

POLICE IGNORING HUMAN RIGHTS TO ENFORCE COVID LOCK DOWN RESTRICTIONS: HOW FAR JUSTIFIED?

"When you have Police Officers who abuse citizens, you erode public confidence in law enforcement. That makes the job of good police officers unsafe."—Mary Frances Berry

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As there is no choice given, exposing themselves and their families to the deadly virus COVID-19, the police personnel have done a commendable job across India in the most unprecedented difficult times of the global pandemic. At the same time, some of the publicly exposed actions of certain policemen, especially the visible human right violations are sad and unwelcomed by the judicial branch of civil society and the rational police officers. The irrational policemen not only trampled down the human rights of the victims, but also brought disrepute to the relentless efforts of the committed police officers.

It is quite understandable that police need to apply force occasionally to deal with unruly antisocial elements in the society. The police are, therefore, equipped by legal powers as well as arms like pistols, rifles, lathis and other modern weapons. However, this does not mean that they can use those powers and weapons indiscriminately. The tragic custodial torture and deaths of father and son, *Jeyaraj* and *Bennix* of Tamil Nadu and the death of 32 years old man in Howrah District of West Bengal within hours of his arrest, the death of another 19 years old in Uttar Pradesh and numerous other such incidents across the country during COVID-19 lockdown raise the repeatedly asked question once again *'Why can't India end police brutality?'*¹ a question that challenges the 70 years old Democracy.

Obviously the police are expected to use their powers and weapons in a just manner

being well aware of the legal limitations of the powers given to them in-line with the demands of protection of human rights of the people. Though, the legal framework of human rights is part of the curriculum of the police training, evidently, they don't seem to understand the seriousness and sensitivity of the subject. On the other hand, there are no actions taken when the police violate human rights under the colour of their lawful duties. Except for a few instances neither the Government nor the superior police officers care about such over-enthusiastic actions by police which can be termed as abuse or misuse of their powers. Often, being tough vs being rude are misunderstood by some police and some feel that both are justified in course of policing job.

This article endeavours to discuss the plight of the people whose human rights got trampled under the police actions in the name of getting compliance with COVID-19 restrictions. The powers police officers normally have by virtue of their office and the rules of the corona virus lockdown are presented at the outset for a proper understanding of the issues highlighted by the paper. The challenges of the police personnel in dealing with stressful nature of their job, though not justifications for their out-of-limitations behaviour, have been discussed in regard of the rights and human nature of police. The article while emphasizing the lack of police legitimacy as a threat to police community relations, argues

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1. *Sumithra Prasanna*, Why Can't India End Police Brutality? A horrifying case from Tamil Nadu once again demonstrates the lack of accountability for India's police. The Diplomat, 1st July, 2020. <https://thediplomat.com/2020/07/why-cant-india-end-police-brutality/>

for the need for proper steps to be taken to assure the discharge of police duties within the legal prescriptions. The paper highlights the need for strict and immediate actions be taken when police fail to comply with legal requirements and also the need to address the grievances, forthwith, of the victims of such excessive policing.

1. Legal Framework of Use of the Force by the Police

Upholding the law and order in the society, enforcing laws, investigating crimes and ensuring security of the people in the State are the primary duties of the police. To perform their role, police need to be properly equipped with adequate number of personnel, suitable weaponry and appropriate powers. Further, while it is important for them to have operational freedom and proper work conditions to fulfil their professional responsibilities it is equally important to hold them accountable for abuse/misuse of their powers as well as for their poor performance². The police organization of each State is governed by its own State laws and regulations, which are designed based on the Police Act, 1861 which is a central legislation³. The Model Police Act came into existence in 2006 with a view to replace the 1861 Act. However, only some of the States⁴ have passed new laws or amended their existing laws in accordance with the Model Law.

The important powers of police officer relevant to the purposes of this paper,

specially relating to use of force by the police, fall under the provisions of the Code of Criminal Procedure, 1973. By virtue of Section 46(1) of the Code the police need not use any force as such in making the arrest, however he can actually touch or confine the body of the person to be arrested, unless there is a submission to the Police custody. In other words, if the person to be arrested voluntarily submits to arrest the need to really touch the body of the person to be arrested would not arise. The actual use of force authorized by the Code is in cases where there is resistance to arrest or attempt to evade arrest⁵. Under this section the police officer may use *all means necessary* to effect arrest. Though the phrase *all means necessary* appears to be very broad it does not empower the police officer to cause death if the grounds of arrest do not include an offence punishable with death or with imprisonment for life⁶. Section 129 of the Code of Criminal Procedure, 1973, while allowing the use of force in the dispersal of an unlawful assembly does not address the amount of force that may or may not be used for the purposes of the section. Under this provision police are empowered to use force to handle agitations, protests, rioting, unruly mobs and unlawful assemblies⁷. The police are protected against prosecutions for acts done under these circumstances⁸.

