

**PRIVILEGED CLASS DEVIANCE  
STUDY MATERIAL (LCR 908)**

**UNIT III**

**(POLICE DEVIANCE)**

**BY**

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## 1. INTRODUCTION

Police work by its very nature involves the slippery slope (the potential for gradual deterioration of social-moral inhibitions and perceived sense of permissibility for deviant conduct). In fact, the whole unspoken "dark" side of criminal justice work involves putting up with conditions that are at less than usual comfort levels; i.e., "slumming it". Police are routinely involved in undercover work which involves taking on false identities and inducing crime. Police are allowed to make false promises to hostage takers and kidnappers. Police feed disinformation to the media. Police are trained to be deceptive at interviewing and interrogation. Police make all kinds of excuses to get out of nuisance calls. Police trade or sell their days off and desirable work assignments. Police angle themselves into cases requiring court appearances and manipulate the overtime system to earn an average for a year. Police strain the truth to protect loved ones and crime victims. Police routinely invade privacy via surveillance and other technological means. Police fighting the drug problem may encounter more loose cash than the gross national product of some small countries. And as with sting operations, there's something that's just plain sick about a system that condones the police making a product, selling the product, and then arresting people for buying the product

*Deviance* is an action or behaviour that violates the generally accepted norms of a group, organization, or society (Adler, 2005). Many societies' and organizations' policies, practices, and laws are developed from this normative foundation. Policies (and sometimes laws) are written because entities, ranging in size from organizations to countries, codify acts of deviance. Deviance can and does occur in all workplaces and throughout all professions. When public officials violate organizational rules and/or break the law these acts are also called malfeasance, misfeasance, and nonfeasance.<sup>1</sup>

- Malfeasance -- intentional commission of a prohibited act or intentional unjust performance of some act of which the party had no right (e.g., gratuity, perjury, use of police resources for personal use)
- Misfeasance -- performance of a duty or act that one is obligated or permitted to do in a manner which is improper, sloppy, or negligent (e.g., report writing, unsafe operation of motor vehicle, aggressively "reprimanding" a citizen, improper searching of suspect)
- Nonfeasance -- failure to perform an act which one is obligated to do either by law or directive due to omission or failure to recognize the obligation (e.g., failure to file report, improper stop & frisk, security breach)

## 2. MEANING OF POLICE DEVIANCE

Police deviance occurs when law enforcement officers behave in a manner that is “inconsistent with the officer’s legal authority, organizational authority ,and standards of ethical conduct”. Police deviance includes but is not limited to discrimination, misconduct, intimidation ,sexual harassment, corruption ,excessive force, use of restricted weapon and illegal surveillance.

Police deviance is a much broader term than corruption. It includes all activities which are inconsistent with norms, values, or ethics. Police deviance and abuse of police power have emerged a major issue of human Rights concern and one of the root obstacles to democracy and development of human well being in contemporary societies. Torture caused police violence has devastating effects on physical and mental health as well as social functioning of the individuals, their children, families, communities and society at large. The victims remain in a state of perpetual fear and horror whenever they remember their custodial agony, hatred, trauma and probably never able to lead a normal life in many parts of the world.

The practice of police brutality in the developing countries like India is, however, more difficult and complex. The practice is more widespread and gone unchecked since British days if there was no tacit support of senior police officials, bureaucrats, politicians and judiciary. The fact is that the practice also enjoys the support of a large section of the public in the mistaken belief that it is necessary for effective maintenance of law and order.

Torture, in order to extract confession was so endemic in India that the British colonial rulers, when enacting criminal laws for the country, decided to make all confessions to police officers inadmissible as evidence in court of law. After Independence, the Constitutional and statutory provisions safeguarding life and liberty of an individual in custody including rights against self-incriminate, incidences of custodial crimes have become a disturbing factor in society.

### **3. TYPES OF POLICE DEVIANCE**

#### ***A. Police Gratuity***

A gratuity is the receipt of free meals, services, or discounts. Non federal police usually do not regard these as forms of corruption ("not another lecture on the free cup of coffee or police discount"). These are considered fringe benefits of the job. Nevertheless, they violate the Code of Ethics because they involve financial reward or gain, and they are corruption because the officer has been placed in a compromising position where favours (a "fix") can be reasonably expected in the future. When there is an implied favour (a "wink and nod"), it's called "mooching". When the officer is quite blatant about demanding free services, it's called "chiselling".

