

## **““I Can’t Breathe!”: A Look into the Deep-Rooted issue of Police Brutality and what One must know to Combat it”**

*Winnie Mathew  
Symbiosis Law School,  
Hyderabad*

### **Introduction**

“I can’t breathe, Officer”. These were the haunting last words of a helpless, unarmed black man named George Floyd who was choked to death on the 25<sup>th</sup> of May, 2020, by a Minneapolis police officer who knelt down on his neck<sup>1</sup>. This horrific incident of police killing is eerily similar to the death and last words of Eric Garner, a 43 year old black man who was killed because of a chokehold by New York police officers in 2014<sup>2</sup>. In the past decade, the American police forces have been under constant criticism and fire over instances of abuse of power and harassment.

India too, is now more divided than ever with deep rooted discrimination and hate crimes on the rise on the basis of religion, class and caste. When corruption, bias, exploitation and prejudice runs deep in the system, knowledge of our rights and laws in place is crucial. Lack of knowledge of provisions which provide relief and remedy in case of police harassment, in most cases gives way to exploitation at the hands of these authorities. Ignorance about the legal facilities available to citizens in encounters with the police has in many cases proved fatal and placed the citizen in unnecessary hardships and inconvenience. India has seen decades of abuse, torture and other police excesses in several cases and the only way these atrocities can be combated and limited in the future is through sound knowledge of one’s rights and the procedure to be followed. There are a few provisions of law or golden principles which every citizen should be aware of in order to protect themselves from harassment and abuse in situations when dealing with the police.

### **Custodial deaths, torture and illegal detention**

The Indian judiciary and courts have through countless judgements, condemned inhuman approaches and violent methods adopted by police officials in the treatment of persons in their custody. *Nothing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts a deeper wound on our constitutional culture than a state official running berserk regardless of human rights*<sup>3</sup>.

---

<sup>1</sup> Laurin- Whitney Gottbrath, George Floyd death: Pressure mounts for US officers to be charged, Aljazeera, <https://www.aljazeera.com/news/2020/05/george-floyd-death-pressure-mounts-officers-charged-200528004535033.html> (last visited May 28, 2020)

<sup>2</sup> Joseph Goldstein & Nate Schweber, Man’s death after chokehold raises old issue for the police, The New York Times, <https://www.nytimes.com/2014/07/19/nyregion/staten-island-man-dies-after-he-is-put-in-chokehold-during-arrest.html> (last visited July 18, 2014)

<sup>3</sup> Kishore Singh v. State of Rajasthan, AIR 1981 SC 625

In 1993, a man in custody of the police force in Orissa was brutally tortured to death and then was thrown on railway tracks. The officers involved concocted a story saying the man escaped custody and succumbed due to injuries from a train accident. The Supreme Court dismissed the police officers' contentions and held that convicts, prisoners, and under trials also have rights under Article 21 of the Constitution<sup>4</sup>. Custodial deaths are one of the most gruesome crimes that pertain in a civilised, constitutional society.

Section 57 of the Code of Criminal procedure, 1973 and Article 22 of the Indian Constitution serve to prevent abuse by police officers. If a person has been kept in custody for more than 24 hours without being produced before a magistrate, it will amount to illegal detention and that person is entitled to be free and set at liberty at once.

### **Entitlement of bail for a bailable offence**

When a person provides the required surety as per the provisions of the Code of Criminal Procedure, in the case of a bailable offence, he need not be detained by the police even for a minute after bail has been granted<sup>5</sup>.

### **Right to know the reason for arrest**

When taken under arrest, that person in custody of the police has a right to know for which offence committed by him the police have detained him. Furthermore, it is one of the duties of a police officer to declare the offence alleged to have been committed by the person under arrest, at the time of arrest.

### **Police cannot enter the dwelling place at any time**

Every citizen is entitled to maintain his or her privacy and even the police cannot enter the place of dwelling at any given time, unless in cases where it is warranted. Normally, the police isn't permitted to visit the dwelling place after sunset and before sunrise. Unless a search warrant is granted, the police aren't permitted to break into a house and conduct investigation, as they please.