Further, the international prescriptions of law on the issue are incorporated in *'the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990'* which

2. "Public Order", Second Administrative Reforms Commission, 2007, <http://arc.gov.in/5th%20REPORT.pdf>; "Police Organization in India", Commonwealth Human Rights Initiative, 2015, <http://www.humanrightsinitiative.org/download/1456400058Final%20Police%20Org%2in%20India%202016.pdf>; *Prakash Singh v. Union of India*, Supreme Court, Writ Petition (Civil) No.310 of 1996, November 8, 2010; "Building SMART Police in India: Background into the needed Police Force Reforms", NITI Aayog, 2016, http://www.niti.gov.in/writereaddata/files/document_publication/Strengthening-Police-Force.pdf.
3. Police Reforms in India, <https://www.prsindia.org/policy/discussion-papers/police-reforms-india#:~:text=Police%20has%20the%20power%20to,and%20order%20in%20a%20state.&text=In%20India%20the%20political%20executive,forces%20to%20ensure%20their%20accountability>.
4. 17 States (Assam, Bihar, Chhattisgarh, Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Maharashtra, Meghalaya, Mizoram, Punjab, Rajasthan, Sikkim, Tamil Nadu, Tripura and Uttarakhand) passed new laws or amended their existing laws in light of this new model law.
5. Section 41(2) of the Cr.PC, 1973.
6. Section 41(3) of the Cr.PC, 1973.
7. These provisions are covered by the Code of Criminal Procedure, 1973, the Indian Penal Code (Sections 141, 158), 1860, and The Police Act, 1861.
8. Sections 129-132 of the Code of Criminal Procedure, 1973.

require the law enforcement officials, to apply non-violent means, as far as possible, before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result⁹. In addition these officials are required to be very cautious and exercise restraint in the use of lawful force and fire arms is unavoidable. The use of such force should be proportion to the seriousness of the offence and the legitimate objective to be achieved. All care must be taken to minimize damage and injury with due respect to human life and preserve the same¹⁰. The Basic Principles also require the Governments to ensure that arbitrary or out-of-limitations use of force and firearms by law enforcement officials is punished as a criminal offence under their law¹¹.

Unfortunately, due to the absence of any suitable law that can perfectly apply to the present pandemic, the Government has resorted to a piecemeal kind of approach, putting together¹² provisions from grand old, outdated laws and new laws as well¹³. It is kind of *ad hoc* and reactive rule making approach that has been adopted to deal with the Corona virus pandemic. The lockdown was announced by the Ministry of Home Affairs invoking Section 6 of the Disaster Management Act of 2005, designating the

spread of Corona virus as a *notified disaster* bringing it under the ambit of Section 2(d) of the said Act¹⁴. Further, *guidelines* for the enforcement of the lockdown period and measures to be taken by the Central and State Governments for the containment of the disease have been issued by the National Executive Committee¹⁵. Liability for violating these containment measures has been mentioned in Paragraph 17 of the guidelines stating that the violators shall be penalized under Sections 51-60 (Offences and Penalties) of the Disaster Management Act, and under different sections of the Indian Penal Code, 1860 relevant to the violations of the orders of public servants. Section 188 punishes the disobedience to orders duly promulgated by a public servant and Section 271 IPC, punishes knowingly disobeying the rules of the quarantine period and lockdown also leads to prosecute individuals under this provision¹⁶.

Various State Governments and authorities, based upon the above mentioned guidelines, issued further directions, under the Epidemic Diseases Act of 1897, to impose social distancing and isolation measures¹⁷. Subsequently, orders have been issued by District authorities like Commissioners of Police, to impose Section 144 of the Code of Criminal Procedure to restrict gathering of people in public places¹⁸. Under Section 144

9. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, 1990,

10. *Id*

11. *Id*.

12. Declaration of the Lockdown and certain guidelines for the enforcement of the lockdown was under the National Disaster Management Act, 2005, instructions for imposing social distancing and isolation measure was under the Epidemic Diseases Act of 1897, offences in violation of these rules to be punished under the Indian Penal Code, 1860 as well as under National Disaster Management Act, 2005 and then to prevent gathering of people under Section 144 of Criminal Procedure Code, 1973.

13. For instance, the Health and Family Welfare Department of Tamil Nadu issued a Government order on March 23, 2020. These instructions required the “suspected cases and foreign returnees” to remain “under strict home quarantine” and people “to stay at home and come out only for accessing basic and essential services and strictly follow social distancing norms”.

14. *Tanay Goyal*, COVID-19: The Law of the Lockdown, JURIST – Student Commentary, April 25, 2020, <https://www.jurist.org/commentary/2020/04/tanay-goyal-india-lockdown/>

15. Under Section 10(2)(l) of the Disaster Management Act, 2005.

16. Section 269 IPC, negligently doing any act in order to spread the disease in the community. Section 270 IPC, doing any act maliciously knowing that it is more likely to be spread infection of any disease.