Gratuities often lead to things like kickbacks (bribery) for referring business to towing companies, ambulances, or garages. Further up the scale comes pilfering, or stealing (any) company's supplies for personal use. At the extreme, opportunistic theft takes place, with police officers skimming items of value that won't be missed from crime scenes, property rooms,

warehouses, or any place they have access to. Theft of items from stores while on patrol is sometimes called "shopping".

### ***B. Police Shakedowns***

A shakedown is when the police extort a business owner for protection money. The typical scenario involves gay bars, which are considered the most vulnerable. In some cities (like Boston for example), police are still charged with the power to inspect bars for compliance with liquor regulations. Officers are then in a position to threaten bar owners with violations if they do not make payoffs, and promise to intercept ("fix") any other violation reports processed through department channels. In other cities (like San Francisco, for example), officers would promise extra protection against gay-bashing in return for extra payments. In still other cities (like New Orleans, for example), moonlighting officers would make extra money from "details" in liquor establishments, and be paid extra for overlooking open sex or drug violations. In some cities, police officers have complete control over liquor licenses and even own nearby parking meters. To deal with the gay bar issue, many police departments have tried hiring openly gay recruits.

Shakedowns are also common with strip bars, prostitution rings, drug dealing, illegal gambling, and even construction projects. In each case, the approach and modus operandi are somewhat variable, because each officer subjects the business operator and/or patrons to the shakedown differently.

### ***C. Police Perjury***

This is usually a means to effect an act of corruption, leaving out certain pertinent pieces of information in order to "fix" a criminal prosecution. "Dropsy" evidence is typical, where the officer testifies untruthfully that he/she saw the offender drop some narcotics or contraband. Lies that Miranda warnings have been given, when they haven't, are also typical. Lying in court is called "testifying", and police can do it coolly; they're trained witnesses. Other actors in the system, supervisors and even judges, are often aware of the perjury. They pretend to believe police officers who they know are lying. Everybody's happy with the system. The cop gets credit for a good bust; the supervisor's arrest statistics look good; the prosecutor racks up another win; the judge gets to give his little lecture without endangering his re-election prospects, the defence lawyer gets his fee in dirty money, and the public is thrilled that another criminal is off the street (Dershowitz 1996).

Most perjury is committed by decent cops who honestly believe a guilty defendant will go free unless they lie about something.

### ***D. Police Brutality***

Police brutality has been defined as excessive force, name calling, sarcasm, ridicule, and disrespect (President's Commission 1967). Other commissions have simply used a vague definition as "any violation of due process". Kania and Mackey's (1977) widely-regarded definition is "excessive violence, to an extreme degree, which does not support a legitimate police function." When a citizen charges police brutality, they may be referring to a number of things, including:

- profane or abusive language
- commands to move or go home
- field stops and searches
- threats of implied violence
- prodding with a nightstick or approaching with a pistol
- the actual use of physical force

Only the last one of these (*unreasonable and unnecessary* actual use of physical force) can be considered police brutality. This is commonly expressed as "more than excessive force". Police perjury and police brutality go hand in hand, as officers who commit brutality will most likely lie on the stand to prevent the possibility of a lawsuit or departmental charges. The reasons why an officer might engage in this kind of conduct are many:

- a small percentage may have been attracted to police work for the opportunity to enjoy physically abusing and hurting somebody
- an officer may come to believe "it's a jungle out there"
- an officer may be provoked and pushed beyond their endurance

The most common reason is occupational socialization and peer support. One common belief is that it's necessary to come down hard on those who resist arrest because they may kill the next police officer who tries to arrest them (so you have to teach 'em a lesson). Another practice is the "screen test", police jargon for applying the brakes on a police vehicle to that the handcuffed prisoner in back will be thrown against the metal protective screen.

### ***E. Police Profanity***

There are many reasons why a police officer would use obscene and profane language. Effective use of verbal communication is one of the skills expected in police work. Concepts such as "command voice" and "command presence" are routinely taught at police training academies. The FCC specifically condemns certain words on radio and television that are "patently offensive", but there's no such mechanism for determining what's offensive with interpersonal communication. The following topology exists:

- words having religious connotations (e.g., hell, goddamn)
- words indicating excretory functions (e.g., shit, piss)
- words connected with sexual functions (e.g., fuck, prick)

Generally, words with religious connotations are considered the least offensive and words connected with sexual functions are considered the most offensive. It's commonly the case, however, that use of such language by police officers is purposive and not a loss of control or catharsis.