### **Police cannot handcuff an accused person**

The Supreme Court through various judgements, like that in *Prem Shankar Shukla v. Delhi Administration*<sup>6</sup> has strongly shown clear disapproval of the practice of handcuffing accused persons unless in rare cases where the approval of the court has been sought. The right not to be handcuffed by the police is a precious right to be remembered when a person is in police of

---

<sup>4</sup> Nilabate Behera v. State of Orissa, (1993) 2 SCC 746

<sup>5</sup> Janak Raj Jai, Universal's Bail, Law and procedures, 175 (2<sup>nd</sup> ed. 2001)

<sup>6</sup> Prem Shankar Shukla v. Delhi Administration, AIR 1980 SC 1535

judicial custody. This comes under the purview of Article 21 of the Indian Constitution and speaks volumes of the importance the Supreme Court places in ensuring the Right to life and personal liberty of a person.

### **Right to inform relatives**

When under arrest and kept in police custody, the arrested person is entitled to a phone call to inform his nearest relative. Furthermore, it is a duty of the police to inform the arrested person's relative of his arrest.

### **Right to Silence**

One is not bound to answer the questions posed by a police officer. It is of essence to remember that one cannot bear witness against himself, i.e., one cannot self-incriminate. The Supreme Court has in many cases condemned the use of third-degree force by the police in order to force answers out of persons. The person's right of remaining silent is protected and regarded by the court as seen in the case of *Nandini Satpathy v. P.L. Dani*<sup>7</sup>.

### **Right to Counsel**

There have been many instances where the police have adopted inhuman and brutal measures, and posed questions, not permitted by law in order to extract a confession or a few answers from the person under interrogation. Knowledge of whether the procedure is as per law is essential and so is having the right to a Counsel, which ensures that the person's rights aren't infringed and the procedure followed is recognized by law.

### **Use of third degree method isn't permitted**

*It is not admissible to do a great right by doing a little wrong... It is not sufficient to do justice by obtaining a proper result by irregular or improper means*<sup>8</sup>.

Third degree is a euphemism for torture. The police or any investigating agency for that matter isn't permitted to use force, pressure or coercion in the process of investigating an offence alleged to have been committed by a person.

### **Women and minors below the age of 15 cannot be called for interrogation**

The police cannot force women or minors below the age of 15 years to come to the police station for interrogation. The Supreme Court has passed strict and detailed orders against investigating agencies harassing women in the due process of investigation and interrogation<sup>9</sup>.

---

<sup>7</sup> *Nandini Satpathy v. P.L. Dani*, (1978) SCR 678

<sup>8</sup> *Nandini Satpathy v. P.L. Dani*, (1978) SCR 678

### **Arrest without warrant**

There are circumstances in which the law permits the arrest of a person without a warrant or order from the magistrate. This is recognized under Section 41 of the Code of Criminal procedure, 1973. The Police Act of 1949 also recognizes this duty of a police officer to take into custody without a warrant, any person within his view who is a source of risk or danger to the residents or passengers through various incidents like- Slaughtering animal, furious riding; Cruelty to animals; Obstructing passengers; Exposing goods for sale; Throwing dirt into streets; Being drunk or riotous; Indecent exposure; Neglect to protect dangerous places<sup>10</sup>.

### **Other police excesses**

In the city of Bangalore, separate instances of racial discrimination and harassment were reported in April, 2020 when police officers targeted men from the north-east amidst the panic due to COVID-19. Ill-treatment and making loose, baseless statements blaming a pandemic on citizens from the north-eastern part of the country is a form of harassment at the hands of police officers.

There have been numerous cases which have brought to light the brutal reality of how individuals are treated and tortured by the police. From amputation of the male organ<sup>11</sup> to torture and harassment induced suicide<sup>12</sup>, the brutal methods adopted by the police has in many cases been inhuman and ghastly. Duty of prosecution is not to secure a conviction but to fairly place the relevant evidence before the court.

### **Conclusion**

One must be prepared for any encounter with the police at all times. Knowledge of how to conduct oneself, the procedure set by law, the duties of the police and rights protected by law can prove to be an important asset to prevent and combat harassment and police brutality.

*“Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.”*

*- Martin Luther King Jr.*

---

<sup>9</sup> *Ibid.*

<sup>10</sup> Janak Raj Jai, Universal's Bail, Law and procedures, 82 (2<sup>nd</sup> ed. 2001)

<sup>11</sup> C.B.I v. Kishore Singh (2011) 6 SCC 369

<sup>12</sup> Vinod Kumar Rajput Case [Case No.1412/12/98-99(FC)]