17. *Manuraj Shannugasundaram*, ‘India Needs to Enact a Covid-19 Law’ The Hindu, 8th May, 2020. <https://www.thehindu.com/opinion/lead/india-needs-to-enact-a-covid-19-law/article31529036.ece>

18. *Id*

of the Criminal Procedure assembly of four or more people is prohibited, to ensure that people do not go out during the lockdown to contain the spread of the corona virus. People violating Section 144 can be arrested and detained by the police.

However, the Government did not authorize the police to use force to enforce the lockdown. The Police Foundation of India issued Guidelines for *Policing and Protection of Rights during the Pandemic*¹⁹. In view of the precautions to be taken to avoid crowding of people several bars are imposed on police actions such as as far as possible arrests must be avoided relation to bailable offences, police must avoid arrests merely for breaking curfew, and all preventive arrests *etc.* Also the Police Foundation recommended the relaxation of restrictions on the freedom of speech and expression and right to peaceable assembly under Article 19(1)(a) and (b) of the Constitution. It further added that, “*As always, any use of force in managing the assembly must be proportionate and only when necessary; and authorized by law in accordance with procedural safeguards, and mandated procedures on initiating use of force and reporting on force always used. The Standard Operation Procedure for this purpose should state that all use of force will be investigated, and excess force penalized*”²⁰. Therefore, naturally, it goes without saying that the force to be used should be reasonable enough to get the compliance of the pandemic regulations and not any more. But, unfortunately, in several incidents across the country police has shown decimal regard for these guidelines and utter disregard of human rights of the victims.

2. Excessive Policing During COVID-19 Lockdown: Human Rights Trampled Down

During national lockdown media rightfully appreciative of police, aired heart touching and sacrificial stories of the efforts made by the police as well as the medical personnel to handle the challenges of the pandemic at the expense of exposing not only themselves but also their families to the fatal disease. At the same time, sadly some of the police personnel seem to believe that use of force for the effective discharge of their duties is normal and even necessary. Such belief added fuel to the fire, when police with such belief tried to force people compliant to recent Corona virus lockdown restrictions throughout the country²¹.

Sadly, there have been disheartening accounts of human rights violations by the police during such difficult times as this pandemic took people of the nation by surprise and panic. People, including doctors who were on their way to attend their emergency duties, journalists capturing news and returning to their homes, people coming out to buy vegetables and provisions²², were slapped, hit by lathis, subjected to undue pressure, and the people included are vendors of vegetables and other essential commodities. The police beatings even resulted in fractured skulls, broken bones and severely bruised bodies of the citizens²³. People had to taste the Lathis in Bengal, Bihar, Gujarat, Haryana, Maharashtra, Nagaland, Karnataka and several other States²⁴. A study on migrant workers that were forced by the lockdown conditions to return to their respective places revealed that ‘one in every four’ migrant

19. The Police Foundation of India. Policing and Protection of Rights during the Pandemic. https://www.policefoundationindia.org/images/resources/pdf/NHRC_Covid_Committee_Submissions_for_Policing.pdf

20. *Id.*, at P.9.

21. Roban Venkataramakrishnan, ‘The Indian Police must understand that corona virus cannot be beaten with a lathi’, Arbitrary State violence will not help win public cooperation. Scroll.in Mar. 26, 2020 • 09:52 am <https://scroll.in/article/957269/the-indian-police-need-to-understand-that-coronavirus-cannot-be-beaten-with-a-lathi>

22. Lockdown ----- 25th March, 2020. <https://www.livehindustan.com/uttar-pradesh/story-police-lathi-charge-on-public-gathering-in-vegetable-market-of-mahrajganj-during-lock-down-3107003.html>

23. Internet has lots of pictures and videos as proof of this sad state of affairs.

24. ‘Why India’s Police Consider the Use of Violence Normal’, Article 14.com, 13th May, 2020. <https://www.article-14.com/post/why-india-s-police-consider-the-use-of-violence-normal>

workers faced police excessiveness while going home²⁵.

In various incidents, peoples' vehicles were seized by police without legal boundaries, caused serious inconveniences to the people far away from home²⁶. There were many complaints on the damage to the vehicles on the road as well as in the residential areas. The lack of accountability from the police officers on the above said complaints was, to the surprise of the Chief Justice that *'they used lathis on vehicles to check whether corona virus was there in the vehicles'*. From this, one can only imagine the considerations that the police have for the rights of the citizens²⁷. The out-of-limitations actions of the police was further found by the High Court in their submission of counter-affidavit containing a series of discrepancies relating to the reports of injuries and the statements of injured persons. There were Public Interest Litigations filed by a social activist²⁸ urging the Court to do justice to the grievances of victims of the arbitrary acts of police including chasing, assaulting, lathi charging, of people during the COVID-19 lockdown across India. For instance, activists approached Telangana High Court lamenting over the tragic situation that the police were acting without any clarity on the point that how they should treat the people during the enforcement of the lockdown restrictions. And there seem to be no proper awareness

of the instructions to the police from the Ministry of Home Affairs on the issue²⁹.