- to gain the attention of citizens who may be less than cooperative
- to discredit somebody or something, like an alibi defence
- to establish a dominant-submissive relationship
- to identify with an in-group, the offender or police subculture
- to label or degrade an out-group

#### ***F. Police Sex On Duty Or Duty Related***

Contacts with promiscuous females and minimal supervision are part of the job. Sooner or later, every police officer will be propositioned. There are a number of women who are attracted to the uniform or the aura of the occupation. Every police officer will be able to tell you stories about police "groupies". These are women who make the rounds by waving at officers, getting them to stop or pull over, and then set up meetings to have sex with them, or sometimes right then and there. A woman such as this typically has sex with whole departments and hundreds of police officers. Other situations involve:

- traffic stops -- to get a closer look at the female or information about her
- fox hunting -- stopping college girls to get the I'll do anything routine
- voyeurism -- window peeping or interrupting lovers lane couples
- victim re-contacts -- consoling victims who have psychological needs
- opposite sex strip searches -- touching and/or sex with jail inmates
- sexual shakedown -- letting prostitutes go if they perform sex acts

#### ***G. Police Sleeping On Duty***

On the night shift, the police car is sometimes referred to as the "travelling bedroom". In police argot, a "hole" or "coop" is where sleeping takes place, typically the back room of someplace the officer has a key to and can engage in safe "cooping". Police officers who attend college during the day or moonlight at other jobs in order to make a decent living are often involved in this kind of conduct. Numerous court appearances during the day can also be a factor, along with the toll of shift work.

Sleeping on duty, of course, is just an extreme example of goldbricking, the avoidance of work or performing only the amount minimally necessary to satisfy superiors. Goldbricking can take many forms: from ignoring or passing on calls for service to someone else; overlooking suspicious behaviour; or engaging in personal business while on duty.

#### ***H. Police Drinking & Abusing Drugs On Or Off Duty***

There are endless opportunities to drink or take drugs while on duty (e.g., victim interviews, shakedowns, contraband disposal), and the reasons for it are many: to get high, addiction, stress, burnout, or alienation from the job. However, even in cases of recreational usage (which doesn't exist, since officers are never off-duty or have any of their "own time"), the potential is there for corruption. The officer must obtain the drugs from some intermediary, involve others in transactions, and open the door to blackmail, shakedowns, rip-offs, and coverups. It sets a bad example for public relations. It will affect judgment, and lead to the greater likelihood of deadly force or trafficking agents. Alcohol and drug use tends to become a systemic problem; others become involved, either supporting or condemning the user. Alcohol and drugs tend to be mixed by police officers because there's more sub cultural support for alcoholism; thus the abuser covers up the drug use with alcoholism.

### ***I. Police Misuse of Confidential Information***

This normally involves jeopardizing an ongoing investigation by "leaking" information to friends, relatives, the public, the press, or in some cases, directly to the criminal suspects or members of their gang. The officer may be unaware that they are even engaging in this kind of conduct which may involve "pillow talk" in some instances. Failed raids, for example, are often due to a leak in the department.

In other cases, department resources, such as computer systems, may be used to produce criminal history reports for "friends" of the department such as private detectives, consulting firms, or area employers. Passwords can also slip out, granting access to computer network information. In rare cases, police resources are put to use in blackmailing political figures. In general, however, cracking down on secrecy violations has produced more problems than it has solved.

## **4. POLICE USE OF FATAL /EXCESSIVE FORCE**

The phenomena of Police brutality also known by various names in different countries such as police violence, police criminality, police misconduct and police deadly use of force. The term "Police Brutality" is phrase from common speech; thus its meaning is not defined. In general, it connotes the use of excessive force by the police against members of the public. It is accepted that many uses of force by the police cannot be labelled "Police brutality or "excessive" because the use of forces is sometimes necessary in police work. The police are the officials in modern society who commonly are called upon when the state has to use it ultimate power of coercion against its own citizens, either for reasons rooted in the enforcement of lawful orders or simply to keep order. Thus, the power to use force is an essential part of police functioning.

Police Brutality may be divided between brutality that occurs as part of the order keeping and crime prevention function of police, on the one hand, or brutality that occurs during the investigative function on the other hand. The former usually occurs in the street, and takes the form of beating or in the extreme, a shooting, and the latter usually occurs inside a police station or police custody as a version of Torture.

