kar-hospital-doctors-rape-murder-267013>. (last visited on November 29, 2024).

LEGAL PRECEDENTS AND THEIR IMPLICATIONS

The abuse of police power is a critical issue that undermines the rule of law and threatens the rights and freedoms of individuals. In India, various legal precedents have shaped the framework for addressing and mitigating such abuses. Here is an overview of police power abuse and notable legal precedents in India:

Forms of Police Abuse:²⁹

- Excessive Force: Use of more physical force than necessary.
- Custodial Torture: Physical or mental abuse of individuals in police custody.
- Extrajudicial Killings: Unlawful killings by police without due process.
- Illegal Detention: Detaining individuals without proper legal procedures.

Implications:³⁰

- Human Rights Violations: Police abuse violates fundamental human rights.
- Erosion of Trust: Undermines public trust in law enforcement and the justice system.
- Social Unrest: Can lead to protests and social instability.

LEGAL PRECEDENTS:

India's judiciary has set important legal precedents aimed at curbing police abuse and protecting individual rights:

D.K. Basu vs. State of West Bengal:³¹

Facts: Concerned custodial violence and the rights of detained individuals.

Judgment: The Supreme Court laid down guidelines to prevent custodial abuse, including:

- Immediate notification of the arrest to a relative or friend.
- Preparation of an arrest memo witnessed by a person from the locality.
- Medical examination of the arrested person every 48 hours.
- The right to consult a lawyer during interrogation.

Implications: Established procedural safeguards to protect detainees from abuse and ensure transparency in arrests and detentions.

²⁹ Amandeep Kaur, Dr. Sugandha Passi, "Legal Accountability of Police in India: An Analysis", 7 IJNRD 1806 (2022).

³⁰ Amandeep Kaur, Dr. Sugandha Passi, "Legal Accountability of Police in India: An Analysis", 7 IJNRD 1806 (2022).

³¹ (1997) 6 SCC 642.

Prakash Singh vs. Union of India (2006):³²

Facts: Addressed the need for police reforms to prevent political interference.

Judgment: The Supreme Court directed the implementation of comprehensive police reforms, including:

- Establishment of State Security Commissions to ensure accountability.
- Fixed tenure for police officers to prevent arbitrary transfers.
- Separation of investigation and law and order functions.

Implications: Aimed to professionalize the police force and reduce political influence, enhancing the accountability and efficiency of law enforcement.

Nilabati Behera vs. State of Orissa (1993):³³

Facts: Dealt with a custodial death case.

Judgment: The Supreme Court held that the state is liable to pay compensation for custodial deaths, emphasizing that the right to life under Article 21 of the Constitution is inviolable.

Implications: Reinforced the state's accountability for human rights violations by police and provided a remedy for victims' families.

Arnesh Kumar vs. State of Bihar (2014)³⁴:

Facts: Focused on arbitrary arrests under Section 498A of the Indian Penal Code³⁵.

Judgment: The Supreme Court issued guidelines to prevent unnecessary arrests, including:

- Police officers must provide reasons for the arrest.
- Issuance of a notice of appearance before arresting individuals.

Implications: Sought to curb arbitrary arrests and ensure adherence to legal procedures, protecting individual liberties.

People's Union for Civil Liberties (PUCL) vs. Union of India (2005):³⁶

Facts: Concerned fake encounters and extrajudicial killings by police.

Judgment: The Supreme Court issued guidelines for the investigation of police encounters, including:

- Mandatory registration of FIRs in cases of encounter deaths.

³² (2006) 8 SCC 1.

³³ 1993 AIR 1960. 1993 SCR (2) 581.

³⁴ AIR 2014 SC 2756

³⁵ The Indian Penal Code, 1860, sec. 498A.

³⁶ AIR1997SC568

- Independent investigation and magisterial inquiry.

Implications: Established mechanisms for accountability in cases of extrajudicial killings, aiming to prevent misuse of force by police.

LEGAL PROTECTIONS AGAINST POLICE ABUSE

In addition to these precedents, Indian law provides several safeguards:

- **Constitutional Protections:** Article 21 guarantees the right to life and personal liberty, and Article 22 provides protections against arbitrary arrest and detention.³⁷
- **Criminal Procedure Code (Cr. PC):** Sections 41 to 60A outlines procedures for arrest, detention, and the rights of arrested individuals.³⁸
- **Indian Penal Code (IPC):** Sections 330 and 331 penalize acts of causing hurt to extort a confession or information.³⁹
- **Human Rights Commissions:** The National Human Rights Commission (NHRC) and State Human Rights Commissions investigate complaints of human rights violations by police.⁴⁰

CONCLUSION

The judiciary in India has been a steadfast guardian against the abuse of police power and atrocities committed by law enforcement agencies. It has intervened and sought to uphold constitutional principles of justice, equality, and human dignity, acting as a bulwark against systemic violations. Landmark rulings such as **D.K. Basu v. State of West Bengal (1997)**⁴¹, which established procedural safeguards against custodial torture, and **Prakash Singh v. Union of India (2006)**⁴², which mandated comprehensive police reforms, underscore the judiciary's commitment to ensuring accountability and transparency.

The judiciary has also demonstrated a victim-centric approach by emphasizing the accountability of the state in cases of police excesses, as seen in **Nilabati Behera v. State of Orissa (1993)**⁴³, where custodial deaths were recognized as a breach of the fundamental right

³⁷ The Constitution of India, arts. 21, 22.

³⁸ The Criminal Procedure Code, 1973, secs. 41-60A.

³⁹ Indian Penal Code, 1860, secs. 330,331.

⁴⁰ Amandeep Kaur, Dr. Sugandha Passi, "Legal Accountability of Police in India: An Analysis", 7 IJNRD 1806 (2022).

⁴¹ (1997) 6 SCC 642.

⁴² (2006) 8 SCC 1.

⁴³ 1993 AIR 1960. 1993 SCR (2) 581.

to life under **Article 21**.⁴⁴ Additionally, it has acted decisively in cases of extrajudicial killings and custodial violence, reiterating the need for independent investigations and adherence to due process.

Despite its proactive stance, the judiciary needs to adapt some more reforms, including:

- **Resistance to Reform:** Many states have been reluctant to implement the Supreme Court's directives on police reforms.
- **Political Interference:** The politicization of police forces undermines judicial directives aimed at impartial law enforcement.
- **Systemic Inertia:** Procedural lapses and a lack of robust mechanisms for monitoring compliance hinder the effectiveness of judicial interventions.

The judiciary has laid a strong foundation for addressing police misconduct, but the realization of its vision requires the collaboration of all branches of government. Legislative action to modernize outdated police laws, executive accountability in implementing reforms, and public awareness of constitutional rights are essential for transforming the policing system.

In conclusion, the judiciary aims to balance punishing and preventing police misconduct. However, cooperation between the judicial, legislative, and executive branches is crucial for ensuring fair, accountable, and citizen-focused law enforcement agencies in India.

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⁴⁴ The Constitution of India, art. 21.