In Khammam District of Telangana State, allegedly, two doctors in separate incidents, who were on their way to their duties were stopped, disrespected and manhandled by the ACP. One of those doctors was a female postgraduate medical student³⁰. The tragic state of human right violations by the police actions resulting in the death of the victims are mentioned in the following paragraphs.

In Howrah District of West Bengal, a 32 years old man went out of his house to bring milk. This man was severely beaten up by the police, just for appearing on the road during lockdown and sadly he succumbed to death within hours of the said attack³¹.

In Uttar Pradesh a 19 years old boy, belonging to Chhajapur Village went out to buy biscuits, was severely assaulted with rifle butts and lathis by the police. Seriously injured by the attack, the boy managed to reach home and later was hospitalized after the home remedies failed to give relief. He died on the third day of his ill-fated encounter with the police³².

In Tamil Nadu, another incident occurred in violation of human rights where a father and son lost their lives to the overpowered

25. '1 in 4 migrant workers faced police brutality while going home ...' Times of India, 9th November, 2020. http://timesofindia.indiatimes.com/articleshow/79125333.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

26. 'A timeline of alleged police brutality in Telangana amid the COVID-19 lockdown', The News Minute, 1st May, 2020. <https://www.thenewsminute.com/article/timeline-alleged-police-brutality-telangana-amid-covid-19-lockdown-123718>

27. Used lathis on vehicles to check if they have corona virus: Police to Telangana HC', The Print, 18th June, 2020 <https://theprint.in/judiciary/used-lathis-on-vehicles-to-check-if-they-have-coronavirus-police-to-telangana-hc/443963/>

28. A Hyderabad-based social activist *Sheela Sarab Mathews*, had filed a PIL against the delinquent police personnel, arguing the police action was not only arbitrary but also illegal.

29. *Id*

30. 'Female doctor alleges manhandling by Telangana cop during curfew', Business standard, 25th March, 2020. https://www.business-standard.com/article/news-ani/female-doctor-alleges-manhandling-by-Telangana-cop-during-curfew-120032500115_1.html; 'Doctors accuse Khammam ACP of misbehavior', Telangana Today, 24th March, 2020. <https://telanganatoday.com/doctors-accuse-khammam-acp-of-misbehaviour>.

31. 'West Bengal: Man Who Was Buying Milk Dies Hours After Police Thrash', The Wire, New Delhi, 26th March, 2020. Him" <https://thewire.in/rights/west-bengal-police-curfew-man-thrashed-dies>

32. *Nathanael, M.P.*, (Retired Inspector General of Police, CRPF) 'Licensed to beat, abuse and kill', The Hindu, 18th May, 2020. <https://www.thehindu.com/opinion/op-ed/licensed-to-beat-abuse-and-kill/article31609626.ece>

police actions. *Jeyaraj* (59 yrs.) alongwith *Bennix* (31 yrs.) kept their mobile shop open after 8 p.m., and it was beyond the time limitations of the lockdown rules. These two men were arrested and forced to the Satankulam Police Station and were beaten up severely, and subjected to out-of-limitations humiliations. The victims' friends who were also lawyers came to the police station but were not allowed by the police officers to enter inside. While they were waiting there for about three hours, they could hear the helpless crying and screaming of the victims in pain. One of them managed to peep inside and found *Bennix* in a pool of blood lying on the floor. Later the police shifted both of them to a hospital near to the police station. Both the victims were having profuse bleeding from their rectums and were in hopeless condition. However, the police managed to get the orders of the District Magistrate, by producing a medical fitness certificate, to shift them to Kovilpatti Jail located 100 Kilometers away from the hospital. After they were taken to the jail both the victims' health condition seriously deteriorated and were shifted to hospital once again where both of them died within a day gap.

Custodial violence shocked the nation for the first time in the well-known *Madhura* case where a teenaged tribal girl was raped by two police men in the police station³³. Unfortunately, from that case to the recent custodial deaths of *Jeyaraj* and *Bennix*, police out-of-limitations actions continue to exist unabated and nothing changed irrespective of the 40 long years of relentless efforts from judiciary, political push, will of the people of India and including the efforts of the social activists against such illegitimate conduct of the agents of law enforcement.

These are only some of the many unfortunate incidents that have happened

during the pandemic lockdown should remind all of us about reforms to be brought about in policing in India.

3. Remedies available against Human Rights Violations associated to policing

In view of the above concerns, it is imperative to understand the legal framework for pursuing grievances resulted from police excesses. The responsible police officers can be made liable under criminal law, and tort law apart from the constitutional remedy that can be invoked pursuant to Article 21 of the Indian Constitution. Remedies, including compensation, can be sought before the High Courts and the Supreme Court under the Constitution of India for violations of fundamental rights. However, these constitutional Courts are not easily accessible for the people that cannot afford to pay the expenses of a High Court Advocate. In addition, the burden of proof is very high in these cases of use of excess force by the police³⁴. The usual victims of police violence are too poor to seek justice in Higher Courts. And it is noteworthy that people who are well off to bear with such expensive legal proceeding are usually not the victims of police violence.