### ➤ **Torture**

According to the Article 1 of the United Nations Convention Against Torture and Other

Cruel Inhuman or Degrading Treatment in (CAT), 1984, torture is defined as “ any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Moreover, the common third degree methods of torture and ill-treatment used by state agents or police in almost all the countries across the globe in the name of third degree methods include beating electric shocks rape and sexual abuse in custody , suspension of the body beating on the soles of the feet more than thirty countries, suffocation mock execution or threat to death . Other methods included submersion in water, stubbing out of cigarettes, sleep deprivation and sensory deprivation. There are more various methods of torture are used in police custody.

Among them, public flogging, public lashing being forced to swallow detergent; sodomy; burning with blow torch; electric shocks; suspension by the wrists; forcible extraction of teeth; beating during public demonstrations; extended detention in solitary confinement; stabbing ; death in custody as a result of ill-treatment; torture during pre-trial detention for the purposes of obtaining confessions; overcrowding in pre-trial detention centres, malnutrition, contagious diseases; asphyxiation; beatings on the soles of the feet; insertion of metal nails under toenails; verbal abuse including sexual insults; shutting the fingers in a door; being tied naked to a radiator; burning with cigarettes beatings with touch eons, boards, metal pipes, hoses; threats of assault, including sexual abuse and rape; continuous blindfolding; threats of having police dogs released on persons arrested or detained; protracted hanging by arms; denial of access to toilets; kicking in the head; denial of food; protected forced standing; threats against family members; forced feeding; prisoner-on-prisoner violence; being stripped naked and forced to crawl through the effluent from a sewage outlet; firing of shots into cells; being forced to perform oral sex; denial of medical treatment; sleep deprivation; scalding with boiling water; threats of amputation; use of tear gas against prisoners; holding the head under water, prolonged incommunicado detention; beatings resulting in broken limbs and bones; denial of needed medical attention; beating and rape; negative religion counselling; prolonged detention in

psychiatric institutions; life-threatening prison conditions; being hung upside down; are common methods for use of force by police in the custody.

In India, neither Constitution nor statutory law contains an express definition of torture. However, different provisions in law provide police power for use of force only in three circumstances; Firstly, to apprehend a person who resists an endeavour to arrest him or attempts to evade arrest<sup>14</sup> secondly, for the dispersal of an unlawful assembly<sup>15</sup> and thirdly, in the exercise of the right of private defence<sup>16</sup>. The legal provisions in laws and procedures in India, allow police in respect of police use of force in certain situations as discussed above. However, police generally believed that use of force is necessary to detection and prevention of crime so called third degree or torture and considered as an effective instrument for seeking confession.

### ➤ *Causes of use of excessive fatal Police force*

Use of excessive fatal police force is due to the following causes:

#### **1. Legal Cause:**

The first and foremost cause or root of the problem lies in a highly anomalous provision contained in the Indian Evidence Act, 1872, namely, Section-27. In the scheme of the Act, a confession made by a person in police custody is not admissible in court of law as evidence under Section-25 of Indian Evidence Act. However, by way of proviso, section- 27 lays down that if a person in the custody of a police officer makes a statement leading to the discovery of a fact, the same is admissible, whether or not it amounts to confession.

Different grammatical problems and linguistic vagueness have been generated by the placing and inept language of the section. Our concern is with matter that is more substantial. The fact that a statement can be rendered admissible, if it is represented to the trial court as a “discovery statement” and presented at the trial in the form of a confession marked as a discovery statement, a fact will known to every police officer police officer, acts as a lever to the police officer to use unfair means to procure such a statement. The police know that this is an easy method of circumventing the prohibitions based on practical wisdom, experience, of generations, and deep thinking. It is an unpleasant thing to say, but it must be said, that section 27 of the Indian Evident Act has been productive of great mischief, in the sense that it generates an itch for extorting confession which, in its turn, leads to resort to subtle, disguised action, physical or mental torture, cruelty or any other form of custodial abuses.

The another reason for the continuation of torture and custodial violence is that police officials believe that they immune to use torture in defense of national interest, public purpose and good faith while exercising sovereign function of the State (Nair 1999). Indian legislation contains various provisions providing immunity from prosecution to certain groups of officials for any offence committed in the discharge of Sovereign Functions of the State.

## **2. Organizational Cause:**

### **(i) Work Pressure**

One of the causes of custodial crimes is the tremendous pressure on the police to detect cases whenever there is surge in crime, and particularly heinous crime . several police officers under pressure of work and driven by a desire to achieve quick results, leave the path of patient and scientific interrogation and resort to the use of physical force in different forms, to pressure the witness/suspect/accused to disclose all the facts known to him.