The landmark judgment of the Supreme Court in the case of *Rudul Sah v. State of Bihar and another*³⁵, laid foundation for the compensatory jurisprudence in cases of violation of fundamental rights. In *Bhim Singh v. State of Jammu and Kashmir*³⁶, where the police arrested and imprisoned the person with mischievous and malicious intent, it was considered as gross violation of the constitutional right of the accused person under Articles 21 and 22(2). The Court held that it was a tort of false imprisonment and one of the most severe forms of human rights violations. A remedy under tort law by filing a civil suit for compensation is available for police misconduct. But,

33. *Tuka Ram and another v. State of Maharashtra*, 1979 AIR 185, 1979 SCR (1) 810.

34. In order to avoid misuse of such provisions, the SC has also laid down in *Sube Singh v. State of Haryana*, Writ Petition (Crl.) No.237 of 1998, Date of Judgment 3.2.2006, that standard of proof for proving such police brutality is high, and only in cases of patent violation of fundamental rights can this remedy be availed

35. 1983 AIR 1086

36. AIR 1986 SC 494

sovereign immunity is often pleaded as a defence. However, in the case of *Nilabati Behara v. State of Orissa*³⁷, the Supreme Court resolved the issue relating to the application of the principles of sovereign immunity in the spheres of private and public law and awarded compensation under Articles 32 and 226 of the Constitution, reinforcing the principles of equity and natural justice to the victims of police excessiveness.

In addition to the qualified Sovereign immunity, the other protection the police personnel have is under Sections 197 and 132 of the Code of Criminal Procedure, 1973. These sections protect police from vexatious litigation. In the case of *Jaysingh Wadhu Singh v. State of Maharashtra*³⁸, it has been observed that the accused police officer needs to show satisfactorily that the alleged crime had a direct nexus with the performance of an official duty. Obviously, any acts violating the fundamental rights fall outside the purview of official duties, and therefore the above mentioned provisions will not be of any help to protect the public servant from prosecution.

To prosecute police in a Court of law, for actions purporting to be done in their official capacity, *there is the necessity of prior sanction from the Government*³⁹. The police, are liable for assaulting someone with lathi just as anyone else would be legally under the provisions of the Indian Penal Code, 1860 for thrashing anybody. However, Section 330 of Indian Penal Code is applicable to police for injuring or threatening to injure somebody to obtain a confession, and likewise Section 340 of the IPC applies for

keeping somebody in wrongful confinement i.e., illegal detention.

Finally, relief that can be claimed before the National and the State Human Rights Commissions established under the Protection of Human Rights Act, 1993. This remedy doesn't appear to be of great use since the recommendations of these Courts are not binding on the respective Governments. Added to that, these commissions are not there in every State, in some States they are not functional and around 10 Commissions the post of Chairpersons remain vacant.

The whole issue of the irrational behaviour of some of the members of the police needs to be considered from the psychological aspects as well. With their commendable services during the COVID-19 lockdown, most of the police personnel won the hearts of the people. The field of psychology has approached this issue of police temperaments and the occupational phenomena such as burnout *etc.* and stresses the need to address the problem with sensitivity.

4. Challenges and Human Rights of the Police

While discussing the human rights violations against the general public, it is not justified to forget that police are human too. Just and fair procedure demands consideration of the case on both sides with equal concern. One cannot deny the fact that every job carries its own burdens and costs. In its report of 2009⁴⁰ the Human Rights Watch⁴¹ stated that the police were overstretched and outmatched in fighting

37. AIR 1993 SC 1960.

38. 2001 BomCR Cri., (2001) 1 Bom. LR 205, 2001 Cri. LJ 456, 2001 (3)

39. *D.T. Virupakshappa v. C. Subhash*, (2015) 12 SCC 231. This protection granted to the police became controversial since the National Police Commission pointed out its inefficacy, in 1981 and recommended that it be repealed. A 2009 report from Human Rights Watch entitled 'Broken System: Dysfunction, Abuse, and Impunity in the Indian Police', urged that Section 197 of Cr.PC, be either repealed or, that 'unconstitutional conduct such as arbitrary detention, custodial torture and ill-treatment, and extra-judicial killings' be specifically excluded from its scope. However, these suggestions have gone unheard by the Indian Parliament. See for a complete discussion on the topic, *Gaurav Mukherjee* "The Prior Sanction Requirement under Indian Public Law" (OxHRH Blog, 18th May, 2015) <<http://humanrights.dev3.oneltd.co.uk/the-prior-sanction-requirement-under-indian-public-law/>>

40. "Broken System: Dysfunction, Abuse and Impunity in the Indian Police, 2009. <https://www.hrw.org/sites/default/files/reports/india0809web.pdf>

41. HRW is an important international agency concerned with the protection and promotion of human rights.

against pressing problems of India such as armed militancy, organized crime, and religious and caste violence. The status of police-public relations in India is not a happy one. Public prefer to keep away from the police out of fear⁴². Political leaders often complicate the matters by intervening in police operations to protect influential offenders⁴³.

The Supreme Court, in *Prakash Singh v. Union of India*⁴⁴, held that as per the constitutional requirements the police are to perform two main roles: *Firstly*, as a law enforcement agency and *secondly*, as an institution to protect citizens' rights with autonomy, accountability and efficiency. The Code of Conduct for the Police in India of 1960 insists that police personnel recognize themselves as members of the public. The stress on the police with so much of expectations from them is not an easy one to handle.

The National Institute on Workers' Compensation in USA lists the police officer's role as one of the 'ten toughest jobs'⁴⁵. The police get exposed to work in life endangering situations, experience distress and misfortune of victims of crimes and calamities, endure long hours of investigations, stay away from home and family in highly stressful situations. In such circumstances, the police officers need to combine a tough shell for their own protection and sensitivity

to others⁴⁶. And, often, police officers have difficulty in admitting that the stressful nature of their job is affecting them. There may be even what is called '*dehumanization in self-defence*'. It is a process of protecting oneself from the overwhelming emotions by responding to others as objects rather than as persons⁴⁷.

Another problem that the stressful working conditions result in is '*burn-out*'. It is a syndrome of emotional exhaustion, depersonalization, and reduced personal accomplishment that can occur among individuals who work with people in some capacity⁴⁸. *Emotional exhaustion* reflects feeling of being emotionally worn-out and 'drained' as a result of accumulated stress from personal or work lives. Depersonalization may take the form of callous or insensitive response to other people particularly crime victims and others requesting police assistance. *Reduced personal accomplishment* is manifested in a decrease in one's feeling of competence at the end of a day's work with other people⁴⁹. Burn-out is an occupational phenomenon⁵⁰ that affects behaviour of the job too. A study on police officers revealed that emotional exhaustion was more likely to be a determinant of behaviour at home than any other factor. Wives of the police officers participating in this study stated that their husbands came home upset, angry, tense and anxious⁵¹.

42. *Id.*

43. *Id.*, note 38.

44. *Prakash Singh v. Union of India*, the Supreme Court, Writ Petition (Civil) No.310 of 1996, November 8, 2010.

45. Impact of Covid-19 on human rights & future response: Advisory on the rights of the police personnel, P.32. <<https://nhrc.nic.in/sites/default/files/Advisory%20on%20the%20Rights%20of%20Prisoners%20and%20Police%20Personnel.pdf>>. Miller A. Stress on the Job, *Newsweek* 25th April, 1988, Pp.40-45 at 43. Citations dropped; See also Pandemic Policing: Health, Well-being, Morale and Motivation of Police Personnel for Operational Continuity and Resilience, Webinar jointly organised by Indian Police Foundation and IDFC Institute. A consolidation of the learnings from State and Central Police Organisations. https://www.policefoundationindia.org/images/resources/pdf/Learning_from_pandemic_policing.pdf.

46. Ellison, K., and Buckhout, R., *Psychology and Criminal Justice*, (New York: Harper and Row 1981). Citations dropped.

47. Zimbardo, P.G., The Human Choice: Individuation, reason and order versus de-individuation, impulse and chaos. In W.J. Arnold & D. Levine (Eds.) *Nebraska Symposium on Motivation*, 1969. (Lincoln: University of Nebraska Press, 1970). Citations dropped.

48. Maslach, C. and Jackson, S.E. *Burnout in Organizational Settings*. In S. Oskamp (Ed.) *applied Sociological Annual*. (1984) Newbury Park, CA: Sage, 133-154., P.134. Citations dropped.

49. *Id.*

50. Burn-out an "occupational phenomenon": International Classification of Diseases, World Health Organization, Departmental news, 28th May, 2019. <https://www.who.int/news/item/28-5-2019-burn-out-an-occupational-phenomenon-international-classification-of-diseases#:~:text=%E2%80%9CBurn%2Dout%20is%20a%20syndrome,related%20to%20one's%20job%3B%20>

51. Lawrence S. *Wrightsmen, Psychology and the Legal System*, (Second Edition, Brooks/Cole Publishing Company, Pacific Grove, California) P.128.

The excessiveness of police actions during Covid-19 have come to the center stage due to the disastrous consequences of such irrational behaviour. National Human Rights Commission has acknowledged these incidents and has issued notices to the State Governments with reference to such occasions. Realizing the role of police as, “first responders” to fight against Covid-19, the Commission has brought out an advisory in consultation with experts, Ministry of Home Affairs and other similar stakeholders that the police departments needs to adopt while performing their duty⁵². On the other hand, it is true that long duty hours tend to test the patience of policemen. Working under tremendous pressure without any respite for relaxation, some of them are constantly on a short fuse and tend to vent their ire on innocent victims. However, none of these things can be justifications for the excessiveness of police and their human right violations. Addressing their challenges is crucial for the reforms needed to alleviate the lapses in the system of policing.