### **(ii) Lack of Supervision**

Administrative reasons like lack of proper supervision of the functioning of the officers at the police station level may instigate commission of custodial violence. Officers at the police stations level feel that their activities are not being monitored by supervising officers. They take the liberty of working recklessly including in perpetration of custodial crimes.

### **(iii) Outdated Police Structure**

The problem of custodial atrocities lies in Police Act, 1861 which is a basic law and remained unchanged. Particularly due to lack of political will to re-define the role and responsibilities of the police officials with recent developments.

## **3. Social Cause:**

Custodial atrocities and Brutality are rampant because of impractical demands and expectation of the society to take tough action. Even a large section of society feels that despite their excesses police carries out a necessary and unpleasant task of preserving and protecting the state

### **4. Economic Cause**

The forms of the corruption are very numerous today. It manifests itself in every stage of the work of the police station. The police officer may levy a fee or receive a present for every duty he performs. The complainant has often to pay a fee for having his complaint recorded. He has to give the investigating officer a present to secure his prompt and earnest attention to the case. More money is extorted as the investigation proceeds. When the officer goes down to the spot to make his investigation, he is a burden not only to the complaint, but to his witnesses, and often to the whole village. People are harassed sometimes by being compelled to hang about the police officer for days, sometimes by attendance at the police station, sometimes by having him and his satellites quartered on them for days, sometimes by threats of evil consequences to themselves or their friends ( specially to the women of the family) if they do not fall in with his view o the case, sometimes by invasion of their houses by low caste people on the plea of searching the property, sometimes by unnecessarily severe and degrading measures of restraint. From all this deliverance is often to be brought only by payment of fees or presents in cash.

### **5. Political Cause :**

Even after six decades after independence, the police in this country is perceived as Authoritarian agent of State rather than an agent of law. Political interference at the local Level, in the higher echelons and in every day functioning. The incentive to bad officers is to benefit

from powerful patronage. Honest officers who discern their duty as serving without bias, fear or favour find themselves labelled as uncooperative, difficult and unhelpful and are sidelined into non-operational roles. Allegiance to power centres outside of the police means that the chain of command is weakened; lines of control get blurred within the force and the ability of superior officers to marshal their forces or make them accountable for wrong-doing is severely compromised. Political interference has a chain reaction and gets institutional in a negative sense resulting in the subversion of existing structures of supervision and control within the establishment. The power of transfer and ability to dam or further the career paths of individual officers make the police unable to resist outside influence, whether this comes from powerful societal or political elements or political superiors. Transfers have become manifest negotiable instruments.

## **5. STRUCTURE OF LEGAL RESTRAINTS ON POLICE POWERS IN INDIA**

There is ample evidence of increasing police deviance in India. Incidents of brutality, extortion and other crimes committed by police officers in different parts of the country are reported in Indian newspapers. Most public complaints against police personnel fall into the following four categories:

- Brutality or excessive use of force;
- Corruption;
- Partiality or bias; and
- Failure to register complaints

The existing mechanisms for calling the police account for their actions can be discussed broadly under two main headings:

1. Internal Accountability Mechanisms.
2. External Accountability Mechanisms

### ***Internal Accountability Mechanisms***

The internal mechanisms for holding individual police officers accountable for their actions are contained in the Police Act of 1861, the state governments. Police Acts and in rules laid down in state Police Manuals. The Police Act of 1861 authorises senior police officers of the rank of Superintendent of Police and above to dismiss, suspend or reduce the rank of any police officer of subordinate ranks whom they think remiss or negligent in the discharge of his or her duties or unfit for the same. They are also authorised to impose one or more of the other punishments, including (a) fine not exceeding one month's pay, (b) confinement to quarters not exceeding 15 days, (c) deprivation of good conduct pay, and (d) removal from any office of distinction or special emolument.

In addition, the Police Act of 1861 lists the following offences for which a police officer can be disciplined:

- (i) a wilful breach or neglect of any rule or regulation or lawful order;

- (ii) withdrawal from duties of the office or being absent without permission or reasonable cause;
- (iii) engaging without authority in any employment other than his police duty;
- (iv) cowardice, and
- (v) causing any unwarrantable violence to any person in his custody. The penalty for these offences ranges between fine of up to three months' pay to imprisonment up to three months or a combination of both.

The rules divide punishments into major and minor. Though the rules differ from state to state, generally, dismissal, removal, reduction in rank or pay and forfeiture of service are regarded as major punishments. They cannot be imposed on any police officer without conducting a regular departmental inquiry. It is only after the inquiry proves the charges against the accused police official that a major penalty can be imposed. Minor punishments include censure and reprimand. They can be imposed without conducting any departmental disciplinary proceedings. Giving major punishments to guilty police personnel is difficult and takes time because the procedure of conducting departmental inquiry is highly elaborate, cumbersome and time consuming. Even if the charges are proved, the delinquent police officer can and generally does go to the court against the findings and punishment imposed.

**External Accountability Mechanisms Judiciary** The courts constitute one of the most important external mechanisms of ensuring police accountability. While writ petitions and public interest litigations can be filed in higher courts, criminal prosecutions can be launched in lower courts. A number of significant judgments have been passed by the higher courts, prescribing safeguards or guidelines to regulate police conduct during arrest, interrogation and other stages of investigation, asking the government to pay compensation in cases of custodial violence, commenting adversely on the police for showing discrimination in the handling of communal and caste conflicts and passing strictures in many cases where defective or inadequate police investigation was noticed.

### **Human Rights Commissions**

The human rights commissions established under *The Protection of Human Rights Act, 1993 (the Act)* provide another means of holding the police accountable in cases of misconduct. The most important of these commissions is the National Human Rights Commission (NHRC), which was established on October 12, 1993. The NHRC undoubtedly has some achievements to its credit, in terms of its efforts to make the police accountable for their actions. However, the Commissions work has suffered due to certain infirmities and deficiencies in the law governing its functioning. The Commission is supposed to be completely independent in its functioning, but there are certain provisions in the Act, which underscore the dependence of the Commission on the Government. The Act makes it dependent on the government for some of its requirements, like manpower and finance.

More importantly, the Act does not authorise the Commission to enquire into complaints of violations of human rights committed by the members of the armed forces. 'Armed Forces', as defined in the Act, means not only the naval, military and air forces but also some central armed police organizations, like the Border Security Force.

### **Non-government organizations**

NGO activities relating to the police are broadly of two types:

- (1) Those concerned with violations of human rights committed by police officers and
- (2) Those concerned with reforms in the working of the police organisation.

The former groups of activities include bringing police atrocities out in the open and putting pressures on the government to take action against the police. Police or government reaction to NGO allegations is usually that of denial. The government is generally reluctant to expose police abuse of power as it could be used against them by the opposition. However, where the documentation of human rights violations is authentic and supported by irrefutable evidence, the government is forced to take action. But documenting human rights violations committed by police personnel poses a major challenge to the NGOs. One problem faced by NGOs advocating for police reforms is the non availability of information about government plans and programmes concerning the police. The police are very reluctant to share information with outsiders, particularly the NGOs. This hampers the work of the NGOs, especially with regard to police reforms. More importantly, there is an element of distrust between the NGOs and the government in the country. The government feels that although the NGOs are ever ready and willing to condemn the police at the drop of a hat, they have no alternative plans to suggest. Those NGOs that receive foreign funding are under greater suspicion. Generally, the government regards NGOs as the mouthpieces of the opposition parties or of international pressure groups.

### **Media**

One of the most vigilant watchdogs over the police functioning in this country is the media. The media in India enjoys a wide measure of freedom. It has enormous reach and power. Technological advances witnessed during the last few decades have revolutionized the world of communications and opened frontiers, which were hitherto unknown to the media or beyond its reach. Any violation of human rights occurring anywhere in the country can be known to the rest of the country in no time, provided the media takes it up. The media has shown great interest in reporting on human rights violations committed by police officers. On the whole, the mainstream national media have been far better than the regional media in covering human rights violations and holding state agencies accountable.

## **6. UNCONSTITUTIONALITY OF THIRD DEGREE METHODS AND USE OF FATAL FORCE BY POLICE**

In India, custodial torture is a serious issue that highlights the need for systemic criminal law reforms and its implementation by law enforcement agencies for better protection of individuals' rights. In 2019, India estimates 1723 custodial deaths have been occurred which constitutes 5 deaths every day. During the custody, police use various third-degree methods to extract confessions and obtain evidence from the accused. Despite the fact that India signed the UN Convention Against Torture (CAT), but India has not ratified this Convention or passed a central law to prevent custodial violence. However, individuals have been guaranteed the right to life and personal liberty under Article 21 of the Constitution of India, emphasising the "right to live with dignity" and well-being of every person. In addition, the National Human Rights Commission (NHRC) constituted under the Protection of Human Rights Act, 1993 addresses violation of human rights, including the custodial torture. Despite these legal safeguards, statistics on custodial deaths indicates systemic failure to prevent the custodial violence through effective implementation of existing laws.