5. Consequences of lack of Police legitimacy

Police legitimacy is a concept that implies that ‘the police are seen as a legitimate power holder who uphold the law and operate in the community

*in a procedurally just way; giving a voice to the people they serve*⁵³. Several research results have consistently shown that the extent to which people obey the law depends significantly upon how much they can trust the police and the legitimacy of their actions⁵⁴. Therefore, it is of vital importance that in challenging situations as this pandemic, the police must understand the impact of their conduct, the construct of police legitimacy, the requirements of procedural justice, and seriously endeavour to avoid creating any mistrust in the people by behaving as though there is a rivalry between them and the public⁵⁵. It is evident from different studies that if the police are perceived as a legitimate power holder, community members are more likely to comply and cooperate with police and less likely to re-offend⁵⁶. And if there is greater satisfaction with the police, there will be less resistance to police, and less support for vigilante violence⁵⁷. On the other hand, when police are not seen as legitimate, community members are less likely to comply and cooperate, show more resistance⁵⁸. And also more often people feel that when they report to the police nothing will be accomplished⁵⁹. Further, lack of police legitimacy is likely to create overwhelming fears of abuse by the police⁶⁰.

52. Impact of Covid-19 on human rights & future response: Advisory on the rights of the police personnel <https://nhrc.nic.in/sites/default/files/Advisory%20on%20the%20Rights%20of%20Prisoners%20and%20Police%20Personnel.pdf>

53. Daniel J. Jones, ‘The Potential Impacts of Pandemic Policing on Police Legitimacy: Planning Past the COVID-19 Crisis, Policing: A Journal of Policy and Practice. 5th June, 2020. NCBI Resources, Oxford Health Emergency Collections. paaa026. Published online 2020 Jun, 5. doi: 10.1093/police/paaa026; <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7313846/>

54. Bottoms A., Tankebe J. (2012). ‘Beyond Procedural Justice: A Dialogic Approach to Legitimacy in Criminal Justice.’ *The Journal of Criminal Law and Criminology* 102(1): 119–170; Mazgerolle L., Bennett S., Davis J., Sargeant E., Manning M. (2013). ‘Procedural Justice and Police Legitimacy: A Systematic Review of the Research Evidence.’ *Journal of Experimental Criminology* 9(3): 245–274; Tankebe J. (2013). ‘Viewing Things Differently: The Dimensions of Public Perceptions of Police Legitimacy.’ *Criminology* 51(1): 103–135.

55. Reicher S., Stott C. (2020). ‘Policing the Corona virus Outbreak: Processes and Prospects for Collective Disorder.’ *Policing: A Journal of Policy and Practice* (Unpublished Thesis).

56. Paternoster, R., Brame, R., Bachman, R. and Sherman, L.W. (1997). ‘Do Fair Procedures Matter? The Effect of Procedural Justice on Spouse Assault.’ *Law and society review* 31(1): 163–204; Sunshine, J. and Tyler, T.R. (2003). ‘The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing.’ *Law and society review* 37(3), 513–548.

57. *Id.*

58. Bolger P.C., Walters G.D. (2019). ‘The Relationship between Police Procedural Justice, Police Legitimacy, and People’s Willingness to Cooperate with Law Enforcement: A Meta-analysis.’ *Journal of Criminal Justice* 60: 93–99.

59. Brunson R.K., Wade B.A. (2019). ‘“Oh Hell No, We Don’t Talk to Police” Insights on the Lack of Cooperation in Police Investigations of Urban Gun Violence.’ *Criminology & Public Policy* 18(3): 623–648; Crehan A.C., Goodman-Delabunty J. (2019). ‘Procedural Justice and Complaints about Police.’ *Salus Journal* 7(1): 58–87.

60. *Id.*

Over-policing of marginalized communities is particularly challenging during such difficult situations as this pandemic, when the police have to enforce new public health laws and ensure public safety. To this end the police need to depend on the willingness of the public to comply with social distancing or lockdowns in a way that they never had to before. At the same time, police are tasked more than ever to prevent civil unrest. Communities that already have strained relationships with the police might have a harder time complying with the new rules and regulations. Such lack of legitimate policing is likely to have lasting consequences and impacts on police–community relations and how interactions between police and community shape society today. However, if the police response to the situation is compassionate with procedurally just operations it can result in rebuilding the police legitimacy strengthening the police community relations which is very important for successful policing and a happy society⁶¹.

6. Conclusion and Suggestions

Policing during the Corona virus pandemic lockdown has brought mixed response from the people of India. The services of majority of the police and the medical personnel, during this pandemic, are certainly worthy of all praise. This experience reveals police in India are sensitive and humane, people-friendly and committed to the rule of law. Several policemen did blood donations to patients in critical condition.