The Indian judiciary played a crucial role in preventing custodial torture through directives issued in various cases, including *D.K. Basu case*, *Arnesh Kumar case*, *Sunil Batra case and others*. In *Arnesh Kumar v. State of Bihar*, the Supreme Court issued guidelines to prevent unnecessary arrests and detention by police officers and Magistrates. In a cognizable offence, the police officer shall serve notice to the accused to appear before him. He shall submit the checklist stating the reasons for such arrest while producing the accused before the Magistrate. After perusing the checklist, the Magistrate upon being satisfied with the reasons mentioned in the report shall detain the accused. In *D.K. Basu v. State of W.B.*, the Supreme Court took suo motu cognizance of the matter based on the Basu's letter, the then Executive Chairman of Legal Aid Services of West Bengal, seeking attention towards news article about deaths in police custody. The Supreme Court issued various guidelines to prevent custodial deaths. Among these guidelines, the Supreme Court suggested that the police officers shall prepare a memorandum of arrest and at least one family member shall be present while arresting him. It is the duty of police officers to refrain from employing coercive methods during the interrogation of accused.

In *Sunil Batra v. State (UT of Delhi)*, the Supreme Court took suo motu based on the letter alleging the torture inflicted by a prison warder upon another inmate. It examined the powers of jail authorities to keep a prisoner in a separate cell. However, Section 30(2) of the Prisoners Act, 1900 does not prescribe any criteria for separate confinement. Thus, the Supreme Court of India struck down the provisions of Section 30(2) of the Prisoners Act on the grounds of arbitrary and violative of prisoners right to life and personal liberty guaranteed under Article 21 of the Constitution of India. In custodial deaths, Magistrate is empowered to hold inquiry under Section 196 of the *Nagarik Suraksha Sanhita, 2023*. At present, Magistrate includes both Judicial Magistrate and Executive Magistrate. However, in *People's Union for Civil Liberties v. State of Maharashtra*, the Supreme Court held that the inquiry in the cases of death by police torture must be invariably conducted by Judicial Magistrate who is empowered to take cognizance of offences under *Section 176 CrPC (now Section 196 of the Nagarik Suraksha Sanhita, 2023)*. It is opined

that the inquiry of custodial deaths may be conducted by Judicial Magistrates rather than Executive Magistrates for a fair trial.

It is imperative to re-examine the scope of police custody to prevent custodial violence and safeguard the rights and well-being of individuals. Section 187 of the Nagarik Suraksha Sanhita, 2023<sup>15</sup> prescribes the procedure when investigation cannot be completed in twenty-four hours. According to this Section, when any person is arrested and detained in custody, and it appears that the investigation cannot be completed within twenty-four hours, the police officer shall produce the accused before a Magistrate. Further, the Magistrate may authorise the detention of the accused in such custody for a term not exceeding fifteen days in the whole, or in parts, at any time during the initial forty days or sixty days out of detention period of sixty or ninety days. If the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of ten years or more, the total detention period is ninety days and investigation relates to any other offence is sixty days. Such enlargement of police custody has legal ramifications such as police officers have adequate time to coerce the accused to make confession or extract the evidence.

At the time of arrest, the police officer may handcuff the accused for certain categories of offences including habitual offenders, repeat offenders of organised crimes, terrorist activities, drug-related crime, rape, murder, acid attack, offence of illegal possession of arms and ammunition, counterfeiting of coins and currency notes, human trafficking, offences against the State or economic offences. However, in *Sunil Batra v. State (UT of Delhi)*, the Supreme Court held that: 197-B. The indiscriminate resort to handcuffs when accused persons are taken to and from court and the expedient of forcing irons on prison inmates are illegal and shall be stopped forthwith save in a small category of cases. Reckless handcuffing and chaining in public degrades, puts to shame finer sensibilities and is a slur on our culture. It also held that the undertrial prisoner has freedom of movement guaranteed under Article 19 of the Constitution<sup>18</sup>, which cannot be curtailed down cruelly by application of handcuffs or other hoops.

In *Prem Shankar Shukla v. State (UT of Delhi)*, the Supreme Court of India categorically held that the routine handcuffing is prima facie inhuman, unreasonable, arbitrary and violative of Article 21 of the Constitution of India. It also issued directives that the police officer must show reasons to the Presiding Judge behind handcuffing a person and shall obtain Judge's approval. The Judge shall authorise the use of handcuffs only when there is no other reasonable way to prevent escape in such circumstances. There is a need to enact comprehensive legislation to address the complex issues pertaining to custodial torture caused by the intersection of criminal law and constitutional rights. Such law should prevent custodial torture and punish erring public officials by conducting prompt investigation and trials. It is necessary to conduct police training programs to uphold accountability and empathy towards citizens. In addition, civil society organisations should conduct public awareness campaigns and advocate for necessary legal reforms to bridge enforcement and implementation gaps to ensure that individuals' rights are protected.

## 7. RAPE AND RELATED FORMS OF GENDER BASED AGGRESSION BY POLICE AND REFORMS SUGGESTIONS ESPECIALLY BY THE NATIONAL POLICE COMMISSION

More than 270 cases of rape in custody were registered from 2017 till 2022, according to NCRB data, with women rights activists attributing such instances to lack of sensitisation and accountability within law enforcement systems. The offenders include police personnel, public servants, members of the armed forces and staff of jails, remand homes, places of custody and hospitals, according to the data of the National Crime Records Bureau (NCRB).

The data highlights that there has been a gradual decrease in such cases over the years. In 2022, 24 cases were registered, down from 26 in 2021, 29 in 2020, 47 in 2019, 60 in 2018 and 89 in 2017. Cases of custodial rape are registered under Indian Penal Code section 376 (2). It pertains to the offense of rape committed by a police officer, jailer, or any other person who has the lawful custody of a woman. This section specifically deals with cases where the perpetrator takes advantage of their position of authority or custody to commit the crime of rape against a woman.

Here are some incidents of rape and gender-based violence committed by police officers in India:

- **Custodial rape:** Between 2017 and 2022, 275 cases of custodial rape were registered, with police officers among the offenders. Uttar Pradesh had the highest number of cases at 92, followed by Madhya Pradesh at 43.
- **Police misconduct:** A 2023 pilot program in Maharashtra that trained new officers reduced complaints of police misconduct by 12%.
- **Police delay in filing FIRs:** In some cases, police have delayed filing FIRs for rape.
- **Victim-shaming:** Victims of sexual violence are often shamed, as in the case of Radha, who was accused of defaming her village after speaking out against her rapists.
- **Police humiliation:** Women who report rape to the police may face humiliation and ridicule. Some factors that contribute to custodial rape include: Patriarchal social norms, Inadequate gender-sensitivity training for law enforcement, Stigma surrounding victims, and Corruption within the legal and law enforcement systems.

To address gender-based violence, some recommend:

- Scaling up training for new police officers
- Improving transparency by publicly disclosing the outcomes of misconduct investigations
- Taking swift legal action against custodial deaths and sexual violence perpetrated by law enforcement

- Implementing Women's Help Desks

### **The National Police Commission (NPC)**

The National Police Commission (NPC) was appointed by the Government of India in 1977 with wide terms of reference covering the police organisation, its role, functions, accountability, relations with the public, political interference in its work, misuse of powers, evaluation of its performance etc. This was the first Commission appointed at the national level after Independence. The Commission produced eight reports between 1979 and 1981, suggesting wide ranging reforms in the existing police set-up.

The following recommendations have been selected from first reports of the NPC:

#### *First Report:*

Complaints against the police:

According to the NPC, any arrangement for inquiry into complaints against police should be acceptable both to police and public as fair and just. The Commission therefore suggested arrangements, which would include inquiries conducted by departmental authorities and those conducted by an independent authority outside the police. The Commission felt that a large number of complaints against police should be looked into and disposed off by the supervisory ranks in the police hierarchy. The Commission however recommended that a judicial inquiry should be made mandatory in the following categories of complaints against the police:

- alleged rape of a woman in police custody;
- death or grievous hurt caused while in police custody; and
- death of two or more persons resulting from police firing in the dispersal of unlawful assemblies.

The judicial inquiry should be held by an Additional Session's Judge nominated for this purpose in every district by State Government in consultation with the High Court. He will be designated as the District Inquiry Authority (DIA) and be assisted by an assessor. The DIA shall send the report of the inquiry to the State Government. It will be mandatory on the part of the government to publish the report and decisions taken thereon within two months of receipt of the report. The DIA shall also serve as an independent authority to oversee the ultimate disposal of complaints dealt with departmentally. To oversee the satisfactory implementation of the entire scheme, a Police Complaint Board should be set up the state level.