However, sadly, this is only part of the picture. There were many instances of police excessiveness that were committed in the name of getting compliance with the COVID-19 Lockdown restrictions. The incidents ranged from simple assaults to deaths of people who advertently or inadvertently violated the lockdown rules. There were guidelines given by the Ministry of Home Affairs as well as the Police Foundation for the peaceful and effective

enforcement of the lockdown requirements. Whether it is lack of proper training or lack of respect for the human rights of people, or the psychological, emotional or physical exhaustion due to the highly overburdened and risky demands of their job during the COVID time, whatever might be the reason, police actions in several parts of the country resulted in serious violation of the human rights of the public. Nevertheless, it is fair and just to understand with sensitivity, the challenges of the police personnel in discharging their duties in the most difficult conditions of their job.

There are several public law and private law remedies available against police misuse of powers. It is also important to keep in mind that the lack of police legitimacy results in further deterioration of the already delicate relationship between the police and community. This in turn will result in poor response to policing. In this context it is worth focusing on what should be done to have better policing, in India, which is done with better respect for the human rights of the people in this most vibrant democracy of the world.

First and foremost a comprehensive legislation must be put in place to address all issues pre-emptively in case of outbreak such pandemics. The laws which have been applied to the emergencies of corona virus do not perfectly handle the situation and most of them are very old and outdated. The laws should include, among other things, clear guidelines regarding police, duties, and powers and remedies available for excesses of police powers. The UK the Corona Virus Act, 2020 and Infectious Diseases Regulations, 2020 of Singapore are good examples of comprehensive legislations on the point.

Indian Evidence (Amendment) Bill, 2016, passed by the Lok Sabha to introduce the “Presumption in prosecution of custodial death or injury” to place the burden of proof on the accused police by introducing Section 114-B⁶² in the Indian Evidence

61. *Id.*, Daniel, J. Jones, *supra* Note 53.

62. By giving due regard to essential factors including the period of custody, any admissible statement by the victim on the cause of injury, evidence of the medical practitioner, and evidence of the Magistrate, who might have a record of the victim's statement.

Act, 1872, must be approved as early as possible to keep the unruly police personnel in their guard and abstain from abuse of their power.

Social policing or community-oriented policing should be adopted that encourages police personnel to establish personal relationships with people and community organizations. Maintaining such relationships with commitment goes a long way to enhance police legitimacy and increases mutual trust between police and community.

As suggested by the second report of the National Police Commission in 1980 the police should be trained and equipped to perform service-oriented role to assist people in situations of distress. This would bring a great difference in the services of police, they being *first and key responders* in a disaster as described by the National Disaster Management Policy, 2009. Such a program should be able to inform them of the dynamics of the area they are posted in, which would give them deep insight into the everyday lives of the people so that they can handle things in a way that is most amicable to the people of the locality.

The policy makers need to take notice of the fact that there is a disproportionate emphasis put on hard skills such as the use of weapons, crowd control drills, and other physical competencies during police training, while there is a great need to include, in their training curriculum, soft skills that include negotiation, communication, peaceful coordination, and conflict resolution. Field based exposure by focusing on behavioral competencies also is very important. These reforms, hopefully, will help police to

discharge their responsibilities with due respect to the human rights of people.

There is great need to make a considerable increase in the number of police personnel in India. The number of police in the country falls far lower than the United Nations recommended 222 per one lakh population. The sanctioned strength of police in India is 181⁶³ but the actual number of police recruited is only 138 per lakh⁶⁴. Therefore, each police officer becomes responsible for a large section of people putting lots of pressure on him that naturally affects his performance.

Reforms in the police laws that treat policing as a 24/7 job is essential to ease the stress on the police personnel and allow them to have weekly offs, following the example of States like Andhra Pradesh, and holidays in reasonable intervals.

Team policing, re-organization within the police department that restructure the traditional chain of command, periodical changes in the branch a policeman works can also bring a great change in the frustrating monotony of police job.

It is of great significance that the police leaders should make sure that procedurally just practices are happening between police and public. Therefore, higher police officials should follow up things with great care and caution to better articulate the interaction between the police officers and the members of the community. These reforms hopefully should bring a considerable change in the attitude and functioning of the police with the due respect for the human rights of the people.

63. "Data on Police Organisations", Bureau of Police Research and Development, 2016, <http://bprd.nic.in/WriteReadData/userfiles/file/201701090303068737739DATABOOK2016FINALSMALL09-01-2017.pdf>.

64. India's ratio of 138 police personnel per lakh of population fifth lowest among 71 countries, The Economic Times, 13th July, 2018, 03:58 p.m., IST https://economictimes.indiatimes.com/news/defence/indias-ratio-of-138-police-personnel-per-lakh-of-population-fifth-lowest-among-71-countries/articleshow/48264737.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppstn=cppst.